

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-09-2008

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K. KANNAN

W.P.NO.32656 OF 2004
and
WPMP.No.39543 OF 2004

J. Abila Thangarani
D/o. Jacop Labas ... Petitioner

Vs.

1. Union of India,
Rep. by the Senior Superintendent
of Post Offices,
Kanyakumari Division,
Nagercoil.
2. P.N. Sankari
D/o.S. Paramasivan
3. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari calling for the records pertaining to the order in O.A.No.597 of 2003, dated 20.4.2004, on the file of the Central Administrative Tribunal, Chennai and quash the same.

For Petitioner : Mr.M. Sivartanan for
Mr.D. Srinivasaragavan

For Respondent-1: Mr.A.S. Vijayaraghavan, CGSC

Respondent-2 : Mr.R. Malaichamy

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J U D G M E N T

P.K. MISRA, J

The facts giving rise to the present writ petition are as follows :-

<https://hcservices.ecourts.gov.in/hcservices/>

Respondent No.1 in the present writ petition issued Notification inviting application to fill up the post of GDS Branch Post Master at Derisanamcode Branch Post Office. Applications were to be submitted by 4.4.2003. The present Respondent No.2 was one of the applicants. In her application, she had not enclosed any income certificate or property certificate. The Department had shortlisted seven candidates who had fulfilled all the norms and ultimately selected the present petitioner. The present Respondent No.2 filed O.A.No.597 of 2003 before the Central Administrative Tribunal (in short Tribunal). The main contention raised by her was to the effect that even though she had not enclosed the income / property certificate along with the application, subsequently, she had submitted such certificate even before the date of interview. The Tribunal, relying upon a decision of the High Court, Madras, allowed such Original Application by coming to the conclusion that the income/property certificate has been submitted before the date of interview. Accordingly, the selection of the present petitioner was set aside and the official respondents were directed to consider the case of the applicant before the Tribunal (present Respondent No.2) for the post of GDS Branch Post Master. Such order passed by the Tribunal is under challenge by the selected candidate.

2. While entertaining the writ petition, an order of stay was granted. It is not in dispute that the present petitioner is continuing to function as GDS Branch Post Master at Dharisanamcode Branch Post Office.

3. Learned counsel for the petitioner has submitted that the present Respondent No.2 (Applicant before the Tribunal) was not eligible to be considered as she had not furnished her income certificate at the time of filing the application and even subsequently she had merely produced the income certificate of her father, whereas, as per the requirement, the applicant must have own independent income. Learned counsel has further submitted that the Tribunal, without noticing the fact that the belated income certificate produced on 26.4.2008 was in the name of the father of the applicant and not in her own name, has set aside the selection and directed for fresh consideration.

4. Learned counsel appearing for Respondent No.1, the Union of India, has submitted that the requirement of own income of the Respondent No.2 is in vogue since very long period and the application of the present Respondent No.2 was not considered as the belated certificate produced only show the income of her father and not of herself.

5. Learned counsel appearing for Respondent No.2 (Applicant before the Tribunal) has submitted that in view of various decisions of this Court, even if the certificate in proof of possession of property or income was not filed along with the application, if such proof is furnished before the interview, the same should be taken into consideration. It is further submitted by him that the Kerala High Court in the decision reported in 2002(1) KLT 554 has set aside the condition incorporated relating to

possession of property / income, as a method of selection and, therefore, the candidature of the present Respondent No.2 should not have been rejected on the ground that she was not in possession of any property or not in possession of separate income. He has further submitted that, at any rate, the very same order passed by the Tribunal was challenged by the Union of India by filing W.P.No.25985 of 2004, which having been dismissed vide order dated 13.9.2004, such order of the Tribunal cannot be permitted to be challenged by the present writ petitioner.

6. Even though the Kerala High Court has set aside the condition relating to possession of property or the independent income, we do not think it would be possible on our part to follow the same in view of several decisions of this Court, wherein it has been observed that the condition relating to possession of property / income is a requirement and the person not having income or property would not be eligible.

7. It is of course true that in several decisions of this Court it has been observed that non-furnishing of such certificate at the time of submitting the application may not be fatal in all cases, particularly when such proof is produced before the interview.

8. The vital question remains to be decided is as to whether the certificate furnished by the present Respondent No.2 on 26.4.2003 and received by the Department on 28.4.2003 was sufficient to cure the defect. It is the specific stand of the Department that such belated furnishing of the certificate was not taken into account because such certificate did not show any income of the applicant herself, but only was a proof of income of the father of the applicant. This aspect of the matter appears to have been lost sight of by the Tribunal while setting aside the order of appointment of the present petitioner. It appears from the materials on record that the present Respondent No.2 had merely furnished a certificate in proof of income of her father, whereas the requirement under the Rules is relating to independent income of the applicant herself.

9. The application, which was filed by the present Respondent No.2 for being considered for the post, is available at Page No.4 of the typed set. Column 9 of such application, which is required to be made in a prescribed form, and the answer therein are extracted hereunder :-

"9. Whether the candidate has income. If so,
income certificate in his own own name No income
issued by the Tahsildar should be attached."

10. From the above, it is clearly apparent that the applicant (present R-2) did not have any income. Even the subsequent certificate only indicates about the income of the father. It is not in dispute that as per the rules applicable at the time of selection, possession of income was a necessary requirement. Therefore, it is quite evident that Respondent No.2

was not at all eligible to be considered. The Tribunal, without considering this aspect, has set aside the selection and directed to consider the case of the present Respondent No.2 for appointment. Such direction of the Tribunal cannot be sustained.

11. Learned counsel for Respondent No.2 has submitted that the very same order of the Tribunal had been challenged in W.P.No.25985 of 2004, which was dismissed at the stage of admission on 13.9.2004 and, therefore, there is no scope for taking any different view.

12. Apart from the fact that the present petitioner was not impleaded as a party and was not heard in the matter, the said order simply confirmed the order of the Tribunal, which had directed for fresh consideration. The question as to whether the present Respondent No.,2 (Applicant before the Tribunal) was eligible or not was neither been decided by the Tribunal nor decided in the said Division Bench order dated 13.9.2004. Even if the order of the Tribunal directing reconsideration is to be followed, it would result in non-selection of the present Respondent No.2 in view of the fact that she was not at all eligible to be considered as she did not have any independent income of her own. In other words, even if the matter is reconsidered by the Department, it would be an exercise in futility. The question of res judicata does not arise for consideration as the present petitioner was not a party to the said adjudication.

13. For the aforesaid reasons, we allow the writ petition and set aside the order passed by the Tribunal. No costs. Consequently, WPMP.No.39543 of 2004 is closed.

dpk

Sd/-
Assistant Registrar

/ True Copy /

सत्यमेव जयते

Sub. Assistant Registrar

To

1. Union of India,
Rep. by the Senior Superintendent
of Post Offices,
Kanyakumari Division, Nagercoil.

2. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

1 cc to M/s.D.Srinivasaraghavan, Advocate, SR.56166
1 cc to M/s.A.S.Vijayaraghavan, Advocate, SR.56013
mg (co)