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• Counsel for the respondents

**O R D E R**  
**(Shri S.P.Mukerji, Vice Chairman)**

Since common questions of law and facts are involved and identical reliefs have been sought in the three applications before us, they were heard together and are being disposed of by a common judgment as follows.

2. The three applicants who hold the posts of Upper Division Clerk (UDC) in the Department of Co-operation & Civil Supplies of the Administration of the Union Territory of Lakshadweep and have been working as Secretaries of Supply & Marketing Societies during various periods have challenged the notification dated 8th December, 1989 (**Exbt.P1 in the first application O.A.31/90**) by which modified Recruitment Rules for the post of Co-operative Auditor/Co-operative Inspector were issued. In accordance with these Rules, the 75% promotion quota for the posts of Co-operative Inspectors was abolished and the direct recruitment quota was increased from 25% to 100%. They have prayed that the 7 vacancies of Co-operative Inspectors for which the willingness of the departmental UDCs was called for should be filled up in accordance with the then Recruitment Rules and that the applicants should be promoted as Co-operative Inspectors (against 75% promotion quota) with effect from 27.1.88 when 3 direct recruits in accordance with the then Recruitment Rules were appointed against 25% quota as Co-operative Inspectors. They have also prayed that they should be declared to be entitled to promotion as Co-operative Inspector with effect from 27.1.88 and the respondents 2 to 4 prohibited from filling up the 7 vacancies<sup>a</sup> of Co-operative Inspectors in accordance with the modified Recruitment Rules at **Exbt.P1**. The brief facts of the case are as follows.

3. The three applicants were appointed as UDCs in the Co-operative Department on 17.9.81, 1.7.80 and 30.4.81. All of them belong to ~~the~~ Scheduled Tribes, have passed the SSLC Examination

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and have been working for various periods on deputation as Secretary of the Co-operative Supply & Marketing Societies at various places. Their grievance is that, in accordance with the Recruitment Rules, for filling up the posts of Co-operative Inspectors, 75% of vacancies were to be filled up by promotion of Head Clerks/UDCs failing which by deputation, and 25% by direct recruitment. ~~Ten~~ vacancies were notified in 1987 and 3 direct recruits were appointed against the direct recruitment quota as Co-operative Inspectors on a temporary and ad hoc basis. For the remaining 7 vacancies which were to be filled up by promotion, willingness of eligible Head Clerks were called for on 12.4.88, but none responded. Accordingly, on 19.7.88, vide circular at Annexure-IX (in OA 31/90), it was notified that 7 posts of Co-operative Inspectors are to be filled up by ~~pro-~~ motion by selection of Head Clerks etc. having 3 years of regular service or promotion of UDCs having 5 years regular service in the grade. It was also mentioned that 5 years experience as Secretary, Supply & Marketing Society is a desirable qualification. This circular was sent to 84 UDCs with 5 years experience for sending their willingness by 31.8.88. The applicant in OA 31/90 was at Sl.No. 71, the applicant in OA 113/90 was at Sl.No.50 and the applicant in OA 135/90 was at Sl.No.64 in that list (Annexure-IX). The applicant in the first application who was at Sl.No.71 was the only candidate who was having a Diploma in Co-operation. All the 3 applicants communicated their willingness within the prescribed date.

4. The grievance of the applicants is that, instead of filling up the 7 vacancies of 1987 on the basis of their willingness and the Recruitment Rules in force in 1987, the respondents, without responding to their various representations, issued the impugned notification dated 8th December, 1989 at Exbt. P1 revising the Recruitment Rules by abolition of the promotion quota in its entirety and including the 7 vacancies of 1987 amongst the 16 posts indicated in the Schedule to Exbt.P1. Their argument is that when 3 persons were appointed against the direct recruitment quota of 3 out of 10 vacancies of 1987, the ~~remaining~~ 7 vacancies of

the promotion quota falling in 1987 should also have been filled up under the Recruitment Rules then in force. The ~~Commitment~~ of the respondents to this effect has been indicated by the applicants on the ground that the respondents <sup>themselves</sup> had sought <sup>the</sup> willingness of the eligible UDCs including the applicants for being considered for promotion against the 7 vacancies. By the impugned notification <sup>of 1989</sup> the respondents cannot take away the 7 vacancies from the promotion quota accruing in 1987 and fill ~~them~~ them up under the revised Recruitment Rules by direct recruitment. They have referred to the judgement of this Tribunal to which one of us was a party in TAK 10/87 delivered on 13th September 1988 at <sup>in OA 31/90</sup> Annexure-XII in which, in similar circumstances, it was held that the vacancies in existence in 1984 cannot be filled up subsequently on the basis of the Recruitment Rules ~~as~~ amended in 1985. They have also referred to a number of rulings of the Hon'ble Supreme Court laying down the obligation ~~of~~ the Appointing authority to follow the prescribed ratio between the sources of recruitment as indicated in the Recruitment Rules. They have also argued that having worked and possessing experience as Secretary of the Co-operative Societies, which is a desirable qualification, they should be given preference for promotion over others not possessing similar experience.

