

(2001) 09 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 18635 of 2000

Gopakumar

APPELLANT

Vs

Post Master General

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2001) 09 KL CK 0011

Hon'ble Judges : K.S. Radhakrishnan, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : Govinda Swamy and Martin G. Thottan, for the Appellant; P.S. Sreedharan Pillai, S.C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Second respondent issued a notification inviting applications for appointment to the post of Extra Departmental Branch Post Master at Kuttussery Post Office. Petitioner, third respondent and several other persons applied. Selection as to be made by verification of the original testimonials and the candidate who scored the highest marks at the S.S.L.C. level would be declared as selected. Petitioner was served with a letter dated 20.12.1999 directing to appear with all original documents in the office of the Sr. Superintendent of Post Offices, Palakkad on 31.12.1999. Petitioner appeared before the second respondent on the said day with all original documents. Petitioner has passed S.S.L.C. conducted by the Tamil Nadu Government with 87.8 percentage of marks. He was awaiting appointment order. However, he came to know that the third respondent who had secured 79.5% marks in S.S.L.C. was selected and appointed. Having come to know about the selection of third respondent petitioner preferred a representation dated 24.1.2000 highlighting the illegality in the conduct of selection. No reply was received. Consequently he filed O.A. 136/2000. Tribunal found no malafides in the selection and held that the petitioner could not prove that he had obtained 439

marks out of 500 marks. Application was therefore rejected by the Tribunal at the admission stage. Aggrieved by the same this Writ Petition is preferred.

2. Counsel appearing for the petitioner Sri. T.C. Govindaswamy submitted that there is no justification in selecting the third respondent overlooking the legitimate claim of the petitioner. According to the counsel, going by the Secondary School Leaving Certificate Ext- P2 it is evident that he got 439 marks out of 500. In other words, he had 87.8% marks in S.S.L.C. At the same time the third respondent secured only 79.5%. Counsel submitted that the reason in selecting third respondent is presumably on the basis of Ext. P7 letter of the Assistant Director General of

Department of Posts, India. Counsel submitted mere fact that he had worked as Agent for Life Insurance Corporation of India would not make him ineligible to apply for the post. Counsel submitted that the direction by the Assistant Director is illegal and violative of Article 14 of the Constitution of India. Counsel also placed reliance of the decision of the Apex Court in *Ananta Prasad Jenna v. Union of India* and Ors. 2001 SCC (L & S) 654.

3. A counter affidavit has been filed on behalf of respondents 1, 2 and 4. Department in the counter affidavit admitted the fact that petitioner had secured more marks than the third respondent. In other, words, fact that he had got 87.8% of marks has not been controverted in the counter affidavit. The only reason stated in the counter affidavit in not selecting the petitioner was that he was functioning as L.I.C. agent and therefore going by the letter of the Director petitioner was ineligible to consider for appointment to the post of Extra Departmental Branch Post Master.

4. In view of the abovementioned facts we may examine whether the letter dated 20.11.1995 would any way disqualify the petitioner and if so, whether such a direction; would stand in the eye of law. It is seen from the said letter that the Department of Posts had introduced Rural Postal Life Insurance Scheme. The scheme envisages procurement of business by the EDRPMs and EDSPMs. It was stated therein that a parallel scheme known as Rural Group Insurance Scheme was also introduced by the Life Insurance Corporation of India recently, which provides for subsidising the payment of premium to the extent of 50%. It was noticed that the element of subsidy to the extent of 50% with regard to payment of premium was made the Rural Group Insurance Scheme more attractive. However, no such concession was given in relation to Rural Postal Life Insurance Scheme. Under the above mentioned circumstance the letter dated 20.11.1995 issued by the Assistant Director General of Department of Posts with a view to ensure that the business of Rural Postal Life Insurance Scheme to be more attractive it was ordered that the candidates who are working as Agents for Life Insurance Corporation of India would be ineligible to seek appointment to the post of ED Agents in the Postal Department.

It is also pointed out therein that however, such candidates who have

relinquished the agency of L.I.C. before the crucial date prescribed for receipt of applications would not be debarred from seeking such appointment in case they are otherwise eligible. Notification makes ineligible to seek appointment to the post of ED Agents if they are working as Agents- for. Life Insurance Corporation of India. However, it is stated therein that if they relinquish agency of L.I.C, he would be considered for appointment to the post of ED Agents. In this case, petitioner relinquished the agency of L.I.C. Consequently the stipulation that L.I.C Agents are debarred from claiming the post need not be gone into in this case. We notice that petitioner was not given any opportunity by the Department so as to relinquish the agency agreement of L.I.C. There is nothing to indicate that the letter issued by the Assistant Director General of Department of Posts dated 20.11.1995 was made available to the petitioner. Notification is silent with regard to the said direction.

5. In this connection we may refer to the decision of the Apex Court in 2001 SCC (L & S) 654 (Supra). Apex Court was dealing with a case of appointment to ILR the post of Extra Departmental Sub Postmaster while a person who was working as L.I.C. Agent. Tribunal took the view that such a person cannot function as the Extra Departmental Sub Postmaster. Rejecting the contention Apex Court held as follows:

"The appointment of the appellant as Extra-Departmental Sub-Postmaster has been set aside by the Central Administrative Tribunal, Cuttack on the ground that the appellant was also working as an agent for Life Insurance Corporation, Peerless and for selling National Saving Certificates. The Tribunal has proceeded on a wrong assumption that an Extra- Departmental Sub-Postmaster cannot have any other avocation in life. This assumption is wrong. In fact, in the counter-affidavit filed on behalf of the Department of Posts, it has been stated that there is no bar against an Extra-Departmental Sub-Postmaster from earning income elsewhere, in the present case, as an agent of Life Insurance Corporation. In view thereof, the impugned order of the Tribunal is set aside and the application filed before the Tribunal is dismissed."

We are of the view that Apex Court in the above mentioned decision has taken the view that there is no bar against an Extra-Departmental Sub-Postmaster working as agent of Life Insurance Corporation, Peerless and for selling National Saving Certificates.

6. Counsel appearing for the Department however, took up the view that the above mentioned decision was rendered by the Apex Court not on merits. It was also pointed out that the various circulars issued by the Director General of Department of Posts were not made known to the Apex Court. Consequently, the said decision cannot be treated as a precedent. We are of the view that going by the circular issued by the Department petitioner should have been given an opportunity to relinquish the agency of L.I.C. As we have already indicated petitioner was not made known to such a circular. There is no indication in the notification with regard to the circular. Under such circumstance we are of the

view that the Department was not justified in rejecting the application of the petitioner. Consequently we set aside the selection of the third respondent and allow this Writ Petition. We direct the Department to consider the application of the petitioner for appointment provided he submits application for relinquishment of the agency of L.I.C.

7. Original Petition is allowed as above.