REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9193 OF 2013
(@ out of SPECIAL LEAVE PETITION (CIVIL) NO. 23761/2011)

B. Amrutha Lakshmi … Appellant

Versus

State of Andhra Pradesh and Ors. … Respondents

WITH

CIVIL APPEAL NO. 9194 OF 2013
(@ out of SPECIAL LEAVE PETITION (CIVIL) NO. 16042/2012)

Irrinki Srinagesh … Appellant

Versus

State of Andhra Pradesh and Ors. … Respondents

J U D G E M E N T

H.L. Gokhale J.

Leave Granted.

2. We will first deal with the facts and legal submissions of the first SLP (C) 23761 of 2011. This appeal by Special Leave seeks to challenge the judgment and order dated 31.12.2010, rendered by a Division Bench of the Andhra Pradesh High Court in Writ Petition No. 32290/2010, dismissing the same. The said Writ Petition sought to challenge the order passed by the Central Administrative Tribunal (CAT) Hyderabad, dated 20.12.2010, on the Interim Application moved by the appellant in her Original Application No. 1291/2010, wherein, the CAT rejected the said Interim Application.

Facts leading to this appeal are as follows:-

3. The appeal is concerning the right of the appellant for being considered for the selection into the Indian Administrative Services (IAS) from the Non-civil services in the state of Andhra Pradesh. The selection into the IAS is governed by the All India Services Act 1951, and IAS (Recruitment) Rules 1954. There are three sources for being selected into the IAS as per the IAS (Recruitment) Rules 1954. They are:- (i) by direct recruitment; (ii) by promotion of a substantive member of a state civil service and (iii) by selection from amongst those persons who hold gazetted posts in substantive capacity in connection with the affairs of the State, and who are not members of a State Civil Service.

4. The vacancies in the IAS cadre for each particular State are notified by the Central Government. In the present case, we are concerned with the three vacancies meant for category (iii) above viz. the officers of Non State Civil Services, which were notified for the year 2011. The case of the appellant is that, though she was eligible for being taken into the panel for consideration, she lost her opportunity due to the erroneous interpretation of the relevant rules by the respondent No. 1, State of Andhra Pradesh. At the relevant time, she was working as the Assistant Commissioner of the Sales Tax, and she satisfied all the eligibility criteria, yet the Principal Secretary, Department of Revenue (Commercial Tax) Department, Hyderabad, Andhra Pradesh, and the Commissioner of Commercial Taxes, Hyderabad, Andhra Pradesh, respondent Nos. 2 and 3 respectively, restricted the zone of consideration only to the higher officers amongst the eligible candidates viz., to the Joint and Additional Commissioners of the Commercial Tax Department.

5. The appellant, therefore, filed Original Application No. 1291 of 2010 before the Central Administrative Tribunal (CAT) and prayed for the following main reliefs:-

"1.) This Hon'ble court may be pleased to declare that the action of the 3rd respondent in not considering the case of the applicant for being proposed for appointment to I.A.S., in terms of I.A.S. (appointment by selection) Regulation 1997 is illegal and is contrary to and violation of Regulation 4 of I.A.S. (appointment by selection) Regulation 1997 and is also violative of Article 14, 16 and 21 of the Constitution of India.

2). This Hon'ble Tribunal may be pleased to declare the action of the 5th respondent in not forwarding the name of the applicant to 3rd respondent is illegal and contrary to G.O.Ms NO. 634 dated 24.8.2007 and is also contrary to Regulation No. 4 (1) of I.A.S. (appointment by selection) Regulation 1997.

3). This Hon'ble Tribunal may be pleased to declare that applicant is entitled to be considered by the Committee (as constituted under Regulation 3) by 2nd respondent for appointment to I.A.S., by selection based on her outstanding merit and ability and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstance of the case."

