A BHUDEV SHARMA

v.

DISTRICT JUDGE, BULANDSHAHR AND ANR.

OCTOBER 31, 2007

B [A.K. MATHUR AND MARKANDEY KATJU, JJ.]

Service Law—Reservation—For Physically handicapped persons—Selection—For Class III posts—2% posts reserved for C *physically handicapped—Single Physically handicapped person applied and appeared in recruitment test—Denied appointment—Held: The applicant was entitled to be appointed against the reserved post, being the only candidate.*

D **30 posts were advertised for Class III Posts in Bulandshahr Judgeship in U.P.. Appellant (a blind man) appeared in recruitment test, but was not selected. He filed Writ Petition. Single Judge of High Court directed his appointment, but the same was set aside by Division Bench of High Court. Hence the present appeal.**

E **Allowing the appeal, the Court**

HELD: By G.O. dated 26.08.1993 U.P. Government has reserved 2% posts for physically handicapped persons for direct recruitment in all groups of Government services. The physically handicapped persons are those who are blind, deaf and dumb and F **otherwise handicapped. There were altogether 30 posts for which the selection was held. 2 per cent of 30 is 0.6. Since 0.6 is more than half it is rounded off and held that one out of the 30 posts is reserved for physically handicapped persons. Since there was no other physically handicapped person who applied, the appellant was** G **entitled to the post reserved for physically handicapped persons. The appellant is already working on the post in view of the interim order of this Court. Hence he shall be regularized.**

[Paras 3 and 5] [731-E, F, G; 732-A]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6168 of 2001. A

From the final Judgment and Order dated 23.5.2001 of the High Court of Judicature at Allahabad in Special Appeal No. 445 of 2001.

Gaurav Jain and Abha Jain for the Appellant. B

Ashok K. Srivastava for the Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. This appeal has been filed against the impugned judgment of the Allahabad High Court dated 23.05.2001 in Special Appeal No. 445 of 2001. Heard learned counsel for the parties and perused the record. C

2. The appellant is a blind man. He appeared in the recruitment test held in the year 1992 for selecting candidates for Class-III Posts in Bulandshahr Judgeship in U.P. However, he was not selected and hence he filed a writ petition which was allowed by a learned Single Judge of the Allahabad High Court by his judgment dated 25.09.1997. Against that judgment the State Government filed a letters patent appeal which has been allowed by the impugned judgment by the Division Bench. Hence this appeal. D E

3. The appellant has relied on G.O. dated 26.08.1993 which is Annexure P-I to this appeal. That G.O. states that the U.P. Government has reserved 2 per cent posts for physically handicapped persons for direct recruitment in all groups of Government services. The physically handicapped persons are those who are blind, deaf and dumb and otherwise handicapped. There were altogether 30 posts for which the selection was held. 2 per cent of 30 is 0.6. Since 0.6 is more than half we round it off and hold that one out of the 30 posts is reserved for physically handicapped persons. Since there was no other physically handicapped person who applied, in our opinion, the appellant was entitled to the post reserved for physically handicapped persons. F G

4. In this view of the matter, the appeal is allowed, the impugned H

A judgment of the Division Bench is set aside and it is directed that the appellant be appointed on a Class-III Post in Bulandshahr Judgeship forthwith.

5. We are informed that the appellant is already working on the post in view of the interim order of this Court. Hence he shall be regularized B and allowed to continue working as a regular Class-III employee and shall be given all the consequential benefits.

K.K.T. Appeal allowed.

JASLOK HOSPITAL & RESEARCH CENTRE

v.

UNION OF INDIA AND ORS.

OCTOBER 31, 2007

[ASHOK BHAN, HARJIT SINGH BEDI AND V.S. SIRPURKAR, JJ.]

Customs Duty:

Exemption Notification No. 64/88-Cus. Dated 1.3.1988—Table—Paras 1 and 2—Assessees granted Customs Duty Exemption Certificates under para 2—CDEs withdrawn for violation of conditions for grant of exemption—Three/four years thereafter assessees claiming change in category from para 2 to para 1—HELD: Effect of withdrawal of CDEs is that assessees are not entitled to exemption under any clause of Table annexed to the Notification, therefore, no question of change of category would arise—Besides, change of category was sought after three/four years of withdrawal of CDEs—It was clearly an afterthought in order to overcome assessees' failure to comply with conditions for grant of exemption.

Appellant in CA No. 7284 of 2005 obtained Customs Duty Exemption Certificate for import of hospital equipments under Notification No. 64/88-Cus. Dated 1.3.1988 for the period between 1988 and 1994. The appellant was categorized under para 2 of the Table annexed to the Notification. The said certificate was cancelled by communication dated 14.11.2000 on the ground that the appellant hospital failed to comply with the condition laid down in para 2 to provide free treatment to the patients mentioned therein. After lapse of 3 years from the date of withdrawal of the exemption the appellant made a representation for being categorized under para 1 of the Table annexed to the Notification. The representation having been rejected, the appellant filed a writ petition. The High Court declined to grant the relief holding that the appellant having enjoyed the

A **benefit under para 2 for fifteen years could not claim change in the categorization.**

In the instant appeals, relying upon the case of *Share Medical Care*[1], it was contended for the appellants that they were entitled to claim change in categorization and the authority concerned erred in holding otherwise.

