CASE NO.:
Appeal (civil) 8271-8272 of 2001

PETITIONER:
The Secretary, Andhra Pradesh Public Service Commission

RESPONDENT:
Y.V.V.R. Srinivasulu & Ors.

DATE OF JUDGMENT: 17/04/2003

BENCH:
Doraiswamy Raju & Ashok Bhan.

JUDGMENT:

J U D G M E N T

D. Raju, J.

The above appeals have been filed by the Andhra Pradesh Public Service Commission challenging the order dated 16.12.1999 of the High Court dismissing the Writ Petition No.17997 of 1999 filed by the appellant, thereby repelling its challenge to the order dated 29.12.1998 of the Andhra Pradesh Administrative Tribunal in O.A. No.4465 of 1997 and the further order passed by the High Court on 16.11.2000 in Writ Petition Miscellaneous Petition No.4514 of 2000 rejecting the application filed by the appellant for review of the earlier order.

For a proper understanding of the grievance of the parties as well as the interpretation to be placed on the relevant provision in question, a reference to some of the vitally essential facts becomes necessary.

The appellant-Commission issued a Notification in advertisement No.8/90 on 23.7.1990 inviting applications for Direct Recruitment (General/Limited) to certain posts enumerated in Group-I (Honours Degree Standard) and Group-IIA (Bachelor's Degree Standard) Services, indicating that the Commission on the basis of the results of the Competitive Examination will draw up a list of successful candidates for filling up the vacancies in Group-I and Group-IIA Services referred to and indicated therein. We are concerned in these proceedings only with the selections made in respect of Group-IIA Services. Respondents 1 to 3 were three of the thousands of the applicants, who responded and underwent the process of selection. It appears that the Notification disclosed that the final list of successful candidates will be drawn up on the basis of the result of the Competitive Examination and the criteria for selection is the marks obtained in the said examination. Under the Scheme of recruitment to Group-IIA posts, the written examination would be followed by an oral interview. Based on the performance in the preliminary examination, it appears that the candidates would be called up for the main examination and based on the performance in the main examination, the candidates would be called for an oral interview and that marks obtained in the main written examination and in the interview formed the basis for selection to the post in the services in question. It is reflected from the facts averred that the respondents 1 to 3 have mentioned in the main application form submitted by them that they possessed B.Com., B.Sc. and B.A. respectively and at the time of verification prior to the actual interview by the Commission during which a check-list also was prepared for each candidate, the qualification disclosed was found to be B.Com., B.Sc. M.A and B.A. respectively and, thus, at the relevant points of time the possession of the additional qualification itself does not seem to have been disclosed and brought to notice for consideration. By means of an additional affidavit filed on the directions of this Court on 9.7.2001, the details relating to the examination the manner in which the selection is made and the ranks obtained by the respondents 1 to 3 came to be disclosed and it is found from the same that a total of 3883 candidates were interviewed by the Commission and the

ranks obtained by respondents 1 to 3 were 1303, 2637 and 2327 respectively. Merit-wise, it appears that there were above them 310, 279 and 101 candidates, respectively with higher ranking.

While matters stood thus, a list of selected candidates was said to have been published in March 1995 according to their ranks on the basis of merit performance and appointments were also made pursuant thereto. It appears that in the meantime O.A. No.2750 of 1993 was filed by a candidate, who applied for the post in Group-I Services under the same Notification seeking for consideration of his claims by giving absolute preference to the educational qualification possessed by him in Law in the matter of selection. The Tribunal by its order dated 13.7.1993 seems to have dismissed the same with an observation, after noticing the facts, that preference was given at the last stage in the process of selection, namely, only in cases where more than one candidate for a particular post has obtained equal marks by preferring those candidates who possessed preferential qualification and no justification, therefore, was made out to interfere at that stage. An appeal, filed in S.L.P. (C) No.13777 of 1993 before this Court, was said to have been rejected on 22.4.1998 observing that having regard to the facts and circumstances of this case, this Court was not inclined to interfere with the order of the Tribunal, leaving at the same time the question raised therein open. Yet another application, O.A. No.560 of 1993, appears to have been filed by an applicant for Group-IIA Services and the Tribunal by an order dated 26.4.1993, after noticing the fact that the selections were half way through and that it would be inappropriate to reopen the matter, disposed of the matter finally observing that at the time of finalizing the selection, the appellant-Commission will have to keep in view the provision of preference in any Special Rules and the manner of preference provided and the decision of the Supreme Court as noticed therein. Aggrieved against the non-selection of the respondents 1 to 3, almost after two years, on 21.7.1997 the present O.A. No.4465 of 1997 came to be filed by those respondents staking their claims for preference in the light of the decision of this Court in Government of Andhra Pradesh, etc. Vs. P.Dilip Kumar & Anr.,etc. [(1993) 2 SCC 310] contending that by virtue of the additional qualification by way of degree of law possessed by them, they are entitled to preference over the other candidates. The Tribunal below by its order dated 29.12.1998 expressed the view that so long as the preference clause is on the statute book in the relevant rules of the service, preference has to be given to the persons who possess the additional qualification before picking up persons, who have come out successful in the screening test and consequently, directed the respondents before the Tribunal, the appellant-Commission and the State Government, to consider the claim of the respondents 1 to 3 herein in preference to the candidates who are not having additional qualification.

