

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/02/2004

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THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

W.P.No.13831 of 2001
and
W.M.P.No.20444 of 2001

1. Union of India, rep. by
The Post Master General,
Southern Region,
Madurai-2.
2. The Senior Superintendent of Post Offices,
Tuticorin Division,
Tuticorin-628 008.
3. The Sub-Divisional Inspector (Postal),
Tuticorin Division,
Tuticorin-628 008. .. Petitioners

-Vs-

1. Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.
2. S.Lakshmi
3. L.Arumugachamy .. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorari, to call for the records in
O.A.No.686 of 2000 on the file of Central Administrative Tribunal, Madras
Bench and quash the order dated 27.3.2001.

!For petitioners : Mr.K.Kannan, SCGSC

^For respondents : No appearance

:ORDER

M.KARPAGAVINAYAGAM, J.

S.Lakshmi, the second respondent herein preferred an application for the post of Extra-Departmental Branch Postmaster (ED BPM), Savalaperi Branch Office. She was one among the 20 candidates who attended the certificate verification (interview) on 17.1.2000. L.Arumugachamy, the third respondent herein, the only one among the candidates who alone satisfied all qualifications and produced all required documents and therefore, he was selected. Against the said order, the said Lakshmi, the second respondent herein filed an application before the Central Administrative Tribunal and sought prayer for her selection. Accepting her contention, the Tribunal set aside the selection of the said Arumugachamy, the third respondent herein and directed the third petitioner herein, namely Sub-Divisional Inspector (Postal), Tuticorin Sub-Division, to consider the candidature of the said Lakshmi in accordance with the recruitment rules and pass a speaking order within a period of eight weeks from the date of receipt of a copy of the order of the Tribunal. This order is sought to be quashed in this writ petition filed by the Postal Department.

2. According to Lakshmi, the second respondent, namely the applicant before the Tribunal, she belongs to a "Scheduled Caste" community; that she applied for the post of ED BPM, Savalaperi, pursuant to the notification issued by the second petitioner, namely Senior Superintendent of Post Offices, Tuticorin Division; that she secured 407 out of 500 marks in X Standard, that she appeared for the interview on 17.1 .2000 and secured highest marks among all the 22 candidates and that the third respondent-Arumugachamy was appointed as ED BPM even though he secured only 309 out of 500 marks in S.S.L.C., which is contrary to the recruitment rules and as such, his appointment is arbitrary, illegal and liable to be set aside.

3. According to the petitioners, though it was brought to the notice of the Tribunal that one of the important requirements, namely production of document owning property has not been complied with by the said Lakshmi, the Tribunal hastened to pass an order setting aside the appointment order and directing to consider the case of Lakshmi, holding that the above requirement of income and ownership of property is to be satisfied only after a person is selected and not before his/her selection, in the light of the rule which says that the person who takes over the agency must have adequate means of livelihood.

4. Learned Senior Central Government Standing Counsel appearing for the petitioners would strenuously contend that the Tribunal has committed a grave mistake in passing the abovesaid order by quoting the rule, even though Rule 3(3) of the method of recruitment prescribed for ED BPM required that the candidates must satisfy both educational qualification and ownership of the property at the same time.

5. Rule 3(3) reads as follows: " the nominated candidates are required to be addressed through registered post calling for application within the date to be stipulated by the recruitment authorities. In the rarest case, if a candidate at the time of making an application does not satisfy the income/property condition but acquires this qualification subsequent to the submission of the application and sends a written request enclosing documentary evidence in continuation of his application and the same is received within the stipulated date, the recruiting authorities should entertain the same. However, if such an intimation is received after the last date prescribed or the development regarding acquisition of this qualification itself take place after the last date prescribed is over, the same should not be entertained. Similar procedure may also be followed in case it becomes

necessary to fill in the post of ED BPM/ED SPM through open advertisement. In other words, in this case also, if an intimation accompanied by documentary proof is received subsequent to the submission of the application within the stipulated date, the same should also be entertained and acted upon."

6. The above Rule does not indicate that the income and property qualification should be considered only after the person takes over the agency. Under the present recruitment Rule, a person who seeks appointment for the post of ED BPM, is required not only to be a matriculate, but also should have adequate means of livelihood and ownership of the property, besides being able to offer space to serve as an agency premises for postal operations. 7. It is not in dispute that the Department is entitled to prescribe the rules and regulations for the eligibility criteria before selection was made. The Rule would indicate that fulfilment of income and property ownership qualification were rooted to the desired object of the person being in a possession of, to offer the space for running the branch Post Office and also have an adequate means of livelihood that would not make him wholly dependant on the income from the post of ED BPM. 8. Further, the comprehensive affidavit filed before this Court by the Deputy Director General (Establishment), Department of Posts, India (Ministry of Communications), Daak Bhavan, New Delhi, also would clearly show that the said requirement regarding the possession of ownership of the property has been in force for over a century and that the said condition has proved to be a very useful anchor to ensure that persons appointed will be in a position to render the service which he is required to do in the locality and that the funds of the Post Offices as also the funds of the public who use the Post Offices through which the funds pass through his hands, will be safe. 9. When a similar issue has been raised before this Court earlier, this Court, in W.P.No.16673 of 1999, by the order dated 13.2.2002, in which one of us (R.Jayasimha Babu,J) was a party, held as follows:

"2. The Tribunal has chosen to refer the requirement as being subsidiary and that there was a duty cast on the post offices to first choose the applicant with the higher marks in the matriculation examination and thereafter call upon him to produce documents to prove the ownership of the property and possession of adequate means of livelihood as also possession of space in which the post office can be run. 3. This approach of the Tribunal cannot be upheld. The Tribunal has on an erroneous premise set aside a selection which has been made by the employer."

The above observations would apply to the present facts of the case on all fours. 10. As pointed out by the Apex Court in the State of Andhra Pradesh and another vs. V.Sadanandam and others (AIR 1989 SC 2060), the mode of recruitment and the category from which the recruitment to a service should be made, are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. 11. In this case, the Tribunal interpreted the Rule as if property qualification should be considered only after the person is selected, which in our view, is clearly

wrong. Under those circumstances, we have to hold that the order impugned would er from infirmity and the same is liable to be set aside. Accordingly, the same is set aside. 12. With the above observations, the writ petition is allowed. W.M.P.No.20444 of 2001 is closed.

Index: Yes

Internet: Yes

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To

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