

BIBHUDATTA MOHANTY
v.
UNION OF INDIA AND ORS.

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MARCH 20, 2002

[SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA, JJ.]

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Service Law :

Recruitment—Preference clause for higher qualifications—Effect of—Temporary appointment—Subsequently requisition sent to Employment Exchange for regular appointment—Requisition specifying VIII standard qualification—No specification that matriculates will be given preference—Selection of appellant on merit—Seniority in age also taken into account—Challenge by respondent—Ground that inspite of his higher qualification he was not given preference—Held, not maintainable—Order setting aside appointment of appellant held not maintainable.

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The appellant was temporarily appointed as Extra Departmental Mail Carrier by respondent No. 4. For filling up the post on permanent basis, a requisition was sent to employment exchange to sponsor candidates having qualification of VIII standard passed. The said requisition did not specify that matriculates would be given preference. The names of appellant and respondent No. 5 did not figure in the list sponsored by employment exchange. They approached High Court and Administrative Tribunal respectively which issued direction to consider their cases. The appellant was selected on merit and respondent No. 5 challenged his appointment before Tribunal on the ground that inspite of being a SSC passed candidate no preference was given to him. In its counter affidavit respondents averred that the appellant was selected on merit and he was senior in age. Ignoring the said averment the Tribunal set aside the appointment taking the view that he was solely selected on the ground that amongst all the candidates he was senior-most in age and that was an extraneous consideration. The High Court agreed with the reasoning of the Tribunal and dismissed the writ petition and the review petition by appellant.

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In appeals to this Court it was contended on behalf of the appellant that his selection was on the basis of merit and not merely on the ground of age;

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A he fulfilled the requirement of residence; the requisition sent by respondent No. 5 to the Employment Exchange did not specify that matriculates would be given preference, therefore, the Tribunal and the High Court erred in setting aside his appointment.

B Allowing the appeals and setting aside the impugned orders, the Court

C HELD: 1. The selection of the appellant was wrongly set aside. The preference clause for higher qualification does not mean that irrespective of fulfillment of other norms SSC passed have to be preferred. Where any rule or guideline provide preference in respect of some higher qualification, it only means that all other requirements being equal, a person possessing higher educational qualification will be preferred. It cannot, however, be considered as the sole criteria for preference in selection and appointment.

[619-B; 618-C]

D 2. It is true that the guidelines contained in "Method of Recruitment" mentions that the minimum educational qualification is VIII passed and preference will be given to SSC passed. But the requisition sent to Employment Exchange did not specify that preference would be given to SSC passed candidates. Therefore, respondent No. 5 could not have claimed any preferential treatment in selection. As the basis of selection was in terms of

E requisition to the Employment Exchange, the selection authority has committed no illegality in not giving preference to SSC passed candidate—respondent No. 5. [618-A-B]

F 3. The Tribunal is not right in ignoring the averment in the counter affidavit of the official respondents that the appellant was selected on merit and erred in holding that the selection was made solely on the ground that amongst all the candidates he was the seniormost in the age. A selection solely on the basis of being senior in age is vitiated by extraneous consideration. But when, as in this case, the selection is on the basis of merit, merely because the seniority in age of the candidate is also taken into consideration, it would

G not be right to invalidate the selection. [618-G-H; 619-A]

H 4. In so far as the selection of respondent No. 5 is concerned that is a consequential action and it cannot stand as the impugned order of setting aside the selection and the appointment of the appellant is held to be bad. The appellant shall be reinstated in service within one month from the date of this order with continuity of service. However, he will not be entitled to any

pay for the period he remained out of service. [619-B-C]

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Union of India and Ors. etc. v. N. Hargopal and Ors. etc., AIR (1987) SC 1227, referred to.

Secretary (Health) Department of Health v. Dr. Anita Puri and Ors., JT (1996) 8 SC 130, explained and held inapplicable.

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2266-2267 of 2002.

From the Judgment and Order dated 12.9.2000/ 3.11.2000 of the Orissa High Court in O.J.C. No. 8733/2000, C.R. No. 137 of 2000.