6. The appellant prayed for the interim order which read as follows:-

"In the above circumstances this Hon'ble Tribunal may be pleased to direct the 2nd respondent not to convene the meeting of the Committee and not

to consider the case of any other candidate(s) proposed by the 3rd respondent for appointment to I.A.S. by selection (of A.P. State Non-SCS Officers), pending disposal of O.A., and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

In the alternative direct the 3rd respondent to consider and propose the name of the applicant for consideration by the 2nd respondent for appointment by selection to I.A.S. before the cases of other candidates are considered and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

7. The CAT, however, declined to grant the interim relief that the appellant had prayed for. The appellant therefore, carried the matter to the Andhra Pradesh High Court, where the High Court has held the restriction of the zone of consideration to be valid. Being aggrieved by this order, the appellant has filed this appeal by Special Leave.

8. Mr. P.S. Narshimha, learned senior counsel appeared for the appellant, Mr. A.T.M. Rangaramanujam, learned senior counsel appeared for the first respondent State of Andhra Pradesh, and the Principal Secretary to the Department of Revenue (Commercial Taxes) Andhra Pradesh, and the Commissioner of Commercial Tax, Andhra

Pradesh. Mr. P.P. Malhotra, Additional Solicitor General has appeared for respondent No. 4 Union of India and Mr. Radhakrishnan, learned senior counsel for respondent No. 5 Union Public Service Commission.

9. It was pointed out by Mr. Narshimha, learned counsel for the appellant, that the relevant regulations for our purpose are the I.A.S. (Appointment by Selection) Regulations, 1997. Clause No. 3, regulation Nos. 3 and 4 thereof, are relevant for our purpose. Regulation 3 deals with the determination of vacancies to be filled. Regulation No. 4 lays down the provisions for the State Government to send proposals for consideration of the committee referred to in regulation No. 3, which is the committee constituted under regulation No. 3 of the Indian Administrative Services (Promotion by Appointment) Regulations 1955. These two regulations Nos. 3 and 4 read as follows:-

*"3. **Determination of vacancies to be filled:***

The Central Government shall, in consultation with the State Government concerned, determine the number of vacancies for which recruitment may be made under these regulations each year. The number of vacancies shall not exceed the number of substantive vacancies, as on the first day of January of the year, in which the meeting of the Committee to make the selection is held.

*4. **State Government to send proposals for consideration of the Committee**:-*

(1) The State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who,

i) is of outstanding merit and ability; and

ii) holds a Gazetted post in a substantive capacity; and

iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee. The number of persons proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year.

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the Committee.

Provided also that the State Govt shall not consider the case of a person who, having been included in an earlier Select List, has not been appointed by the

> *Central Government in accordance with the provisions of regulation 9 of these regulations."*

10. As can be seen from these two regulations, the Central Government has to determine the number vacancies for which recruitment may be made each year, which is to be done in consultation with the State Government. The number of vacancies to be determined, shall not exceed the number of substantive vacancies, as on the first day of January of the year, in which the meeting of the selection committee is held. Regulation No. 4 lays down, that the State Government has to send the proposal for consideration of the committee. It is important to note that while sending the recommendations from Non Civil Services section, the Government has to see that (i) the person concerned is a person of outstanding merit and ability, (ii) he holds a Gazetted post in a substantive capacity, (iii) he has completed at least 8 years of continuous service on the first day of January of the year in which his case is being considered, (iv) the person must belong to a post which has been declared equivalent to the post of Deputy Collector in the State Civil Service, (v) the number of persons proposed for consideration of the committee shall not exceed five times the number of vacancies, and (vi) the persons to be recommended should not have attained the age of 54 years on the first day of January of that year in which the names are considered by the committee.

11. As far as the equivalence with the post of Deputy Collector is concerned, the Andhra Pradesh Government came out with a G.O.Ms No. 634 of the General Administration (Special Department) dated 24.8.2007, which provided as follows:-

