

CASE NO.:
Appeal (civil) 6234 of 2004

PETITIONER:
Government of India

RESPONDENT:
G.Limbadri Rao & Ors.

DATE OF JUDGMENT: 22/09/2004

BENCH:
K.G. Balakrishnan & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P.(C) No.11708 of 2003)

Dr. AR. Lakshmanan, J.

Leave granted.

The above appeal is directed against the final judgment dated 13.8.2002 of the High Court of Andhra Pradesh at Hyderabad in Writ Petition No.9653 of 2002 following the judgment of the High Court in Writ Petition No.9182 of 2002 allowing the writ petition filed by the first respondent herein.

During the year 2001, as an advance action for the year 2002, the State Government of Andhra Pradesh's General Administrative Department, vide their D.O. letter No.1875/Spl.A/2001-02 dated 25.10.2001 decided to send necessary proposals to the Union Public Service Commission for preparation of select list of Non-State Civil Service Officers for the year 2002 for appointment to the IAS under provisions of the IAS (Appointment by Selection) Regulations, 1997 (hereinafter referred to as "the Regulations"). By this letter, all the Secretaries of the State Government Departments had been requested to furnish the names of eligible Non-SCS officers for appointment to the post of IAS (Appointment by Selection) for sending proposals to the Union Public Service Commission for preparation of the select list of 2002 for appointment to the IAS under the selection Regulations. In the "subject" heading of the said letter, the State Government had inadvertently indicated that proposals are being called for preparation of the select list of Non-SCS officers for the year 2001 instead of 2002. However, in paragraph 2 of the said letter, it was correctly stated that the State Government had decided to send the proposal to the Union Public Service Commission for preparing the select list of 2002 for appointment to the IAS. In paragraph 3 of the letter, it was stated

that those candidates who have not crossed 54 years of age as on 1.1.2002 were eligible.

Aggrieved by the non- inclusion, the first respondent herein (G.Limbadri Rao), a Non-SCS officer of Andhra Pradesh, had filed O.A.No.1711 of 2001 against the Union of India before the Central Administrative Tribunal, Hyderabad. The first respondent raised three contentions before the Tribunal:

a) As in the subject of the letter, it was mentioned that proposal for preparation of the select list for appointment of Non-SCS officers to the IAS for the year 2001 is to be forwarded to the UPSC. The applicant contended that the mention of the year 2002 in para 2 and para 3 of the letter was a mistake. The year 2001 mentioned in the subject only is correct.

b) In terms of the proviso to Regulation 4(iii) of the IAS (Appointment by Selection) Regulations, 1997, the State Government shall not consider the case of a person who has attained the age of 54 years on the 1st day of January of the year in which the decision is taken to propose the names for the consideration of the Committee. Thus the applicant contended that as per the letter of the State Government issued on 25.10.2001, wherein in the subject it was mentioned that proposal for preparation of the select list for appointment of

Non-SCS officers to the IAS for the year 2001 is to be forwarded to the UPSC, the select list of 2001 is to be prepared and not the select list of 2002. Therefore, he is eligible for consideration as on 1.1.2001 as he has not crossed the age of 54 years.

c) The Government of India amended Rule 16 of the All India Services death-cum-retirement Benefit Rules, 1958 (sub-Rule (1) enhancing the age of retirement from 58 to 60 years in respect of AIS officers including IAS. It is, therefore, just and proper to proportionately increase the maximum age limit to 56 years under Regulation 5(3) of the IAS (Appointment by Selection) Regulations, 1997. Failure to do so by the Government of India is affecting the fundamental right of the applicant who is eligible and entitled to be considered for appointment to the post of IAS.