B

Dismissing the appeals, the Court

HELD: 1. The appellant in CA No. 7284 of 2005 is not entitled to the relief sought for. The appellant had given up its challenge to the communication dated 14th November, 2000 cancelling/ withdrawing the CDECs issued to it in terms of para 2 of the Table annexed to the Notification, for having violated the conditions laid down for grant of exemption. The effect of the withdrawal of CDEC is that the appellant is not entitled to the exemption under any of the clauses of the Notification on or after 14th November, 2000 and, therefore, no question of change of its category would arise. Such a change could only be possible if the appellant had applied for change of its categorization before the issuance of the communication of the DGHS dated 14th November, 2000 withdrawing/cancelling the CDECs. Besides this, the change of categorization sought after a lapse of three years of the withdrawal/cancellation of the CDECs could not be entertained at the sweet will of the appellant. It is clearly an after-thought in order to overcome the failure on the part of the appellant to comply with the conditions laid down in para 2.

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F **[Para 17 and 18] [739-A, B, C, D, E]**

2. The appellant in the CA no. 5054 of 2007, filed the representation after a lapse of four years of the withdrawal/ cancellation of the CDECs, which could not have been entertained and the High Court has rightly upheld the order of rejection of the change of categorization. [Para 19] [739-F]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7284 of 2005.

H 1. [2007] 3 SCR 44 =[2007] 4 SCC 573

From the final Judgment and Order dated 17.12.2004 of the High Court of Judicature at Bombay in Writ Petition No. 2613 of 2004. A

WITH

C.A. No. 5054 of 2007.

Arun Jaitley, Gaurav Sharma, Pratibha Singh, Sumeet Bhatia, Surbhi Mehta (for Maninder Singh), V. Lakshmikumaran and Alok Yadav (for M.P. Devanath) for the Appellant. B

Amrendra Sharan, ASG., K. Radhakrishnan, A.K. Srivastava, Binu Tamta, C.V.S. Rao, Sushma Suri and B. Krishna Prasad for the Respondents. C

The Judgment of the Court was delivered by

BHAN, J. 1. Leave granted in special leave petition No. 17577 of 2006. D

2. This judgment shall dispose of Civil Appeal No.7284 of 2005 and the Civil Appeal arising out of SLP© No. 17577 of 2006.

3. C.A. No.7284/2005 is directed against the judgment and order passed by the High Court of Judicature at Bombay in CWP No. 2613 of 2004 dated 17th December, 2004 whereby the High Court has dismissed the writ petition filed by the appellant. E

4. The Civil Appeal arising out of SLP© No.17577 is directed against the order dated 21st September, 2006 passed by the same High Court in Writ Petition No.5594/2006. F

5. The latter case has been dismissed by the High Court on the basis of the findings recorded in the order dated 17th of December, 2004 passed in WP No.2613/2004 *M/s. Jaslok Hospital and Research Centre* v. *Union of India & Ors.*

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6. As the point involved in both the appeals is identical, the appeals are taken up for disposal together by this common Judgment.

7. For the convenience of reference, the facts are taken from C.A. No.7284/2005.

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A 8. The appellant obtained Customs Duty Exemption Certificate (for short 'CDEC'), from the Directorate General of Health Services (DGHS), for import of various hospital equipments under Notification No.64/88-Cus. Dated 1st March, 1988 (for short "the Notification"). CDECs issued to the appellant relate to import of medical equipments for the period B between 1988 and 1994. The CDECs certified that the appellant was covered under para 2 of the Table annexed to the Notification. The same reads as under:

"TABLE

C 1. All such hospitals as may be certified by the said Ministry of Health and Family Welfare, to be run or substantially aided by such charitable organization as may be approved, from time to time, by the said Ministry of Health and Family Welfare.

2. All such hospitals which may be certified by the said Ministry D of Health and Family Welfare, in each case, to be run for providing medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race, religion or language but also, -

(a) free, on an average, to at least 40 per cent of all their outdoor patients; and

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(b) free to all indoor patients belonging to families with an income of less than rupees five hundred per month, and keeping for this purpose at least 10 per cent of all the hospital beds reserved for such patients; and

F (c) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in clauses (a) and (b)."

9. The said CDECs were cancelled/withdrawn by the Directorate General of Health Services (DGHS) vide its communication bearing No. G Z.37024/13/92-MG dated 14th November, 2000 addressed to the Chief Executive Director of the appellant, on the ground that the appellant-hospital had failed to comply with the conditions laid down in para 2 of the Table annexed to the Notification extracted above.

H 10. After about three years, the appellant made a representation to

the Secretary, Ministry of Health and Family Welfare on 24th September, 2003, seeking categorization under para 1 (extracted below) instead of para 2 of the Table annexed to the Notification.