"*__NOTIFICATION__*

In supersession of the order issued in G.O.Ms, General Administration (Special.A) Department, Dated: 08.06.2006, G.O.Ms. No. 807, General Administration (Special A) Department, Dated: 23.12.2006, read with G.O.Ms No. 63 General Administration (Special A) Department, Dated: 08.02.2007, and in the exercise of powers conferred under sub-regulation (iii) of regulation 4(1) of the Indian Administrative Service (Appointment by Selection) Regulations, 1997, the Government hereby declare that, all the post carry the scale of pay of Rs. 10,845-22,995 and above (revised scales of 2005) in all the departments under the Govt. of Andhra Pradesh, barring the services viz. (i) State Police Service, (ii) State Forest Services, and (iii) Judicial Service, are equivalent to the post of Deputy Collector in the State Civil Service for the limited purpose in regulation ibid. Officers who have completed 8 years of continuous service in the said scale as on 1st January of the year for which selection is made and are substantive in the *above scale of pay as stipulated in IAS (Appointment by Selection) Regulations 1997, are eligible for consideration.*

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

J.HARI NARYAN
CHIEF SECRETARY TO GOVERNMENT

12. Thus, as can be seen, sub-regulation (iii) of regulation 4 (1), referred to above, includes all the posts which carry the scale of pay of Rs. 10,845-22,995 and above, and (ii) persons from all the departments under the Government of Andhra Pradesh except State Police Service, State Forest Service and Judicial Service are eligible to be considered. The notification declared such posts to be equivalent to the post of Deputy Collector in the State Civil Service, for the limited purpose specified in the Regulations. The Principal Secretary to the Government accordingly, wrote to the different departmental heads to send the full particulars of eligible Non Civil Services officers who fulfill the criteria. In para 4 of this letter he specifically stated as follows:-

"4. The Regulations stipulate that the Non-SCS Officers to be considered for selection should be of outstanding merit and ability. This aspect should

be thoroughly ensured before sending the proposals. An Officer who is facing disciplinary enquiries and against whom adverse remarks are recorded in the ACR or whose integrity is not certified, cannot unequivocally be said to be of outstanding merit and ability."

13. The Commissioner of Commercial Tax, Andhra Pradesh by his letter dated 18.6.2010 sought a clarification whether all the eligible officers in the cadre of Assistant Commissioner and above would be considered as eligible, if they were of substantive ability, had completed the minimum years of service, and had not crossed the age of 54 years as on 1.1.2010. The Commissioner got a reply that the necessary instructions may be adhered to scrupulously. He subsequently got another letter dated 1.7.2010 from the Principal Secretary, of the Revenue (CT-I) Department, that the names of officers from the cadre of Assistant Commissioner of Commercial Taxes and above, who are of outstanding merit and are eligible, may be forwarded. It so happened, that the names which were sent for consideration were, however, only of the Joint Commissioners and Additional Commissioners and not Assistant Commissioners. It is, therefore, that the appellant filed the above Original Application and applied for interim relief which came to be declined, and the order of the CAT was left undisturbed by the High Court. This has led to the present Civil appeal.

14. According to Mr. Narshimha, the relevant rules were very clear, and the appellant satisfied all those requirements. The appellant was a Gazetted Officer in a substantive capacity, and she had completed more than 8 years of continuous service as an Assistant Commissioner of Sales Tax which was a post declared to be equivalent to the post of Deputy Collector. She had not completed the age of 54 years, and there was no dispute about her outstanding merit and ability. The CAT, however, rejected the prayer for interim relief, solely on the ground that by the time the matter was considered by the CAT, the selection had already been completed, and therefore, the interim prayer as sought could not be granted. In the High Court, it was however contended on behalf of the Commissioner for Commercial Tax, that if the criterion was to be applied as it is, the number of officers to be considered from the Commercial Tax Department itself would be more than 300. It was submitted that there are in all 30 departments in the State Government, and therefore, the Commissioner and other heads of department were well within their power to restrict the zone of consideration up to a particular level, from which the names may be forwarded. It was also pointed out on behalf of the Government that, if the criterion as insisted by the appellant was applied, some of the persons of the rank of Assistant Commissioners or Deputy Commissioners will get selected, they will become superior to Joint and Additional Commissioners, and will write the Annual Confidential Reports of such officers who were presently holding posts higher to them. The High Court posed the question, as to whether the names of these junior officers should be mechanically forwarded. In paragraph 19 of the judgment the High Court held as follows:-

> *"19. In the present case, the Commissioner did not strictly go by rule of seniority among the eligible officers in the Commercial Taxes Department. The course adopted by him is that since a large number of officers have to be forwarded going by the criteria of eligibility as per Regulation 4 (iii) and G.O.Ms No. 634, he restricted the zone or level of officers for consideration upto the level of Additional Commissioners and Joint Commissioners. Thus this is a case where the seniority rule has not been followed but the zone of*

consideration has been restricted upto a particular level…….”