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Monoj K. Das, Sibho Sankar Mishra for the Appellant.

Anoop Choudhary, Hemant Sharma, P. Parmeswaran and S.K. Das for Ajay Choudhary, for the Respondents.

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The Judgment of the Court was delivered by

SYED SHAH MOHAMMED QUADRI, J. Leave is granted.

These appeals are from the judgment and order of the Division Bench of the High Court of Orissa at Cuttack in O.J.C. No. 8733 of 2000 dated September 12, 2000 and final order of November 3, 2000 in Civil Review No. 137 of 2000, respectively.

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The unsuccessful petitioner in the said O.J.C. and Civil Review is the appellant. He was temporarily appointed in the post of Extra Departmental Mail Carriers (for short, the EDMC) in the Sithalo Branch Post Office, by the Assistant Superintendent of the Post Offices (I/C), Jagatsinghpur Sub-Division, Jagatsinghpur (for short, 'respondent No. 4') on February 1, 1997. He worked in that post till September 3, 1997. He was again appointed as a substitute in the said post for the period from May 9, 1998 to August 24, 1998 in Palasol Branch Post Office. For filling up the post on permanent basis, respondent No. 4 sent a requisition to the Employment Exchange to sponsor candidates having qualification of VIII standard passed for the post of EDMC. It may be mentioned that in the requisition to Employment Exchange there was no mention that preference will be given to the candidates who passed matriculation. The Employment Exchange accordingly sponsored 40 names having VIII class passed qualification and out of them only 13

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A candidates applied for the post. As the name of the appellant did not figure in the list of the candidates sponsored by Employment Exchange, he filed O.J.C. No. 12733 of 1998 before the High Court for a direction to respondent No. 4 to consider his candidature for the said post. Having regard to the judgment of this Court in *Union of India and Ors., etc. v. Hargopal and Ors., etc.*, AIR (1987) SC 1227, a Division Bench of the High Court issued a direction to respondent No. 4 to consider the case of the appellant *on merit and in accordance* with rules and thus disposed of the writ petition on September 15, 1998. Respondent No. 5 who was also aspiring for the post, having learnt that his name was not sponsored by the Employment Exchange in response to the requisition of respondent No. 4 approached the Central Administrative Tribunal, Cuttack Bench Cuttack (for short, the Tribunal) for a direction to consider his candidature for the said post. On January 28, 1999, the Tribunal issued an interim direction to respondent No. 4 to consider the candidature of respondent No. 5.

D On February 2, 1999, after considering all the applicants, the fourth respondent selected and appointed the appellant as a EDMC Palasol Branch Post Office. He joined the post on February 4, 1999 and was working as such. While so, respondent No. 5 questioned the appointment of the appellant before the Tribunal stating that inspite of being a SSC passed candidate no preference was given to him. In the counter affidavit filed on behalf of respondent Nos. 1 to 4 it was averred that the appellant was selected on merit and he was senior in age.

F By order dated August 18, 2000, the Tribunal set aside the appointment of the appellant by allowing O.A. No. 227 of 1999. Aggrieved by the said order of the Tribunal the appellant filed Writ Petition (O.J.C.) No. 8733 of 2000) which was dismissed on September 12, 2000. Then he filed review petition challenging the correctness of the said order but that was also dismissed on November 3, 2000. The said two orders are assailed in these appeals by special leave.

G Mr. Monoj K. Das, the learned counsel appearing for the appellant, contended that the selection of the appellant was on the basis of merit and not merely on the ground of age; he fulfilled the requirement of residence; the requisition sent by Respondent No. 5 to the Employment Exchange did not specify that matriculates would be given preference therefore, the Tribunal and the High Court erred in setting aside his appointment.

H Mr. Anoop Choudhary, the learned senior counsel appearing for the

Union of India and the official respondents, submitted that the appointment of the appellants was on overall consideration of various factors but pursuant to the order of the Tribunal a fresh selection was made and respondent No. 5 had been appointed.