"1.

organization as may be approved, from time to time, by the said Ministry of Health and Family Welfare"

11. The said representation came to be rejected by the DGHS vide its order dated 18th March, 2004.

12. Against the rejection of its aforesaid representation, the appellant filed the Writ Petition in the High Court, challenging the communication dated 14th November, 2000 issued by the DGHS, canceling / withdrawing the CDECs granted to the appellant, and the order dated 18th March, 2004, declining to categorize the appellant under para 1 of the Table annexed to the Notification. During the course of hearing before the High Court, Counsel for the appellant did not press the prayer for setting aside the communication dated 14th November, 2000 and confined the challenge only to the order dated 18th March, 2004 passed by the DGHS.

13. Till the year 2003, the appellant accepted and was rather satisfied of its being categorized under para 2 of the Table annexed to the Notification. It was only after the withdrawal/cancellation of the said CDECs by the communication dated 14th November, 2000 and, that too, after a lapse of almost three years, that the appellant made a representation to the Secretary to the Ministry of Health and Family Welfare for being categorized under para 1 of the Table annexed to the Notification.

14. The representation of the appellant, as stated above, was rejected by the DGHS on the ground that the State Government had recommended the appellant's case only under para 2 of the Table annexed to the Notification which, *inter alia*, stipulates that the hospital has to provide free treatment to 40 per cent of the outdoor patients and to all indoor patients whose income is less than Rs.500/- per month.

15. The High Court, by the impugned order, has upheld the order

A passed by the DGHS. It has been held that the order passed by the DGHS is not based on irrelevant or extraneous considerations. That the appellant could not claim change in the categorization after having enjoyed the benefit under para 2 of the Table annexed to the Notification for about fifteen years. During the said period of fifteen years, the appellant did not B raise any grievance with regard to its non-categorization under para 1 of the said Table and its categorization under para 2 thereof.

16. Counsel for the appellant contends that the appellant was entitled to claim change in the categorization and the DGHS has erred in holding that the appellant was not entitled to claim change in its categorization C from para 2 to para 1 of the Table annexed to the Notification. In support of his submission, the learned Counsel had relied upon a judgment of this Court in the case of *Share Medical Care* v. *Union of India & Ors.*, [2007] 4 SCC 573 wherein it has been held, thus:

D "In the instant case, the ground which weighed with the Deputy Director General (Medical), DGHS for non-considering the prayer of the appellant was that earlier, exemption was sought under category 2 of exemption notification, not under category 3 of exemption notification and exemption under category 2 was withdrawn. This is hardly a ground sustainable in law. On the E contrary, well settled law is that in case the applicant is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the *duty* of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit. Therefore, non-consideration on the part of the F Deputy Director General (Medical), DGHS to the prayer of the appellant in claiming exemption under category 3 of the notification is illegal and improper. The prayer ought to have been considered and decided on merits. Grant of exemption under category 2 of the notification or withdrawal of the said benefit cannot come in G the way of the applicant in claiming exemption under category 3 if the conditions laid down thereunder have been fulfilled. The High Court also committed the same error and hence the order of the High Court also suffers from the same infirmity and is liable to be set aside."

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17. Without going into the question regarding applicability or otherwise of the decision referred to above, we are of the view that the appellant is not entitled to the relief sought for. The appellant had given up its challenge to the communication dated 14th November, 2000 cancelling/withdrawing the CDECs issued to the appellant for having violated the conditions laid down for grant of exemption. The effect of the communication dated 14th November, 2000 is that the appellant is not entitled to the exemption under any of the clauses of the aforesaid Notification on or after 14th November, 2000. The representation made by the appellant after a lapse of three years of the cancellation/withdrawal of the CDECs cannot be entertained, as the change of its category would not arise as the appellant's categorization under para 2 of the Table annexed to the Notification had already been withdrawn. Such a change could only be possible if the appellant had applied for change of its categorization before the issuance of the communication of the DGHS dated 14th November, 2000 withdrawing/cancelling the CDECs.

18. Apart from this, the change of categorization was sought after a lapse of three years of the withdrawal/cancellation of the CDECs. Such a representation could not be entertained after a lapse of three years at the sweet will of the appellant. The representation filed by the appellant in 2003, seeking change of category from para 2 to para 1 of the Table annexed to the Notification, is clearly an after-thought in order to overcome the failure on the part of the appellant to comply with the conditions laid down in para 2 of the Table annexed to the Notification. The same could not be entertained after such a lapse of three years of the communication dated 14th November, 2000.

19. In the Appeal arising out of SLP© No. 17577 of 2006, the representation was filed after a lapse of four years of the withdrawal/ cancellation of the CDECs, which, as held in the preceding paragraphs, could not have been entertained and the High Court has rightly upheld the order of rejection of the change of categorization.

20. For the reasons stated above, we are not inclined to interfere with the orders passed by the High Court. The Civil Appeals are, therefore, dismissed with no order as to costs.

R.P. Appeals dismissed.