The Tribunal in its judgment dated 1.5.2002 upheld the decision of the State Government not to include his name in the eligibility list for consideration by the Selection Committee for preparation of the select list of 2002. The Tribunal observed as follows:

"The issue for our consideration is whether the D.O. letter issued by the Secretary to Government in GAD to the other Secretaries calling for proposals amounts to the decision of the State to propose names for consideration of the Committee. We are of the opinion that the argument put forward by the learned counsel for the applicants not well founded. The subject matter of the D.O. letter contains a typographical mistake as is clear from a plain reading for the letter. Even after receipt of the proposal from all the departments, substantial amount of time is taken to scrutinise each one of these proposals to be received from various Secretaries to Government. Thereafter the Secretary to the Government in the GAD submits the consolidated proposals for consideration of the Government to shortlist the names. Mere calling of the proposals from the various departments does not confer on the applicants a right for consideration of their cases as laid down under the Regulations. The argument relating to enhancing of age from the existing limit of 54 years to 56 years as prayed for by the applicants is a matter impinging on the policy of the Central Government. We are of the view that it does not constitute an issue applicable to the applicants alone. We refrain from passing any orders on the subject as the applicants had been permitted to withdraw MA 122/02 in OA 1711/2001 during the admission hearing on 8.4.2002".

Aggrieved by the dismissal of his O.A., the first respondent herein filed Writ Petition No.9653 of 2002 in the High Court challenging these orders. Respondent No.1 herein prayed to quash the order of the Tribunal and to direct the respondent-authorities therein that the first respondent herein is eligible for consideration for appointment by selection to the IAS as per Regulation 4 of the Regulations and also to declare that the action of the Government of India in not revising the date of eligibility from 54 years to 56 years as done in the case of IAS (appointment by Competitive Examinations) Regulations, 1955 i.e., 28 years to 30 years under Regulation 4(b)(ii) is discriminative which affect his fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

The High Court allowed the writ petition for the same reasons as recorded in the judgment/order dated 13.8.2002 in Writ Petition No. 9182 of 2002 and set aside the impugned judgment dated 2.1.2001. The writ petition was, accordingly, allowed and consequent directions were also issued. The High Court, however, rejected the contention of the first respondent herein to consider his case for increasing the age on the ground that such a relief cannot be granted by the Court and that any such direction from the High Court would amount to compel the respondent-authorities to act contrary to law.

The judgment passed in Writ Petition No.9182 of 2002 which was passed on the same date, has also been filed as annexure in this appeal. In that, the High Court observed as under:

"\005..In the instant case, the petitioner has not crossed the age of 54 years as on the first day of January, 2001. There is no option left to the State Government except to consider the case of the petitioner for such inclusion since he has not attained the age of 54 years as on 1.1.2001. The attainment of age of 54 years is with reference to the first day of January of the year in which the decision is taken to propose the names for consideration of the Committee and not with reference to the vacancies as such. What is crucial is the year in which the decision is taken to propose the names. Admittedly, the decision to submit the proposals has been taken and accordingly, proposals have been called for during October, 2001 for the preparation of select list for the year 2002.

For the aforesaid reasons, the view taken by the respondents not to include the name of the petitioner on the ground that he has attained the age of 54 years as on 1.1.2002 is absolutely unsustainable. The respondents have committed an error in referring to the age of the petitioner as crossing 54 years as on 1.1.2002 i.e., to say with reference to the year in which the vacancies have arisen. The crucial requirement is that one should not cross the age of 54 years as on the day of first day of January of the year in which the State Government has taken decision to propose the names for consideration of the Committee. The year of 2001 alone is relevant. The crucial date is 1st January, 2001. Admittedly, as on that date, the petitioner has not crossed the age of 54 years."

Aggrieved by the impugned judgment, the above appeal by way of special leave has been filed before this Court. Though the service of notice on all the respondents is complete, none appears for the respondents.

We heard Mr. B. Datta, learned Additional Solicitor General, appearing for the appellant. Learned ASG contended that the construction placed by the High Court on Regulation 4 is wholly wrong and that the State Government has to consider the case of the first respondent herein for inclusion since he has not attained the age of 54 years as on 1.1.2001. The High Court erred in holding that the vacancy has to be filled with reference to the year in which the vacancy has arisen. Concluding his arguments, learned ASG submitted that the view of the High Court is unsustainable and is liable to be set aside by this Court.

In the background facts of this case, the following question of law arises for consideration by this Court:

"Whether the High Court is justified in holding that the first respondent is entitled to be included for consideration for appointment by selection to the IAS even though he had attained the age of 54 years on 1.1.2002 .:"

In other words, the short question that falls for consideration in the instant appeal is as to whether the respondent have committed any illegality in considering the case of the first respondent for non-inclusion in the proposals to be sent to the Union Public Service Commission for preparation of the select list of Non-State Civil Services Officers for the year 2002 for appointment to the IAS on the ground that the first respondent has attained the age of 54 years as on 1.1.2002.

