
(2001) 12 KL CK 0040

In the High Court Of Kerala

Case No : O.P. No's. 1422 of 2000, 18369 of 2001 and connected cases

Director General of Post Offices

APPELLANT

Vs

Central Administrative Tribunal, Ekm. Bench

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2003) 1 ILR (Ker) 107

Hon'ble Judges : K.S. Radhakrishnan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : P.S. Sreedharan Pillai, S.C.G.S.C. and K. Ramakumar, for the Appellant; O.V. Radhakrishnan, P.B. Suresh Kumar and P.T. Pradeep, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The legality of the following stipulation laid down by the Director General of Post dated 6.12.1993 while considering the appointment of ED Sub Postmasters/Branch Post Masters is under challenge in all these cases.

"In the case of appointment of ED Sub Postmasters/Branch Post Masters preference may be given to those candidates whose "adequate means of livelihood" is derived from landed property or immovable assets if they are otherwise eligible for the appointment. Heads of Circles may be asked to issue suitable instructions to the appointing authorities on these lines so that they could follow these while making appointments to the post of EDSPM/EDBPM. In respect of other EDAs, the present "adequate means of livelihood" will hold good".

(underline supplied)

2. We may refer to the facts in O.P. 28419/99 for easy reference. Writ Petition was filed by the Superintendent of Post Offices, Kannur. The Original Petition was

filed against the order in O.A. 1514/97. Applications were invited for regular selection and appointment to the post of Extra Departmental Branch Postmaster (EDBPM for short) at Chithappilepoyil Post Offices, Thaliparambu Sub Post Office. The following are the essential qualifications laid down for the post.

1. Age should be between 18 and 65 years.
2. Should have passed 10th Standard (SSLC or equivalent)
3. The candidate should have independent income from other sources (preferably from landed property) and income claimed should continue to be available even after the provisional appointment. An income certificate issued by a Revenue Officer not below the rank of a Tahsildar should be enclosed.

Apart from letter dated 6.12.93 mentioned hereinbefore letter No. 17-104/91-ED & Trg, dated 18.9.1995 was also issued by the Director General of Posts, New Delhi on the same lines. On the basis of the notification as well as on the basis of the various orders referred to hereinbefore the application submitted by the petitioner as well as on the basis of the various orders referred to hereinbefore the application submitted by the petitioner as well as respondents 2 and 3 were considered. Applicant Praseetha passed SSLC Examination with 401 marks out of 600 and claimed that she had adequate means of livelihood from her occupation as a Typist as also from landed property owned by her in Survey No. 185/2B in Kunjimangalam Village in Kannur Taluk. She was served with memo dated 5.11.97 to appear from an interview on 17.11.97. She produced various documents. Certificate from Tahsildar showing that her annual income of Rs. 13,200/- of which Rs. 6000/- was derived from her landed property of 0.05 acres in survey No. 185/2B of Kunjimangalam Village in Kannur Taluk and Rs. 7200/- from her occupation as a Typist were produced. The petitioner in O.P. 28409/99 who is the third respondent in O.P. 28419/99 obtained only 319 marks out of 600 and she had also produced the certificate from Tahsildar showing income from her landed property. After interview the Department selected Kasthoor Bai on the ground that she had adequate income for livelihood derived from immovable property. As far as Praseetha is concerned it was found that she had practically no income from the landed property and that adequate means of livelihood of her was the income she obtained from the salary income of the Typist.

3. Aggrieved by the selection of Kasthoor Bai, Praseetha filed the O.A. before the Tribunal. She contended that she was having more marks in SSLC than Kasthoor Bai and therefore she is the most eligible person to be appointed for the post. It was alleged that the stipulation that the preference should be given to persons having independent income derived from immovable property is illegal, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India. A reply statement has been filed on behalf of the Department. The stipulation made by Director General of Posts was sought to be justified on the ground that the post for which selection is made carried such a condition. According to the Department the Post of EDBPM and EDSPM are posts dealing with case and

therefore in the event of misappropriation by the incumbent Government should be able to recover from the incumbent the amount misappropriated. According to the Department, this stipulation cannot be said to be irrational or unreasonable. Further it was pointed out the applicant was aware of the requirement of producing the income certificate disclosing the source of income and therefore she having participated in the selection and failed to be selected she is estopped from challenging the process of selection.

4. Tribunal repelled the contention and found that stipulation made by Director General of Posts that preference should be given to those candidates who have independent means of livelihood and income derived from the landed property or immovable assets is illegal and violative of Article 14 of the Constitution of India. Aggrieved by the same O.P. 28419/99 is preferred by the Superintendent of Post Offices and other Writ Petitions preferred by the affected candidates and the respondents in O.A. 1514/97 and O.P. 28409/99. Two other applications were disposed of by the Tribunal subsequently on the basis of this order. Aggrieved by the same O.P. 1422/2000 & O.P. 18369/2001 were filed by the Assistant Superintendent of Post Offices. We heard counsel on either side at length.

5. We have already extracted the stipulation which is under challenge. The object of any selection is to find out the most meritorious person. In a country like India very few persons are having landed property and immovable assets. Even if anybody has got landed property or immovable assets it may not generate adequate means of livelihood. Qualification prescribed for the post is pass in SSLC and have got landed property and immovable assets which is adequate enough to make a livelihood. According to the department the incumbent of the post of EDBPM and EDSPM are dealing with cash and therefore in the event of misappropriation by the incumbent the Government should be able to recover the amount from him.

6. We are of the view there is absolutely no justification for the said stand of the Department. In this connection we may refer to report of Justice Talwar Committee. Talwar Committee was set up by the Government of India to go into the service conditions, wage structure and to examine the reasonableness of introducing a social security scheme for the extra departmental agents working in the Department of Post. The Committee while dealing with method of recruitment and conduct rules of ED Agents recommended as follows:

"It has been recommended that the condition of owning immovable property be deleted and instead the amount of the fidelity bond may be enhanced to Rs. 10,000/- for the B.P.Ms and to Rs. 5000/- for other categories of ED Agents.

Talwar Committee's report submitted in 1997 also opined as follows:

"At this stage it is useful to advert to the apprehension of the Secretary (Post) that the condition is liable to be struck down as it favours those with property. That view is correct. The condition is constitutionally invalid. It is, therefore, recommended that the condition of owning immovable property be deleted".

Talwar committee has opined such stipulation is irrational and violative of the constitutional provisions. We are of the view Talwar Committee has rightly opined so. We have no hesitation to say that stipulation that preference should be given to those candidates who had adequate means of livelihood derived from land property or immovable assets is irrational, illegal and violative of Articles 14, 16 and 21 of the constitution of India.

7. We do not find any discernible principle emerging from the stipulation that preference would be given to those who have landed property or immovable assets, and that their adequate means of livelihood is derived from those assets. People may derive income from sources apart from landed and other immovable assets. This stipulation in our view would not advance the purpose or object for selecting the best candidates. If the idea is to safeguard the interest of the department since the E.D. Agent is dealing with cash, the same could be met by insisting deposit of cash or executing fidelity bond. The classification therefore made between person who have landed and other immovable assets deriving income for adequate livelihood and others is therefore discriminatory and illegal. We declare so.

8. We therefore, uphold the decision of the Tribunal in all these cases and dismiss the Writ Petitions. Department is directed to conduct fresh selection bearing in mind the object of rules which we have found already.