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ASHOK KUMAR SHARMA AND ORS.

v.

CHANDER SHEKHAR AND ANR.

MARCH 10, 1997

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[B.P. JEEVAN REDDY, S.B. MAJMUDAR AND
S. SAGHIR AHMAD, JJ.]

Service Law :

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Recruitment—Eligibility—Relevant date for—Determination of—Advertisement invited applications prescribing minimum qualification to be possessed on the last date of submission of application—Certain candidates who did not possess the minimum qualification on the last date of submission of application were allowed to appear for the interview—However, these candidates acquire the minimum qualification before the interview—Held : Allowing such candidates to appear for the interview was impermissible—Contrary—Majority opinion in Ashok Kumar Sharma's case was a clear error apparent on the face of the record and unsustainable in law—However, in that decision the Supreme Court had unanimously exercised is discretion in not disturbing the seniority given to such candidates by the Selecting Authority—Hence, interference with that decision in review jurisdiction refused—Constitution of India, 1950, Art. 142—Code of Civil Procedure, 1908, O. 47 R. 1.

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An advertisement was issued inviting applications for the post of Junior Engineer for which minimum qualification was prescribed. A number of persons applied pursuant to the advertisement. Out of them the respondents (33 persons) did not possess the minimum qualification on the date of submission of application. However, on the date of interview the respondents had acquired the minimum qualification. The respondents were selected along with some other candidates.

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The petitioners/applicants, who were fully qualified to apply for the said post according to the aforesaid advertisement and who were selected but placed in the Select List below the respondents, filed a writ petition in the High Court contending that the 33 respondents could not have been allowed to appear for the interview because they had not acquired the requisite qualification by the prescribed date i.e., the last date for submission.

sion of application. A Division Bench of the High Court allowed the petition. The Division Bench held that the 33 respondents could not have been to appear in the interview for the reason that they had not acquired the requisite qualification by the prescribed date. The Division Bench, however, did not set aside the appointment of the 33 respondents but directed that they should be treated as juniors to all those selected persons who were fully qualified by the prescribed date. Thus the respondents who were not qualified by the prescribed date were treated as juniors *en bloc* to the candidates who were fully qualified by the prescribed date and were selected.

Being aggrieved the 33 respondents filed an appeal before this Court which was heard by a Bench of three Judges. The majority held that allowing the said 33 respondents to appear for the interview was not impermissible. The majority further held that by allowing the said 33 respondents to appear for the interview, "the recruiting authority was able to get the best talents available. It was certainly in the public interest". But the minority held that the 33 respondents, who were not qualified on the last date of submission of the application but had required the requisite before the date of interview, could not have been allowed to appear for the interview. However, by an unanimous opinion, the seniority of the said 33 respondents (given by the Selecting Authority) was not disturbed with the result that the appeal preferred by the 33 respondent was allowed and the judgment of the Division was set aside. Being aggrieved the petitioners/applicants preferred the present review petition.

Dismissing the petition, this Court

HELD : 1.1. Where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. The reasoning in the majority opinion in *Ashok Kumar Sharma's* case that by allowing the 33 respondents to appear for the interview, the Recruiting Authority was able to get the best talent available and that such course was in furtherance of public

- A interest is an impermissible justification. It was a clear error of law apparent on the face of the record and unsustainable in law. The minority opinion in *Ashok Kumar Sharma's* case that the 33 respondents, who were not qualified on the last date of submission of the application but had acquired the requisite qualification before the date of interview could not have been allowed to appear for the interview, was right. [902-B-G]

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Ashok Kumar Sharma v. Chander Shekhar, [1993] Suppl. 2 SCC 611, overruled.

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Rekha Chaturvedi (Smt.) v. University of Rajasthan & Ors., [1993] Suppl. 3 SCC 168, relied on.

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1.2. The question then arises as to the relief to be granted in the instant review petition. In view of the fact that the relief to the said 33 respondents has been granted by this Court within its discretion, it would not be appropriate for this Court to interfere in its review jurisdiction with the unanimous opinion of this Court on that aspect. [903-C, 904-C]

CIVIL APPELLATE JURISDICTION : Review Petition (C) Nos. 600-601 of 1993.

IN

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Civil Appeal Nos. 5407-5408 of 1992.

From the Judgment and Order dated 13.12.91 of the Jammu & Kashmir High Court in L.P.A. No. 8 of 1985.

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R.K. Jain, P.H. Parekh, E.R. Kumar, Ms. Bina Madhavan for the Petitioner/Appellants.

Rakesh Dwivedi, Addl. Adv. Gen., G.K. Banerjee, Navin Prakash, J. Menhus for the Respondents.