To appreciate the contention of the appellant herein, Regulation 4 of the Regulations is extracted below:

"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 Government shall not consider the case of 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."

There is no dispute whatsoever before us that the first respondent's date of birth is 20.1.1947 and he has attained the age of 54 years as on 20.1.2001. It is the case of the first respondent that the other respondents have set in motion, the selection process on 25.10.2001 calling for the proposals of the eligible Non-State Civil Services Officers for consideration of their cases for inclusion in the select list. It was further contended that the name of the first respondent ought to have been included in the said list as he satisfies all the requirements. As is evident from the impugned order dated 2.1.2002, the respondents-authorities refused to include the name of the first respondent herein solely on the ground that the proposals are required to be sent in respect of the vacancies that have arisen during 2001 and that are available as on 1.1.2002 and by which date the first respondent herein attained 54 years of age as on 1.1.2002.

We have already extracted Regulation 4 of the Regulations which would make it clear that the State Government while considering the proposals is required to consider the case of the person not belonging to the State Civil Services but serving in connection with the affairs of the State who is of outstanding merit and ability and holding a Gazetted post in a substantive capacity and 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 he has been declared equivalent to the post of Deputy Collector in the State Civil Services. The State Government is required to propose the names of such persons who possess such qualifications for consideration of the Committee. However, the proviso mandates that the State Government shall not consider the case of the 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 consideration of the Committee.

The first respondent herein contended that as is evident from the D.O. letter dated 25.10.2001, the State Government has taken a decision to send necessary proposals to the Union Public Service Commission for preparation of the select list of Non-State Civil Services Officers for the year 2002 for appointment to the IAS under the provisions of the Regulations.

In our opinion, the High Court is not correct in allowing the writ petition of the first respondent by misquoting Regulation 4. It is seen from the records that for the recruitment year 2002, the proposals were received in that year and the eligibility of officers were reckoned from the 1st of January, 2002 as per the provisions of the selection Regulations. The High Court's observation that the eligibility of the officers were to be reckoned from 1.1.2001 is a misinterpretation of the Rules and Regulations and this interpretation would bring to naught the entire selection process undertaken by the Union Public Service Commission not only for the Government of Andhra Pradesh but for all the State/Cadres where selections have been made under the selection Regulations. The interpretation of the Rules by the High Court is not a harmonious construction of interpretation of the Rules and Regulations and if not set aside would

have wide scale implications on the selection of officers for appointment to the IAS under the selection Regulations since the Selection Committee would then be required to consider the eligibility of the officers of a previous and not the current year. Moreover, the High Court has given relief to the first respondent herein under an inadvertent typographical error in a letter of the State Government dated 25.10.2001 and this essentially circumvents the letter and spirit of the statutory Rules and Regulations. The typographical error in the D.O. letter dated 25.10.2001 in the "subject" as specified:- IAS \026 Select List of Non-S.C.S. Officers for appointment to the IAS under IAS (Appointment by Selection) Regulations, 1997 for the year 2001 \026 Proposals \026 Called for. However, in the remaining paras, the position has been made clear. The eligibility was as on 1.1.2002 as indicated in paragraphs 2 & 3, that the proposals had been called for from the various departments.

It is amply clear from the Regulation that eligibility of officers is reckoned from the 1st of January in the year in which the SCM meets which would be 1.1.2002 in the instant case.

The proviso to Regulation 4 clearly states 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 consideration of the Committee.

In the instant case, as already noticed, the proposal was sent by the State Government in January, 2002. Therefore, on 1.1.2002, the first respondent has completed the age of 54 years.

In our opinion, the first respondent is not eligible and entitled for considering his name for appointment to the post of IAS by selection.

For the foregoing reasons, we are of the opinion that the impugned judgement passed by the High Court of Andhra Pradesh is unsustainable and is liable to be set aside. Accordingly, we allow the appeal. However, we order no costs.