

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. _____ OF 2008
(Arising out of SLP (C) Nos.20365-20367 of 2005)

Union of India

...Appellant

Versus

K.H. Srinivasan & Ors.

...Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order of a Division Bench of the Karnataka High Court allowing the writ petitions by directing as follows:

“This takes us to the kind of relief that we may grant in these writ petitions, having regard to the subsequent developments brought to our notice. It is seen that if the selection committee were to conduct separate selection process by drawing up separate list to fill up one vacancy that occurred in the year 1998, the appellant alone could have been selected to I.P.S. inasmuch as the other two candidates who could have come under zone of consideration were admittedly found to be 'unfit'. Of the three selected candidates, Sri S.S. Annegowda, Petitioner in Writ Petition No. 14842 of 2001 died during the pendency of the writ petition. Since, the two others including Sri S.S. Annegowda who would have come under zone of consideration with regard to the vacancy that occurred during the year 1998 are found to be unfit, they would be unfit for consideration even with regard to the two vacancies that arose in the year 1999. In that view of the matter, there is no need to disturb the appointment of the two writ petitioners to the I.P.S. viz., K.H. Srinivasan (Petitioner in W.P.No.14837 of 2001) and, H.N.Siddanna (Petitioner in W.P.No.14843 of 2001).

In the result, we dispose of these writ petition, and, in substitution of the impugned order of the Tribunal, we direct the official respondents to appoint the applicant B. Jkamalanabhan to the IPS against the vacancy that occurred in the year 1998 with effect from 18.01.2000, the date of the Notification impugned before the Tribunal with all consequential benefits, pecuniary and otherwise, flowing therefrom. In the facts and circumstances of the case, the parties shall bear their respective costs.”

3. Before the High Court it was urged by the respondents as follows:

“The fourth respondent, namely, Sri B. Kamalanabhan in Writ petition No. 14837 of 2001 is the applicant in O.A. No. 655 of 2000 (hereinafter referred to as the ‘applicant’ for the sake of convenience). The applicant was initially appointed as Deputy Superintendent of Police, a Group A Junior Scale Post in the Karnataka State Police Service (hereinafter referred to as ‘KSPS’) in the year 1982. The applicant was promoted as superintendent of police, a Group A Senior Scale Post in the KSPS in the year 1991. We were told that the applicant retired from service on attaining the age of superannuation on 31st May, 2003 at the age of 58 years.”

4. According to learned counsel for the appellant the effect of the amendment to the Regulations in 1997 and scope and ambit of Regulation 5 has not been kept in view by the High Court. The Regulations are Indian Police Service (Appointment by Promotion) Regulations, 1955 (in short the ‘Regulation’).

5. Learned counsel for the respondents on the other hand supported the judgment of the High Court.

6. It appears that the High Court placed reliance on the decision of this Court in Syed Khalid Rizvi & Ors. v. Union of India & Ors. [1993 Suppl. (3) SC 575] and Union of India & Ors. v. Vipinchandra Hiralal Shah [1996(6) SCC 721]. Stand of the appellant-Union of India with the relevant Regulations have been amended with effect from 1997 by Indian Police Service (Appointment by Promotion) Amendment Regulations, 1997 (in short ‘Amendment Regulations’). The High Court did not consider the effect of the amendment, more particularly, the proviso (c) to Regulation. Same in its entirety including proviso (c) reads as follows:

“5. Preparation of a list of suitable officers:

(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service, as are held by them to be suitable for promotion to the service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government, and shall not exceed the

number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the recruitment rules. The date and venue of the meeting of the Committee to make the Selection shall be determined by the Commission:

Provided that no meeting of the Committee shall be held, and no list of the year in question shall be prepared when,

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under rule 9 of the recruitment rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under rule 9 of the recruitment rules; or

(c) the Commission, on its own or on a proposal made in either the Central Government or the State Government, after considering the facts and circumstances of each case, decides that it is not practicable to hold a meeting of the Committee to make the selection to prepare a select list.

Explanation: In the case of joint cadres, a separate list shall be prepared in respect of each State Police Service.”

7. The stand of the appellant in a nutshell is that Syed Khalid's case (supra) will not have any application after 1996. The un-amended Regulation 5 with the 3rd proviso makes the position clear that the decision in Syed Khalid's case (supra) and Vipinchandra Hiralal Shah's case (supra) had no application after the amendment in 1997.

8. The Rule prior to 1997 amendment reads as follows:

“5. Preparation of a list of suitable officers -

(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Civil Services in the order of a seniority in that service of a number which is equal to three times the number referred to in sub-regulation (1):

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers:

Provided further that in computing the numbers for inclusion in the field of consideration, the number of officers referred to in sub--regulation (3) shall be excluded:

Provided also that the Committee shall not consider the case of a member of the State Civil service unless on the first day of January of the year in which it meets he is substantive in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

Provided also that in terms of any released Emergency Commissioned or short Service Commissioned Officers appointed to the estate Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of the January of the year in which the committee meets, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

Explanation - The powers of the State Government under the third proviso to this sub-regulation shall be exercised in relation to the members of the State Civil Service of a constituent State, by the Government of that State."

9. The pre and post amendment Regulation 5 are conceptually different.

10. Since the High Court has not considered the effect of the amendment in 1997 and the applicability of the ratio in Syed Khalid's case (supra) and Vipinchandra Hiralal Shah's case (supra) thereafter, it would be appropriate to set aside the impugned judgment of the High Court and remit the matter to it to consider the matter afresh in the light of the amended Regulations.

11. The appeals are allowed to the aforesaid extent.

.....J.

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(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi:
September 19, 2008