

ASHOK ALIAS SOMANNA GOWDA AND ANR.

A

v.

STATE OF KARNATAKA BY ITS CHIEF SECY. AND ORS.

OCTOBER 11, 1991

[N.M. KASLIWAL AND M.M. PUNCHHI, JJ.]

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*Civil Services:*

*Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973:*

C

*Selection of Assistant Engineers— Keeping 33.3% of the total marks for interview—Whether valid.*

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The Respondent-State invited applications for recruitment of Assistant Engineers (Civil) and (Mech.) for the Public Works Department. According to the rules governing the recruitment, viz. Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973 the marks obtained in the qualifying examination and the marks secured in the interview would be the basis for selection. The total marks for qualifying examination was kept at 100 and 50 marks were kept for interview. Thus the marks allotted for interview was 33.3% of the total marks.

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Appellant No. 1 who applied for the post of Assistant Engineer (Civil) secured 29.50 marks out of 50 marks in the interview, his marks in the qualifying examination were 69.96, totalling in all 99.46 marks out of 150. The second appellant, a candidate for the post of Assistant Engineer (Mech.) secured 24.83 marks in the interview and his marks in the qualifying examination being 66.40, he got 91.23 marks out of the total of 150 marks. Both the appellants were not selected as they got less marks than the last candidate selected, and they filed a petition before the State Administrative Tribunal challenging the rules on the ground that the percentage of marks for viva voce fixed at 33.3 was excessive. The Tribunal having dismissed the petitions, the appellants have preferred the present appeal, by special leave.

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Allowing the appeal, this Court,

HELD: 1. 50 marks for interview out of 150 are clearly in violation of the settled law on this point. Some candidates have been selected though

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- A they had secured much lesser marks than the appellants in the qualifying examination but had secured very high marks in the viva voce out of 50 marks kept for this purpose. If the marks for interview were kept even at 15% of the total marks and merit list was prepared accordingly then both the appellants would have been selected and a large number of selected candidates would have gone much lower in the merit list than the appellants. [495 G, 496 A-B]

*Ashok Kumar Yadav & Ors. v. State of Haryana & Ors.*, [1988] Supp. S.C.R. 657; *Mohinder Sain Garg v. State of Punjab & Ors.*, J.T. 1990 (4) S.C. 704, relied on.

- C 2. Though the Karnataka State Civil Services (Direct Recruitment by Selection) Rules are clearly in violation of the dictum laid down by this Court, since the result of the selections was declared in 1987 and the selected candidates have already joined the posts, it would not be just and proper to quash the selections on the above ground. Further the selections were made according to the Rules of 1973 and this practice is being consistently followed for the last 17 years and there is no allegation of any malafides in the matter of selections. [496-C-D]

- E 3. The respondents are directed to give appointment to the two appellants on the post of Assistant Engineer (Civil) and Assistant Engineer (Mech.), respectively in Public Works Department within a period of two months in case the appellants are found suitable in all other respects according to the Rules. [496-E]

- F 4. Since the appointments under the Rules were made way back in 1987, the case of other candidates cannot be considered as they never approached for redress within reasonable time. The relief is thus restricted only to the present appellants who were vigilant in making grievance and approaching the Tribunal in time. [496-F-G]

- G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4088 of 1991.

- H From the Judgment and Order dated 24.5.1990 of the Karnataka Administrative Tribunal, Bangalore in Application No. 887 of 1989 C/W. A. No. 2101/1989.