15. Again, in paragraph 23, the High Court observed that just because the appellant officers satisfy the criteria and are eligible officers, their names could not be forwarded. This is because the number of vacancies to be filled was 3, and the number of candidates to be recommended will be 5 times that number i.e. 15 only. The High Court therefore, held that the Commissioner of Commercial Taxes had the power to restrict the zone of consideration in sending the names above the level of Additional Commissioners and Joint Commissioners. The Writ Petition filed by the appellant was, therefore, dismissed.

16. It is material to note, that a counter affidavit has been filed on behalf Government of Andhra Pradesh, where in para 4 it is stated as follows:-

“4. I say and submit that there may be large number of officers who will meet above eligibility but number has to be restricted to five times the vacancies for consideration from all departments put together. Commercial Taxes Department is one of departments in the State. There are more than 30 departments in the State. There were only (3)

vacancies. Hence maximum number that could be considered by the Committee was (15) for all departments put together. In order to have healthy competition and to avoid unhealthy competition, out of all eligible persons having outstanding merit and ability, persons having highest seniority were recommended. ...”

17. The question for our consideration is whether such a restriction of the candidates to be considered, who were otherwise eligible, was permissible under the rules. It is not disputed that the petitioner was very much eligible for being considered, and there were so many similar eligible candidates. It was being portrayed by the respondents that from every department 300 persons were eligible, and there are 30 departments and therefore, the number would go to some 9,000 and above. Now, what is to be noted is that all that the eligible officers concerned have, is a limited right of being considered, though they do not have a right of promotion, as held in **Shankarsan Dash Vs. Union of India 1991 (3) SCC 47**. Mr. Narshimha submitted that this limited right should not be denied to the candidates like the appellant, on the basis of the ground that in such a case a large number of names will have to be forwarded. That apart, he submitted that there was no substance in this justification, and it was merely a bogie. This is because what the State Government had to do first was to find out as to who fulfilled the criteria. Undoubtedly, a large number of persons will fulfill the criteria, being Gazetted Officers with more than 8 years of service, and less than 54 years of age on the relevant date. They would also have to be in the required pay scale. However, as stated in paragraph 4 of the Principal Secretary's letter, while considering the outstanding merit and ability, those with adverse remarks and those facing departmental enquiries were to be excluded. Therefore, there was no difficulty in excluding such persons on those grounds. Thereafter, what remained to be seen was as to who were the persons with outstanding ability and merit amongst them? The State Government maintains their annual appraisal reports, and for such selection it lays down some criteria of maintaining the outstanding merit and ability over certain period viz. that in previous five years the officer must have 3 outstanding reports, or that in the previous 3 years the officer concerned must have all throughout an outstanding rating etc. It is for the State Government to lay down by rules as to how the outstanding merit and ability is to be assessed, and over how much period. After all these tests are applied, the number of persons to be recommended will not be very large. However, once a candidate comes into the zone of consideration, and satisfies all the requirements, including that of outstanding merit and ability, he cannot be told that merely because he is junior in the seniority, his name will not be forwarded for consideration. The rule requires that from amongst the outstanding officers, 15 names are to be forwarded to the Central Government, and hence it is possible that amongst these 15, a junior officer may as well figure, depending upon the assessment of his merit. He cannot be eliminated merely on the ground that he is a junior officer, and that if selected he will write the ACRs of his superiors.