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The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. These two review applications are filed by the respondents in Civil Appeal Nos. 5407-5408 of 1992 decided on February 18, 1993 (reported in [1993] Suppl. 2 S.C.C. 611)

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On January 9, 1982 an advertisement was published inviting applica-

tions for appointment to the post of Junior Engineer in the service of the Jammu and Kashmir State. The last date for submitting applications was specifically stated as July 15, 1982. A pass in B.E. (Civil) examination was the minimum academic/technical qualification required for applying for the said post. A number of persons applied pursuant to the advertisement. Out of them, 33 person (referred to hereinafter as the Respondents) had not passed the B.E. (Civil) Examination on or before July 15, 1982. They had appeared for the said examination earlier to the said date but the result were published only on August 21, 1982. Interviews were held on various dates commencing on August 24, 1982. Though these 33 persons (respondents) were not qualified as on the specified date, they were yet interviewed pursuant to certain instructions given by the government. They were selected alongwith some other candidates.

Certain candidates who were fully qualified to apply for the said post according to the aforesaid advertisement and who were selected but placed in the Select List below the respondents, filed a writ petition in the Jammu and Kashmir High Court contending that the 33 respondents could not have been allowed to appear for the interview because they had not set acquired the required academic/technical qualification by the prescribed date, viz., July 15, 1982. The writ petition was dismissed on 27.5.83. No Letters Patent Appeal having been filed against the said order, it became final. (It is, however, not known how many persons have Jointed as petitioners in the said writ petition - W.P. No. 250 of 1983).

Writ petition 483 of 1983, from which the present proceedings arise, was filed by four candidates, who are the review petitioners herein, in Jammu & Kashmir High Court, questioning the selection of the said 33 respondents on the very same ground as was urged in the Writ Petition No. 250 of 1983. While this writ petition was pending, appointment orders were issued as per the Select List. (The petitioners in Writ Petition No. 483 of 1983 were placed in the Select List below the 33 respondent.) Another batch of selected candidates was appointed on 5th September, 1984. Thereafter on 20th December, 1984, Writ Petition No. 483 of 1983 came up for final hearing and was dismissed following the order dated 27.5.83 dismissing Writ Petition No. 250 of 1983. Thereupon, the petitioners filed a Letters Patent Appeal which was allowed by a Division Bench on 13th December, 1991. The Division Bench held that the 33 respondents could not been allowed to appear in the interview for the reason that they had not acquired

- A the requisite academic/technical qualification by the prescribed date. The Division Bench, however, thought it just and proper to direct that while the appointment of the said 33 respondents be not set aside, they should be treated as juniors to all those selected persons who were fully qualified by the prescribed date. In other words, the candidates who were not
- B qualified by the prescribed date (15th July, 1982) were treated as juniors *en bloc* to the candidates who were fully qualified by the prescribed date and were selected. It may be mentioned that all the 33 respondents were impleaded as respondents both in Writ Petition No. 483 of 1983 as well as in the Letters Patent Appeal.
- C The 33 respondents filed Civil Appeal No. 5407 of 1992 in this Court, while the State of Jammu and Kashmir filed Civil Appeal No. 5408 of 1982 questioning the decision of the Division Bench aforesaid. The appeals came up for hearing before a Bench comprising Dr. T.K. Thommen, V. Ramaswami and R.M. Sahai, JJ. There was a difference of opinion on one
- D question though all the three learned Judges agreed on the result. The majority (Dr. Thommen and V. Ramaswami, JJ.) held that allowing the said 33 candidates to appear for interview was not impermissible. The learned Judges were of the opinion that by allowing the said persons to appear for the interview "the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview
- E was made as broad-based as was possible on the basis of *qualification*". The learned Judges held that inasmuch as the 33 respondents (appellants before them) were qualified by the date of interview, though not by the date prescribed in the advertisement inviting applications, there was no illegality in allowing them to appear for the interview. R.M. Sahai, J.,
- F however, held that the said 33 candidates should not have been allowed to appear for the interview since they did not possess the requisite academic/technical qualifications by the prescribed date. Even so the learned Judge agreed with the majority that the seniority of the said 33 candidates vis-a-vis the qualified candidates (who are placed at a lower position in the Select List) need not be disturbed in the particular facts and circumstances of the case. The result was that all the three learned
- G Judges allowed the appeals preferred by the 33 respondents and the State of Jammu and Kashmir and set aside the judgment of the Division Bench. The present review petitions are filed by the four original writ petitioners in Writ Petition No. 483 of 1983, who were respondents in the Civil Appeals
- H in this Court. After hearing the counsel for the review petitioners, we had

passed the following order on 1.3.95 :

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"Heard Mr. Rohinton Nariman for the petitioners.

Mr. Nariman has attempted to bring to our notice several new questions of fact which were not urged in the High Court or in this Court. Their writ petition was dismissed by the learned Single Judge. Their letters patent appeal too failed, except for a certain modification. This Court dismissed their appeal restoring the judgment of the learned Single Judge. All this took ten years. It is only in these Review petitions that certain new facts are sought to be brought to the notice of the Court. We cannot permit them to do so at this distance of time. We are of the opinion that the petitioners have not been diligent. We cannot re-open the whole case on the basis of new facts. We are, therefore, not inclined to permit them to put forward new facts or issues before us. The Review Petitions are admitted confined to the following two issues :

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(1) Whether the view taken by the majority (Hon'ble Thommen & V. Ramaswami, JJ.) that it is enough for a candidate to be qualified by the date of interview even if he was not qualified by the last date prescribed for receiving the applications, is correct in law and whether the majority was right in extending the principle of Rule 37 of the Public Service Commission Rule to the present case by analogy?

