

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/06/2003

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The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. THANIKACHALAM

Writ Petition No. 19359 of 1999
and
W.P.M.P.No. 28388 of 1999

1. Union of India
rep. by the Post Master General
Central Region
Tiruchirappalli □ 620 001.

2. Superintendent of Post Offices
Karur Postal Division
Karur - 639 001. .. Petitioners

-Vs-

1. Central Administrative Tribunal
rep. by its Registrar
High Court Campus,
Chennai □ 600 104.

2. R. Kadhivel
Ex.Branch Postmaster
Ariyur Village & Post
K. Parmathy - 639 111. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for the issue of a Writ of Certiorari as stated therein.

!For Petitioners .. Mr. R. Santhanam
Senior Central Govt.
Standing Counsel

^For Respondent2 .. Mr. O. Venkatachalam

:O R D E R

(The Order of the Court was made by V.S. SIRPURKAR, J)
It is again an unfortunate case where a Scheduled Caste candidate was
selected as the Extra Departmental Branch Post Master at a place called Ariyur
in pursuance of the selection held somewhere in the year 1997. That selection

was challenged by way of a show cause notice issued to him by the Superintendent of Post Offices. In the show cause notice, it was suggested that the selection itself was found to be bad, as three eligible candidates were not available to compete with the second respondent. On that ground alone, perhaps the exercise to examine the selection process was gone ahead by the Superior Officer of the Superintendent of Post Offices and it was in pursuance of the directions issued by him that the said show cause notice came to be issued. The second respondent gave an answer to this show cause notice, but in that answer unfortunately the second respondent has not taken up a position that there were in fact more than three eligible candidates available at the time of the interview or at the time of the selection. The show cause notice instead came to be challenged on the ground that firstly it was belated, secondly it pertains to a Schedule Caste candidate and thirdly, the candidate selected had all the necessary qualifications for eligibility. Unfortunately, however, that explanation was not accepted and he came to be slapped with the termination order, which termination he challenged before the Central Administrative Tribunal. The Central Administrative Tribunal relying upon another judgment, in common batch cases, held that the termination was bad as according to the Tribunal there were as many as eight candidates available for the interview and therefore, there could be no question of more than three candidates not being available for selection. It is this order of the Central Administrative Tribunal, which is challenged in the present writ petition.

2. Mr.R.Santhanam, learned Senior Central Government Standing Counsel points out that the Tribunal has nowhere considered the contentions raised on behalf of the Central Government that at the time of selection, it was imperative for all the candidates to give their property details by 05.05.1997 and that no candidate had given the property details or the certificates regarding the existence of the property in their name. It was the second respondent alone who, probably, had given the certificate stating that he was a joint holder of the property, but, however, he had also not given the certificate of exclusive ownership of the property, which certificate came to be given only on 22.05.1997 i.e., 17 days after the notified date. Learned counsel points out that the factual finding of the Tribunal that there were eight candidates available is not correct for the simple reason that it has nowhere come on record that all those eight candidates or at least more than three out of them had given the details of their properties. We have gone through the findings of the Tribunal and we also do not find anywhere that the Tribunal has in any way supported its finding of fact by holding that all the eight candidates or at least more than three out of them had given the property details on or before 05.05.1997. In that view, we are unable to accept the finding of fact by the Tribunal. Once that finding goes, then the only material available on record would be the detection by the higher authority, who went into the selection process and found that the eight candidates, who came for the interview, had not given the property details.

3. It seems that the Tribunal was more impressed on account of the fact that the Tribunal in the earlier judgment had expressed an opinion that such property details were not liable to be given at the notified date, but such details could be supplied even after the selection process. However, we find that the judgment of the Tribunal had been upset by this Court in W.P.Nos.18692 and 18695 of 1999 dated 26.06.2003 wherein this Court has held

that the Tribunal could not be allowed to rewrite the selection rules and that it was imperative for all the candidates to give the property details at the notified date only and not beyond the same. Therefore, this Court has taken a clear view that the candidates cannot be allowed to supplement their information about the property after their selection and that it is imperative for the candidates to give all the property details prior to the selection and more particularly on the notified date.

4. Learned counsel also pointed out that in this case even the selected respondent had not given his property details and he gave the property details only on 22.5.1997 i.e., 17 days after the notified date. In that view, obviously, the order of the Tribunal would be incorrect, because, according to the learned counsel, as per the Communication issued by the Government of India, vide No.STB/1-1/95/Rlgs Dated 03.12.1997 and more particularly paragraph 8, it is a must that there has to be availability of minimum three eligible candidates for holding interview and for going ahead with the process and if there are no minimum candidates for being selected then the concerned authority cannot proceed with the selection and have to either obtain approval prior to the issuance of the appointment order or at least give an advertisement and invite applications from the open market. That obviously also has not been done. It is also relevant to extract the concerned paragraph:-

"In case the Employment Exchange fails to sponsor the minimum number of 3 eligible candidates, an open advertisement should be issued calling for nominations. Even here if the minimum number of 3 eligible candidates do not offer their candidatures approval of the next higher authority to the proposed appointment should be obtained before selection is made from amongst such candidates. In case the Employment Exchange nominates lesser number of eligible candidates than 3 and it becomes necessary to call for application from the open market also, the candidatures of the nominee of the Employment Exchange should also be considered along with those offering their candidatures in response to the open advertisement"

Learned counsel fairly conceded that there was nothing on record supplied by him that minimum of three eligible candidates were actually available for selection. In that view, paragraph 8 of the communication issued by the Government of India, which we have already quoted above, would apply, and the order of the Tribunal would be clearly incorrect. We, accordingly, set aside that order.

5. We are told at the Bar that the termination order has already been issued and another candidate has already been selected and hence, this writ petition has actually become infructuous. However, since it was a question of career of the second respondent, we have expressed our opinion.

6. Before parting with the case, we would like to express that this exercise of examining the selection process should not be taken in the leisurely manner as it has been done. Such exercises are not to be taken by way of supplementing or fanning one's egos. They are to be taken for keeping the selection process pure and unpolluted. We have found in a number of cases that such exercise have been taken after the candidates have worked for more than one year. We really do not understand as to why the candidates, who were selected in the so called defective manner, are allowed to work for one or two years and then are sent home. We hope that the Central Government and the concerned authority would take necessary steps to expedite the exercise, if it

so decides to take.

7. We allow the writ petition and make the rule absolute. No costs.
Consequently, W.P.M.P.No.28388 of 1999 is closed.

Index:Yes

Internet:Yes

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Copy to:

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