Finding that such a construction and enforcement of the rule relating to the preference clause will not only upset the whole process of selection, but will totally undermine the very scheme and system of selection in vogue and also notified in conformity with the governing rules in force, pursued the matter before the High Court by filing a Writ Petition. The High Court also agreed with the Tribunal that the principles laid down in P.Dilip Kumar's case (supra) would govern the case and in addition thereto, proceeded to say that the Service Commission itself had categorized as to how the preference should be given in the advertisement in question and, therefore, it has to go by the method indicated therein and it will not be open for the appellant to say that they are not prepared to abide by what they have said. Immediately thereafter realizing that Rule 5 of the Andhra Pradesh Commercial Tax Subordinate Services Rules envisaging preference itself came to be superseded w.e.f. 3.2.1990 by the promulgation of new set of rules removing the provision for 'preference' from the Rules and that this fact was not brought to the notice of the Tribunal or the High Court, the appellant filed an application for review, which also came to be rejected on the ground that the omission/lapse of the nature by the appellant is no ground for review and dismissed the same resulting in filing of these appeals.

The subsequent developments which seem to have taken place also require to be noticed. The Special Leave Petitions appear to have been filed in this Court on 15.1.2001 and since this Court declined to grant stay of the

judgment of the High Court and ultimately only leave was granted, respondents No.1 to 3 filed C.C. No.1562 of 2001 for not implementing the order of the High Court. The matter therefore, seems to have been taken up for consideration of the claims of respondents No.1 to 3, subject to the ultimate result of the appeals in this Court. Even, on such consideration it appears to have been found that they could not be selected, as there were many number of candidates with higher merit ranking above them possessing law degrees. Accordingly, respondents were said to have been informed on 21.1.2002 that their claims were considered but were found not eligible for selection. Thereupon, respondents No. 1 to 3 appears to have filed O.A. No.2378 of 2002 before the A.P. Administrative Tribunal challenging the same and seeking for a declaration in their favour. The Tribunal was said to have dismissed on 31.1.2003, the O.A. relying upon the decision of this Court in Bibhudatta Mohanty vs UOI & Ors. [2002(4) SCC 16].

Shir P.P. Rao, learned senior counsel appearing for the appellant-Commission contends that the provisions relating to preference were totally misconstrued, apart from the fact that it was not in force at the relevant point of time in this case and that the Tribunal as well as the High Court committed a grave error in treating it to be a rule of absolute preference, dehors the merit performance of the candidates, to claim precedence over others who were more meritorious, on the ground of mere possession of a degree in law. Preference, envisaged by the rules according to the appellant was meant to operate in favour of those who possess law degree, wherever the candidates for selection are otherwise equal in merits, as a tilting factor and not for constituting them as a distinct or separate class even for consideration. It was also urged for the appellants that the decision in Dilip Kumar's case (supra) has no application to the case on hand, apart from the case not laying down any universal principle of law that in any and all circumstances the 'preference' envisaged has to be given so as to take precedence even in consideration and that such a construction as the one placed in this case would defeat the very purpose of selection on the basis of competitive examination and interview, causing grave in justice in addition, to the claims of candidates with greater merit performance. Finally, it was pointed out that the advertisement of the Commission in this case does not give any indication in the manner assumed by the High Court and at any rate no interference was called for at the instance of respondents No.1 to 3, who approached the Tribunal almost after two years after selection was over and posts were filled up.

Per contra, Shir V. Sridhar Reddy, learned counsel for respondents No.1 to 3, while adopting the reasoning of the Tribunal and the High Court, reiterated the stand taken before the Tribunal and High Court, even before us by inviting our attention elaborately to portions of those orders and the decision of this Court relied upon therein. It was also submitted that the amendment to the rule of preference with reference to one service relating to ACTO will have no impact on the claims to other posts and that at any rate, the stipulation in the advertisement in this case would itself provide sufficient basis for the claims of respondents. Consequently, it is urged that no interference is called for with the order of the High Court and the Tribunal below.

