

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.12.2004

CORAM:

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE N.V.BALASUBRAMANIAN

W.A.No.3751 of 2004

N.Selvan

..

Appellant/Petitioner

versus

1. The Inspector General of Police
Southern Sector, CRPF
Road No.12, Senjaver Mills
Hyderabad
Andhra Pradesh-500 004.

2. The Deputy Inspector General of
Police, CRPF, Avadi
Chennai-600 065.

3. The Principal
RIC - II
CRPF, Avadi
Chennai-600 065.

..

Respondents/Respondents

Prayer: Appeal under clause 15 of the Letters Patent against the order of this Court dated 27.8.2004 passed in W.P.No.3136 of 2001.

For appellant : Mr.R.Singgaravelan

For respondents : Mr.S.Manikumar
S.C.G.S.C.

JUDGMENT

(Judgment of the Court was delivered by
THE HON'BLE THE CHIEF JUSTICE)

This appeal has been filed against the impugned order of the learned single Judge dated 27.8.2004.

2. The appellant was only a daily wage employee who worked from 1991 to 1994. A daily wage employee is only a temporary employee. It is well settled that a temporary employee has no right to the post vide STATE OF U.P. V. KAUSHAL KISHORE SHUKLA ((1991) 1 S.C.C. 691).

3. Hence, obviously, the appellant has no right to the post.

4. The learned single Judge has, however, directed that he should be considered for fresh appointment if the law permits. In our opinion, there is no infirmity in this order of the learned single Judge. If the law does not permit, obviously, the appellant cannot be considered. For instance, if there is an age limit, then, this Court cannot direct that he should be considered if he has crossed the age limit. It is only if the rules permit relaxation in the age limit that the authority concerned can consider such relaxation in accordance with the said provision for relaxation. But, if there is no provision for relaxation of the age limit, this Court cannot direct that a person, who is over-age, should be considered.

5. Judges cannot take over the role of the Legislature or executive, as held by us in RAMA.MUTHURAMALINGAM Vs. DEPUTY SUPERINTENDENT OF POLICE (2004 (5) CTC 554). Judges must exercise self-restraint and cannot direct that the law should be broken, rather, it is their duty to direct that the law should be followed. If a person is over-age, it may cause hardship to him, but on the ground of hardship, we cannot direct that the law should be broken. When there is any conflict between the law and equity, it is the law which has to prevail, however great the hardship that may be caused. As is said in Latin, 'dura lex sed lex', which means, 'The law is hard, but it is the law.'

For the reasons given above, there is no force in this appeal and it is dismissed. No costs.

Ksv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Inspector General of Police
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Hyderabad
Andhra Pradesh-500 004.

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Chennai-600 065.

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+ 1 cc to the Government Pleader High Court Madras in SR No.58136

+ 1 cc to Mr.S.Manikumar, Advocate in SR No.57963

+ 1 cc to Mr.R.Singaravelan, Advocate in SR No. 58211

सत्यमेव जयते

W.A.No.3751 of 2004

CP (CO)
SR/7.1

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