Mr. Ajay Choudhary, the learned counsel appearing for respondent No. 5, contended that the appellants were appointed on extraneous ground of seniority in age so his appointment was rightly quashed; that respondent No. 5 possessed Higher Secondary Certificate and had better qualification, so after the order of the Tribunal he was appointed, therefore, his appointment ought not to be disturbed in these appeals. He further submitted that the requirement of residence was subsequently modified and it was not necessary to reside in the area of the post office.

A big fight is on for a small post of EDMC. The short question that arises for our consideration is whether the impugned Judgments and Orders of the High Court confirming the order of the Tribunal, quashing the appointment of the appellants, is unsustainable.

A perusal of the order of the Tribunal shows that the appointment of the appellants was set aside taking the view that he was selected solely on the ground that amongst all the candidates he was the senior most in age and that was an extraneous consideration. The High Court agreed with the reasoning of the Tribunal.

The relevant portion of the counter filed by respondents Nos. 1 to 4 reads thus:

“Sri Bhibudatta Mohanty having essential qualification and senior in age from among all the candidates has been selected on merit and appointed to the post of EDMC Palasol BO w.e.f. 4.2.99. In the requisition vide Annexure R-1 there was no mention regarding giving preference to candidates who have passed HSC examination and also to the candidates belonging to the reserved community.”

(Emphasis supplied)

Those averments are attempted to be diluted in the counter affidavit filed in the special leave petition, which are inconsistent so we are inclined to ignore them.

Admittedly in the requisition sent by respondent No. 4, to the

- A Employment Exchange candidates having VIII class passed qualification were called for consideration and accordingly the Employment Exchange sponsored as many as 40 candidates all VIII class passed. It is true that the guidelines contained in "Method of Recruitment" mentions that the minimum educational qualification is VIII passed and preference will be given to SSC passed. But
- B the requisition did not specify that preference would be given to SSC passed candidates. Had the fourth respondent notified this condition, perhaps the Employment Exchange would have also sponsored SSC passed candidates as well. As the basis of selection was in terms of requisition to the Employment Exchange, the selection authority has committed no illegality in not giving preference to SSC passed candidate - respondent No. 5. However, the
- C preference clause for higher qualification does not mean that irrespective of fulfillment of other norms SSC passed have to be preferred. Where any rule or guideline provide preference in respect of some higher qualification, it only means that all other requirement being equal, a person possessing higher educational qualification will be preferred. It cannot, however, be considered as the sole criteria for preference in selection and appointment.

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The Tribunal did not properly appreciate the order of this Court in *Secretary (Health) Department of Health v. Dr. Anita Puri and Ors.*, JT (1996) 8 SC 130. Speaking for this Court Pattanaik, J. held :

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When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed."

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"In that case the advertisement, calling applications from B.D.S., did mention that preference would be given to M.D.S. qualification. In the instant case, the requisition did not even mention that preference would be given to SSC passed candidates. Therefore, respondent No. 5 could not have claimed any preferential treatment in selection.

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Further, the Tribunal is not right in ignoring the averment in the counter affidavit of the official respondents, extracted above that the appellant was selected on merit and erred in holding that the selection was made solely on the ground that amongst all the candidates he was the seniormost in the age.

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It is thus clear that the selection of the appellant was on merit and not solely

on the ground of being senior in age. It cannot be disputed that a selection solely on the basis of being senior in age is vitiated by extraneous consideration. But when, as in this case, the selection is on the basis of merit, merely because the seniority in age of the candidate is also taken into consideration, it would not be right to invalidate the selection. A

Without properly examining the contents of the counter affidavit the High Court sustained the order of the Tribunal. In the light of the above discussion, we are of the view that the selection of the appellant was wrongly set aside. Insofar as the selection of respondent No. 5 is concerned that is a consequential action and it cannot stand as the impugned orders of setting aside the selection and the appointment of the appellant are held to be bad. Therefore, the selection of respondent No. 5 automatically falls to the ground. The impugned orders of the High Court maintaining the order of the Tribunal are set aside. The appellant shall be reinstated into service within one month from today with continuity of service. However, he will not be entitled to any pay for the period he remained out of service. The appeals are accordingly allowed. No costs. B C D

T.N.A.

Appeals allowed.