We have carefully considered the submissions made on either side. The Tribunal as well as the High Court appears to have undertaken a consideration, in a superficial and general manner without specifically adverting to the scheme underlying the relevant provisions in the various services, the posts falling under which constituted the cluster of posts falling under Group-IIA services. The rules, other than A.P. Labour Officers Subordinate Service Rules, which came into force on 2.9.1985 and the A.P. Commercial Taxes Subordinate Services as it existed prior to the new set A.P. Commercial Taxes Subordinate Services Rules, 1990, envisaged while providing the required educational qualifications for the concerned posts, preference being given to a candidate who in addition to the ordinary degree in a subject has obtained a degree in law of a recognized university. The Public Service Commission has issued the notification in question Adv.8/90 on 23.7.90 only and so for the post of ACTO's is concerned it is the APCT Subordinate Service Rules which came into force on 3.2.1990 that alone matters and is relevant since while promulgating these rules under Article 309 of the Constitution it is found mentioned in the preamble itself that they are in

super session of the special rules issued in G.O.MS No.170.GA dt.30.1.62. Consequently, there is no scope for relying upon those rules which only provided for giving preference ignoring the relevant rules governing the service at the crucial point. If oblivious to the new rules the Commission in the advertisement stated anything, apparently keeping in mind the old rules, the same can neither bind the appellant-Commission nor can provide a legal basis for a right in favour of anyone to the detriment of the rights of others. Even dehors this aspect, as to what should be the purport of the 'preference' envisaged in the superseded rules, the issue will be considered separately along with the claims relating to posts in other services. So far as A.P. Labour Officers Subordinate Service Rules, 1985, are considered, the provision in the schedule itself stipulate that, "other things being equal, preference shall be given to those who possess .". The further fact that the respondents for reasons best known to them, have not disclosed either in the main application or at the time of scrutiny of the records prior to the interview, itself would disentitle them from staking a claim subsequently on the basis of qualification which they kept for themselves without due disclosure, to the Commission.

Both on account of the scheme of selection and the various stages disclosed as necessary to be undergone by every candidate and the manner of actual selection for the appointment in question, the candidates were required to be selected finally for appointment on the basis of the ranks obtained by them in terms of the inter se ranking based on the merit of their respective performance. There is no escape for anyone from this ordeal and claim for any en bloc favoured treatment merely because, anyone of them happened to possess an additional qualification than the relevant basic/general qualification essential for even applying to the post. The word "preference" in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involve, a qualifying test, a written examination and oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all round merit, if had to be adjudged in that manner only what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The rules do not provide for separate classification of those candidates or apply different norms of selection for them. The 'preference' envisaged in the rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through Public Service Commission, on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority, merit wise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when anyone or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-a-vis others in the matter of actual selection.

Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits,

by according en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to be considered. If it is to be viewed they way the High Court and Tribunal have chosen to, it would amount to first exhausting in the matter of selection all those, dehors their inter se merit performance, only those in possession of additional qualification and take only thereafter separately those with ordinary degree and who does not possess the additional qualification. Assuming for consideration without even accepting the same to be right or correct view to be taken, at least among the class or category of those possessing the additional qualification, inter se merit performance should be the decisive factor for actual selection for appointment and relief could not have been granted to respondents for the mere asking only on the basis of the interpretation of the provision to some one who came to court, ignoring the fact that those before the court at any rate in spite of the view taken do not come up to the level of selection considered in the context of numerous others with higher ranks of merit performance, in addition to they being also in possession of the additional qualification, as those before the court. That apart, the old rule relating to the post of ACTO, which has become obsolete having been superseded, or even the advertisement if it has stated on the basis of the obslete rule, that preference will be given first to candidates who possess a degree in Commerce and degree in Law, secondly to those who possess a degree in Commerce and thirdly to those who possess a degree in Law, cannot either support the claim of the respondents No.1 to 3 nor in any manner lend credence to the interpretation placed by the High Court and the Tribunal. The word 'first' has to be construed in the context of even giving preference only in the order and manner indicated therein, inter se among more than one holding such different class of degrees in addition and not to be interpreted vis-a-vis others who do not possess such additional qualification, to completely exclude them, en bloc.

We are fortified in our conclusions, supra by the decision of this Court in Bibhudatta Mohanty's case (supra) and Secy. (Health) Deptt. of Health and F.W. & Anr. vs Dr. Amita Puri & Ors. [1996(6) SCC 282]. The decision in Dilip Kumar's case (supra) not only turned on the peculiar scheme and context of the service rules, under consideration but also, in our view does not proclaim to lay down any general rule of universal application, for all cases. As a matter of fact the same admits the possibility more than one interpretation too, and therefore, wholly inapplicable in the context and requirement of the provisions as well as the case before us.

For all the reasons stated above, we set aside the judgments under challenge, allow the appeals and consequently order the dismissal of the O.A. No.4465 of 1997 filed by the respondent No.1 to 3 before the Tribunal. No costs.