18. We have got to accept that, if the rules for selection contain a requirement, the same has to be applied uniformly and strictly, and none from the eligible group can be eliminated from being considered on any criteria, other than those which are provided in the rules. If there is a criteria laid down for selection, the Administration has to confine to the same, and it cannot impose an additional criterion over and above whatever has been laid down. If that is done, it will no longer remain an exercise of discretion, but will result into discrimination. It will mean treating similarly situated employees dissimilarly, and denying equal opportunity to some of them in the matter of public employment on the basis of a criterion which is not laid down, resulting into violation of Articles 14 and Article 16(1) of the Constitution of India. If the rules were to provide that in the event of large number of persons coming into the zone of consideration, the names of the senior most alone will be forwarded, then it would have been a different situation. In the absence any such restrictive rule, as in the present case, the decision of the respondents cannot be justified.

19. In view of the reasons stated above, we accept the submissions canvassed on behalf of the appellant. The prayers in the O.A. filed by the appellant were negatively worded viz. to declare that the action of the respondents not to consider the case of the appellant, and not to forward her name, was illegal. In a way it was a prayer for a positive declaration viz., that the appellant and persons situated like her were entitled to be considered by the committee, if they are otherwise eligible. We are of the view that, the appellant is entitled to such a positive declaration, which order takes care of the prayer as made in the Original Application.

20. In the circumstances we allow this appeal, set-aside the impugned judgment and order of the High Court as well as of the Central Administrative Tribunal, modify the relief as prayed in the O.A., and hold that the decision of the Respondents not to consider the appellant for the selection, amounted to her being treated dissimilarly, though she was situated similarly to the recommended officers. The decision was violative of Article 14 and Article 16(1) of the Constitution, since it was arrived at on the basis of a criterion which was not laid down. However, the selection for the year 2011 was over, even before the interim application in the CAT was decided. Setting aside the selection conducted some two years back, and asking the respondents to re-do the exercise after considering the appellant and other similarly situated candidates, would create lot of uncertainty, in as much as the appellant and such other similarly situated candidates, might or might not finally succeed in the selection process. Hence, it will not be proper now to set aside the selection of the selected candidates. Therefore, though this declaration is being granted, viz. that the appellant and persons situated like her were entitled to be considered by the committee, no further relief in that behalf can be granted to them. The opinion rendered by us will have to operate prospectively in the matter of application of the concerned rules, for the future selections. Hence, this appeal is being allowed in part.

21. We cannot, however, ignore that the appellant had to resort to this litigation for no fault of hers. The non consideration of her claim was totally unjust. Hence, even though for the reasons that we have stated earlier, the appellant can not get the relief in the nature of a direction to consider her for the selection which she had sought, she must get the damages for non-consideration on unjust grounds. This is because, the Commissioner for Commercial Tax had acted to reduce the zone of consideration, contrary to the rules, and inspite of a letter dated 1.7.2010 from the Principal Secretary Revenue (CT-I) Department, which had clarified that the Commissioner may send the proposals of the eligible candidates of the cadre of Assistant Commissioners and above, who were of outstanding merit. The award of damages is necessary also because, a message must go down that those who are responsible for administration of the State cannot trample upon the rights of others on the grounds which are unsustainable in law. We, therefore, direct the State of Andhra Pradesh to pay the damages of rupees fifty thousand to the appellant. This will be over and above the litigation cost of rupees twenty five thousand, which we hereby award.

22. The issue involved in the appeal arising from the second SLP (C) No. 16042/2012 is same as the one in the earlier matter. We have heard Mr. Jayant Bhushan, learned senior counsel for the petitioner in the second matter, as well as, the counsel for the respondents. For the reasons stated in the first matter, we grant leave in this matter and pass the same order, as in the first one. This appeal will also stand allowed, accordingly, with damages quantified at rupees fifty thousand, and cost of rupees twenty five thousand to be paid by the first respondent.

23. We direct that the amounts towards the damages and the cost be paid to both the appellants within six weeks from the receipt of a copy of this order. In both these appeals, it will be open to the State Government to recover these amounts from the then Commissioner of Commercial Tax, and/or whoever were the officers responsible for the non-consideration of the claim of both the appellants.

……………………………………….J.

[**H.L. Gokhale**]

…………………………………….J.

[**J. Chelameswar**]

New Delhi
Dated : October 18, 2013