Naresh Kaushik, Mrs. Lalita Kaushik and Shankar Divate for the Appellants. A

M. Veerappa, S.R. Bhatt and Naveen R. Nath for the Respondents.

The Judgment of the Court was delivered by

KASLIWAL, J. Special leave granted. B

Sri Ashok alias Somanna Gowda appellant No. 1 is a Bachelor of Engineering (Civil) having secured first class with distinction getting 69.96% marks from Karnataka University. Shri Rajendra appellant No. 2 is a Bachelor of Engineering (Mech.) from Karnataka University and secured 66.40 marks in the qualifying examination. The Govt. of Karnataka by notification dated 4th April, 1985 invited applications for recruitment of Asstt. Engineers (Civil) and (Mech.) for the Public Works Deptt. The selections were to be made on the basis of marks obtained in the qualifying examination and marks secured in the interview, in accordance with the K.S.C.S. (Direct Recruitment By Selection) Rules, 1973 (hereinafter referred to as 'the Rules'). According to these Rules total marks for qualifying examination were kept at 100 and 50 for interview. Thus the marks allotted for interview amounted to 33.3% of the total marks. Applications were invited for 300 posts of Civil Engineers and 100 Mechanical Engineers initially and subsequently added additional posts of 150 Civil Engineers and 10 Mechanical Engineers thus in all 450 Civil Engineers and 110 Mechanical Engineers. Both the appellants applied for the posts of their choices in the Public Works Department, Government of Karnataka. Appellant No. 1 secured 29.50 marks out of 50 marks in the interview and 69.96 marks in the qualifying examination thus in all 99.46 marks out of 150. The 2nd appellant obtained 24.83 marks in the interview and 66.40 marks in the qualifying examination thus in all 91.23 marks out of 150. Both the appellants were not selected in merit as the last candidate selected for the above posts secured higher marks than the appellants. The appellants filed a petition before the Karnataka Administrative Tribunal challenging the Rules on the ground that the percentage of marks for viva voce as 33.3 were excessive and in violation of the decisions of this Court. The Tribunal by its order dated 24th May, 1990 dismissed the petitions and the appellants aggrieved against the aforesaid decision have approached this Court by grant of special leave. It is not necessary to examine the matter in detail inasmuch as 50 marks for interview out of 150 are clearly in violation of the judgment of this Court in *Ashok Kumar Yadav & Ors. v. State of Haryana & Ors.*, [1988] Sup. S.C.R., 657 and *Mohinder Sain Garg v. State of Punjab & Ors.*, J.T. 1990 (4) S.C., 704. On a direction given by this Court on 4th September, 1991 the record of the C D E F G H

- A Selection Committee was produced before this Court at the time of hearing. From a perusal of the marks awarded to the selected candidates it is clear that a large number of candidates have been selected though they had secured much lesser marks than the appellants in the qualifying examination but had secured very high marks in the viva voce out of 50 marks kept for this purpose. Thus it is an admitted position that if the marks for interview were kept even at 15% of the total marks and merit list is prepared accordingly then both the appellants were bound to be selected and a large number of selected candidates would have gone much lower in the merit list than the appellants. In view of the fact that the result of the impugned selections was declared in 1987 and the selected candidates have already joined the posts, we do not consider it just and proper to quash the selections on the above ground. Further the selections were made according to the Rules of 1973 and this practice is being consistently followed for the last 17 years and there is no allegation of any malafides in the matter of the impugned selections. However, the Rules are clearly in violation of the dictum laid down by this Court in the above referred cases and in case the marks for viva voce would have been kept say at 15% of the total marks, the appellants before us were bound to be selected on the basis of marks secured by them in interview, calculated on the basis of converting the same to 15% of the total marks.

- E We, therefore, allow the appeal and direct the respondents to give appointment to the appellant Ashok alias Somanna Gowda on the post of Asstt. Engineer (Civil) and appellant Rajendra on the post of Asstt. Engineer (Mech.) in Public Works Department within a period of two months of the communication of this order in case the appellants are found suitable in all other respects according to the Rules. Learned counsel appearing on behalf of the State of Karnataka pointed out that there are many other candidates who had secured much higher marks than the appellants in case the above criteria is applied for selection. In view of the fact that appointments under the impugned Rules were made as back as in 1987 and only the present appellants had approached the Tribunal for relief, the case of other candidates cannot be considered as they never approached for redress within reasonable time. We are thus inclined to grant relief only to the present appellants who were vigilant in making grievance and approaching the Tribunal in time. Learned counsel for the State also submitted that the State Government has already framed new rules, and as such we do not find it necessary to quash the Rules under which the present selections were made as they are no longer in existence.
- G No order as to costs.