

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 2155-2156/2010

TEJESWARA RAO AND ORS.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

O R D E R

We have heard learned counsel for the parties.

These appeals have been filed against the judgment and order dated 05.02.2008 passed by the High Court, by which the writ petition and the review filed by the appellants have been dismissed.

The brief facts necessary for deciding these appeals are:-
The Andaman and Nicobar Administration framed rules on 17.01.1978 viz. Andaman and Nicobar Administration, Education Department (Group C and D posts) Recruitment Rules, 1977. Under the said rules, the essential qualification for promotion on the post of Laboratory Assistant was Matriculation with Science subject concerning the Lab. for which appointment is required and knowledge of Hindi. The desirable qualification was at least II class Higher Secondary with Science subject and experience of working as Laboratory Assistant in any recognized Institution.

A new set of Rules was framed on 14.03.2006 viz. Andaman and Nicobar Administration, Department of Education (Group B Non Gazetted and Group C post in the Directorate of Education),

Recruitment Rules, 2006. Under the said Rules, the essential qualification was Senior Secondary School Certificate (XIith std.) Examination with Science Stream or its equivalent and knowledge of Hindi. The desirable qualification was Bachelor's Degree in Science of the subject concerned and two years experience as Laboratory Assistant in any recognized Institution.

The appellants before us are the candidates who possessed the qualification for Laboratory Assistant as per new Rules of 2006. The original application was filed before Central Administrative Tribunal by the contesting respondents claiming that they are entitled for promotion on the post of Laboratory Assistant as per the earlier Rules.

The case setup by the respondents was that on the vacancies which arose prior to commencement of the new Rules, new Rules shall not be applicable with regard to promotion and they are entitled to be considered as per the earlier qualification. The claim of the respondents was considered by the Tribunal and allowed by order dated 31.08.2007. The sole reason given by the Tribunal for allowing the claim is given in para 5 which is to the following effect:

"After hearing learned counsel and having gone through the pleadings we held that vacancies in the cadre of Laboratory Assistant which arose prior to the new Recruitment Rules came into force should be filled up in accordance with the rules / executive instructions in vogue by the time when that vacancy arose. Thus the OA is partly allowed. The respondents are to consider the promotion of the applicants in accordance with the aforesaid direction within three months from

the date of communication of this Order. No order as to costs."

The writ petition was filed challenging the said order which has been dismissed by the High Court by its impugned judgment.

Learned counsel for the appellants submits that the Tribunal as well as the High Court committed error in holding that the promotion of the respondents after the enforcement of Rules 2006 shall be governed by the qualification as was in existence in accordance with Rules 1978. It is submitted that the earlier Rules did not provide any yearly exercise for promotion and the Rules which were enforced under 2006 Rules did not provide any such requirement that for existing vacancies the earlier Rules will apply. It is further submitted that in view of the order of the Tribunal, the promotions were granted to the respondents on 18.10.2011.

Learned counsel for the appellants further submits that in fact the Departmental Promotion Committee was conducted on 19.07.2007 and the appellants were recommended to be promoted as per Rules 2006 but the said order was not given effect to.

In these appeals, this Court on 22.02.2010 passed the following order:

"Leave granted.

The appeal will be heard on the SLP paper book. Additional documents, if any, may be filed by the parties.

Hearing expedited.

Ad-interim order dated 25th July, 2008 is modified to the extent that promotions, if any, during the pendency

of this appeal, shall abide by the final result in this appeal and none of the parties shall claim any equities in their favour."

Learned counsel appearing for the respondents submits that the promotion has been effected on some of the respondents on 18.10.2011 and 21.10.2011. They have worked for more than 7 years and this Court may not displace them from their promoted post.

Learned counsel for the appellants in rejoinder affidavit submits that it was the appellants who were entitled to be promoted as they were fulfilling the qualification. The mere fact that the respondents were promoted illegally cannot deprive their rightful claim.

We have considered the submissions of learned counsel for the parties and perused the record.

The Rules 2006 which have been brought on record provide for filling up of the posts both by promotion as well as by direct recruitment and qualification which has been provided for the post of Laboratory Assistant does not contain any exception as to consider the claim of the respondent's promotion on the basis of the qualification which were in existence as per Rules 1978.

A perusal of the schedule to the Rules which is mentioned as Recruitment Rules 2006 for the post of Laboratory Assistant clearly indicates that 50% are to be filled up by the promotion and 50% by direct recruitment and for promotion it is provided that promotion is to be held from amongst Group D employees.

The Laboratory Assistants who have passed XII standard with Science subject and are in five years regular service in the respective grade and qualified the written test conducted by the Department / Administration.

The Rule clearly indicates that all the employees in existence had to undergo the test and should have educational qualification as prescribed therein. No exception can be read in favour of the respondents who have been promoted by the Administration.

We, thus, are of the view that the appellants have made out a case for promotion as per Rules 2006 and the Tribunal as well as the High Court erred in law in directing the promotion of some of the respondents who did not possess the qualification at the relevant time.

Learned counsel for the appellants submits that there are still vacancies on which the appellants could be promoted giving them benefit from the date the respondents have been promoted.

Learned counsel for the Administration after obtaining instructions submits that there are vacancies on which promotion can be effected of the appellants.

In the facts of the present case, we without displacing the respondents who have been promoted, direct the Administration to promote the appellants and respondent NO.25 and give them notional seniority from the date the respondents have been promoted i.e. 18.10.2011.

We make it clear that the appellants and respondent No.25

shall not be entitled for financial benefits except notional seniority.

The civil appeals are allowed to the above extent.

.....J.
[ASHOK BHUSHAN]

.....J.
[NAVIN SINHA]

NEW DELHI;
November 19, 2019.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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(IA No. 49385/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 19-11-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. Gaurav Jain, Adv.
Ms. Abha Jain, AOR
Ms. Rupali Sharma, Adv.

For Respondent(s) Mr. Rauf Rahim, AOR
Mr. Ali Asghar Rahim, Adv.
Mr. Mayur Shah, Adv.

Mrs. Anil Katiyar, AOR

Ms. Pinky Anand, ASG
Mr. Ajit Kumar Sinha, Adv.
Mr. Bharat Singh, Adv.
Ms. Akanksha Kaul, Adv.
Ms. Snidha Mehra, Adv.
Ms. Tanisha Samanta, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Mrinal K. Mondal, Adv.
Ms. G. Indira, AOR

UPON hearing the counsel the Court made the following
O R D E R

The civil appeals are allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(MEENAKSHI KOHLI)
COURT MASTER

(RENU KAPOOR)
COURT MASTER

[Signed order is placed on the file]