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(2) Whether in the facts and circumstances of the case, would it not be just to restore the direction of the Division Bench with respect to the *inter se* seniority between the two sets of candidates, namely those who were qualified as on the last date for receiving application and those who were not so qualified. In other words, the question is whether the direction of the Division Bench to treat the candidates who were not qualified by the last date of receipt of applications as juniors, as a class, to those who were qualified, was not a just one?

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Notice of these Review Petitions shall go to Respondent Nos. 1 to 33 in the Writ Petition. Dasti service also permitted.

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A List after service of notice."

B The Review Petitions came up for final hearing on March 3, 1997. We heard the learned counsel for the review petitioners, for the State of Jammu and Kashmir and for the 33 respondents. So far as the first issue referred to in our order dated 1st September, 1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr. T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement of notification issued/published calling for application constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the person had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority Judgment. This is also the proposition affirmed in *Rekha Chaturvedi (Smt.) v. University of Rajasthan and Others*, [1993] Suppl. 3 S.C.C. 168. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the Recruiting Authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J.(and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

H Mr. Rakesh Dwivedi, learned counsel for the 33 candidates, submitted that these 33 candidates had appeared for the B.E. Examination prior to their applying for the post and that there was some delay in publishing the results and that these respondents cannot be punished for

the delay on the part of the concerned authorities in publishing the results. In our opinion, the said contention is beside the point. In these proceedings, we cannot examine the reasons for delay - assuming that there was delay in publishing the results. That issue is outside the purview of the writ petition. Whatever may be the reason, the 33 person were not qualified as on the prescribed date and, therefore, could not have been allowed to appear for the interview. On the first issue (mentioned in the order dated 1st September, 1995), therefore, we hold in favour of the review petitioners, affirming the opinion of Sahai, J.

The question then arises as to the relief to be granted in these review applications. Mr. R.K. Jain, learned counsel for the review petitioners, says that the necessary and logical consequence of our opinion on the first issue would be to set aside the appointment of the 33 respondents, or at any rate to restore the order of the Division Bench of the High Court. On the other hand, Mr. Rakesh Dwivedi and the learned counsel for the State of Jammu and Kashmir brought to our notice several reasons for which, they submitted, we should not interfere with the order under review on this score. The facts pointed out are : (a) Writ Petition No. 250 of 1983 filed by certain similarly placed persons (similar to the review petitioners who are the writ petitioners in writ petition No. 483 of 1983 from which these proceedings arise) was dismissed on 27.5.1983. That order has become final, which means that so far as those writ petitioners are concerned, no relief can be granted to them in these proceedings. (b) Even the present Writ Petition No. 483 of 1983 was filed only by four candidates and not by all the candidates affected. These four petitioners did not sue in a representative capacity but in their individual capacity. The other affected persons have not chosen to implead themselves at any stage of these proceedings. It cannot be said that they were not aware of these proceedings. (c) Even though Sahai, J. disagreed with the majority on the question of law, he too opined (for reasons stated in Paragraphs 22 and 23) that the seniority of the 33 respondents vis-a-vis other candidates ought not to be disturbed. In other words, all the three learned Judges are unanimous in holding that the seniority given to the 33 candidates (by the Selecting Authority) should not be disturbed. This Bench, sitting in review jurisdiction, should not interfere with the said unanimous opinion of three learned Judges, more so because the matter lies within the realm of discretion and is a case of moulding the relief in exercise of this Court's power under Article 142 of the Constitution. The 33 respondents were appointed as far back as in 1984

A and have earned two promotions namely to the post of Assistant Engineer and thereafter to the post of Assistant Executive Engineer. The review petitioners and other similarly placed persons have also been promoted once i.e., to the post of Assistant Engineer. Thirteen year have passed by since their initial appointment. Upturning the *inter-se* seniority at this distance of time will not be just and equitable.

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Having given our anxious and earnest consideration to the question and keeping in view the fact that we are sitting in review jurisdiction and that this particular aspect is a matter lying within the discretion of the Court, we do not think it appropriate to interfere with the unanimous opinion of the three learned Judges of this Court on this aspect. It is true that the Division Bench of the High Court had granted the relief not only to the four review petitioners/writ petitioners but to all the candidates falling in that category yet we cannot ignore the fact that even Sahai, J. who agreed with the review petitioners on the first issue, thought it just and proper not to disturb the *inter-se* seniority between these two groups of selected candidates. The said seniority was determined by the Selecting Authority. Though certain allegations are made with respect to the fairness of the process of selection, that issue is not open in these review applications nor was it gone into by this Court in the civil appeal.

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E For the above reasons, these review Petitions are dismissed subject to the clarification on the legal issue, viz., Issue No. 1 mentioned in our order dated September 1, 1995. There shall be order as to costs.

V.S.S.

Petitions dismissed.