5. In the counter affidavit, the respondents have accepted the factual position as indicated above. They have also clarified that in the Co-operative Societies, Secretaries are appointed some time from the cadre of UDC when willing Assistant Registrars or Co-operative Inspectors are not available for appointment on deputation basis. In the case of Secretaries of minor island Co-operative Societies, appointments are made from the cadres of Co-operative Inspectors and when they are not available, by UDCs. They have also indicated that the Recruitment Rules for the Class III posts of Co-operative Auditor/Inspector were promulgated on 18.11.65 and subsequently amended on 30.5.66, 4.9.74, 20.12.74, 21.12.76, 8.8.76, 17.2.77, 29.1.85, 6.5.87 and ultimately on 8.12.89. They

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have justified the abolition of the promotion quota and increasing the direct recruitment quota to 100% for graduates on the ground that there are lots of unemployed graduates now than before. They have stated that the 16 posts shown in the revised Rules is the total number of posts and not the total number of vacancies. They have, however, conceded that the total number of actual vacancies and the anticipated vacancies of the posts of Co-operative Inspectors in 1987 was 10, 3 being in the direct recruitment and 7 in the promotion quota. The question of promoting UDCs under the Recruitment Rules of 1987 would arise only when Head Clerks/Accountants/Sub Treasury Officers are not available. They have conceded that these latter categories of Head Clerks, etc. were invited to give their willingness, but since none of them was willing to work as Secretary of Co-operative Societies also on promotion as Co-operative Inspectors, the vacancies were circulated amongst the 84 senior UDCs to give their willingness to work as Secretary of Co-operative Societies. Since the applicants' names in the seniority list figured quite low, they cannot claim consideration for promotion as Co-operative Inspectors. They have justified the revised Recruitment Rules abolishing the promotion quota for UDCs on the ground that the UDCs have already the avenues of promotion in the ministerial cadre and the need for giving employment to unemployed graduates <sup>by direct recruitment</sup> could not be ignored. They have also argued that the applicants should have represented when 3 direct recruits were appointed.

6. In the rejoinder, the applicants have urged that their experience as Secretary of the Supply and Marketing Society should give them the entitlement to be considered for promotion irrespective of their low position in the seniority list, <sup>because</sup> such, an experience has been prescribed to be a desirable qualification. They have also referred to another judgement of this Tribunal dated 24.4.90 in TA-135/85 in which it was held that vacancies are to be filled up in accordance with the Recruitment Rules in vogue when the vacancies materialised.

7. The respondents in the additional reply have argued that irrespective of whether the applicants have got experience as Secretary of Co-operative Marketing Society or <sup>have</sup> Junior Diploma in Co-operation which are desirable qualifications, they would be considered only in accordance with their seniority.

8. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is now an established law that vacancies can be filled up only in accordance with the Recruitment Rules in vogue when the vacancies occurred. In **Y.V.Rangaiah & Others Vs. J.Sreenivasa Rao & Others, AIR 1983 SC 852**, it was held that vacancies occurring prior to the amendment of the Recruitment Rules are to be filled up by the unamended Recruitment Rules. Similar view was expressed by the Supreme Court in **P. Mahendran & Others Vs. State of Karnataka & Others, 1990 (1) SLR 307**. It was held that where the amendment to the Recruitment Rules changing qualifications <sup>is</sup> not given retrospective effect, the right to be considered by applying in response to an advertisement before the amendment cannot be taken away.

9. In the instant case before us, the respondents have conceded that in 1987, before the Recruitment Rules were amended on 8.12.89, there were 7 vacancies for the promotion quota. It is also established that, to fill up these vacancies, the respondents obtained the willingness of the Head Clerks to work <sup>also</sup> as Secretary of the Co-operative Societies, but since none of them was willing, they sought the willingness of 84 eligible UDCs on 19.7.88 <sup>in OA 31/90.</sup> as at **Annexure-IX**. The applicants were included in that list and gave their willingness. The subsequent change in policy and Recruitment Rules cannot, to our mind, take away the right of the applicants to be considered against the 7 vacancies for which they had given their willingness. To say now that they are not within the zone of consideration <sup>also</sup> ~~will~~ not be equitable in view of the fact that their willingness was sought for. If they were not

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within the zone of consideration, they should not have been approached for their willingness. Also, since the applicants are possessing experience and are working as Secretaries of the Supply and Marketing Societies to which Assistant Registrars and Inspectors are normally appointed, they have a right to be considered irrespective of their seniority, especially when experience as Secretary of the Co-operative Marketing Society has been prescribed as a desirable qualification.

10. In so far as the amended Recruitment Rules at **Exbt.P1** are concerned, we do not see any illegality in the same and they shall come into force from the date of publication in the Lakshadweep Gazette. But they would not affect the existing right of the applicants for consideration for promotion to the seven vacancies already notified and <sup>for which</sup> willingness <sup>was</sup> obtained from the candidates. Nevertheless we are upholding the validity of **Exbt.P1**. It has been held by the Supreme Court in **State of Andhra Pradesh Vs. V.Sadanandam, (1989) 11 ATC 391**, that the mode and source of recruitment <sup>are</sup> exclusively in the domain of the Executive and the judicial bodies should not intervene in the policy of recruitment. This Tribunal in **Tarip Singh & Others Vs. Union of India & Others, (1989) 9 ATC 772**, held that Recruitment Rules cannot be declared to be void if they do not provide for promotion. A similar view was expressed by the Tribunal in **Girish Sahai & Others Vs. Union of India, (1989) 9 ATC 251**, wherein it was held that Recruitment Rules can be modified even if the prospects of promotion are affected.

11. In the facts and circumstances, we allow these applications only to the extent of directing respondents 2 to 4 to consider the applicants for the post of Co-operative Inspectors in accordance with the Recruitment Rules of 6.5.87 (**Annexure-VI in O.A 31/90**), keeping in view their desirable qualifications of Junior Diploma in Co-operation and experience as Secretary of the Co-operative Societies, <sup>as the case may be,</sup> along with other eligible candidates against the 7 vacancies notified on 19.7.88 (**Annex. IX in OA 31/90**). There will be no order as to costs. A copy of this order may be placed on all the three case files.

  
(N.Dharmadan)  
Judicial Member

31.8.90.

  
(S.P.Mukerji)  
Vice Chairman

31.8.90