
(2007) 01 MAD CK 0228

In the Madras High Court

Case No : Writ Petition No's. 18461 and 18462 of 2000

M. Selvam

APPELLANT

Vs

Union of India (UOI) and K. Senji

RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 MLJ 453

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : Balan Haridas, for the Appellant; Narmada Sampath, ACGSC for Respondents 1 and 2 and Jothivani, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mishra, J.—Heard Mr. Balan Haridas for the petitioner, Mrs.Narmada Sampath, Audi. Central Government Standing Counsel for the Respondents 1 and 2 and Mrs. Jothivani for Respondent No. 3.

2. The question in these writ petitions relate to selection of Extra Departmental Branch Postmaster. A notification was issued for such post on 25.8.1995. The present petitioner as well as the present Respondent No. 3 were candidates in addition to several other candidates. There is no dispute that the present Respondent No. 3 belongs to Scheduled Caste community. Initially the present petitioner was selected and was allowed to join. At that stage, the present Respondent No. 3 filed O.A. No. 95 of 1996 challenging her non-selection and the selection of the present petitioner. The Tribunal, at that stage, came to the conclusion that the present Respondent No. 3 had been illegally excluded on the basis of the pressure put by the local villagers and not according to the Rules and directed the Department to have a fresh selection by order dated 4.5.19S8. Thereafter, the Department communicated to the present petitioner by office letter dated 25.6.1998 that a fresh selection would be held on 25.7.1998. At that time the present petitioner did not challenge such communication or the order of

the Tribunal. Subsequently, in the fresh selection held, the petitioner as well as Respondent No. 3 had participated. The Department by order dated 6.8.1998 appointed the present Respondent No. 3 as Extra Departmental Branch Postmaster.

The above order was challenged by the petitioner by filing O.A. No. 766 of 1998.

3. The Department in the counter affidavit filed before the Tribunal clarified that the present Respondent No. 3 had been selected taking into account the fact that she belongs to Scheduled Caste category and the candidates belonging to Scheduled Caste have been grossly underrepresented and therefore such Respondent No. 3 was preferred. The Department had also relied upon Instruction No. 6 of the Method of Recruitment given in Swamy's ED Rules (1995 Edition). O.A. No. 766 of 1998 having been dismissed by order dated 9.12.1999, the present petitioner filed Review Application No. 30 of 2000, which has been rejected by the Tribunal vide order dated 28.8.2000. Thereafter the petitioner has filed W.P.No.18461 of 2000 against the first order of the Tribunal in O.A. No. 95 of 1996 dated 4.5.1998, filed by Respondent No. 3, and W.P.No.18462 of 2000 against the orders of the Tribunal in O.A. No. 766 of 1996 dated 9.12.1999 and R.A. No. 30 of 2000 dated 28.8.2000.

4. The main contention of the learned Counsel for the petitioner is to the effect that as per the Instruction No. 2 of the Method of Recruitment, selection has to take place on the basis of the marks obtained in the qualifying examination, namely, Matriculation or equivalent examinations. Since the present petitioner has secured more marks compared to Respondent No. 3, he has to be selected. He has further contended that since the post is not reserved for SC Category, the petitioner should have been preferred for the post. Learned counsels appearing for the respondents have supported the conclusion of the Tribunal.

Having heard the counsel for the parties at length and having bestowed our anxious consideration to the contentions raised, we are unable to accept any of the submissions made by the counsel for the petitioner.

5. The method of selection nowhere states that selection is only on the basis of marks obtained in the qualifying examination. Instruction No. 6 being relevant is extracted hereunder:

6. Preferential Categories:

The last orders issued in this connection under Letter No. 43-191/79-Pen., dated 22-6-1979, fixing the four preferential categories according to the earlier orders issued vide D.G., P. & T., Letter No. 43-14/72-Pen., dated 2-3-1972, No. 43-246/77-Pen., dated 8-3-1978, to Scheduled Castes and Scheduled Tribes-candidates; and No. 43-231/78-Pen., dated 17-2-1979 (regarding Ex-Army Postal Service Personnel), No. 43-312/78-Pen., dated 20-1-1979 (regarding Backward Classes and weaker sections of Society) and to the educated unemployed persons, it is clarified that the above preference should be subject to

first and foremost condition that the candidate selected should have an adequate means of livelihood, which though already prescribed, seems to have been ignored for some time past especially in view of these preferential categories being introduced in the above orders.

6. In the present case, the Department has clearly explained in the counter that the candidates belonging to SC Community were grossly, underrepresented and therefore Respondent No. 3 had been preferred. It is also apparent from the materials on record that initial selection of the petitioner was based on the pressure put by the local villagers. The Tribunal had set aside the selection, but the petitioner had not preferred to challenge such order of the Tribunal immediately. Only after he was not selected during the second selection process, he has come out with W.P. No. 18461 of 2000, challenging such order. Therefore, it can be concluded that validity of the order in O.A. No. 95 of 1996 had been accepted at that stage by the present petitioner.

Learned Counsel appearing for the petitioner has relied upon a decision of the Supreme Court reported in 2008 SCC (L & S) 362 *Nar Singh Pal v. Union of India and Ors.* and submitted that there has been no waiver of right. The said case relate to retrenchment and the Supreme Court held that acceptance of compensation would not amount to waiver.

7. In our considered opinion, the ratio of the said decision is not applicable to the present case. In the present case, initial selection of the present petitioner was specifically challenged and the Tribunal directed that there should be fresh selection by setting aside the selection of the present petitioner. The present petitioner instead of challenging the order had kept quiet and, on the other hand, also participated in the further selection. The principle of waiver and acquiescence being squarely applicable, W.P. No. 18461 of 2000 is liable to be rejected.

8. Since it cannot be said that selection is based on any irrelevant consideration, we do not think it would be justified on our part to interfere with the order passed by the Department which has been again confirmed by the Tribunal in O.A. No. 766 of 1998 and in R.A. No. 30 of 2000.

9. It is well settled that while dealing with a writ of certiorari under Article 226 of the Constitution of India, the High Court does not sit as an appellate court over the decision of the Tribunal or the quasi judicial authority and only if there is error apparent on the face of the order, the High Court can interfere. In the present case, it is indeed very difficult to come to a conclusion that there was any error on the face of the order of the Tribunal in O.A. No. 766 of 1998 or in the subsequent order dismissing the Review Application No. 30 of 2000. Therefore, W.P. No. 18462 of 2000 is also liable to be rejected.

10. Learned Counsel for the petitioner has relied upon a decision of the Supreme Court reported in *Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions* in support of his contention that qualification should be on the date of notification

and if a person acquires qualification subsequent to the date indicated in the notification it will not make him eligible for the post.

11. We do not see how this decision can be made applicable to the facts of the present case. In the present case, there is no question of fresh qualification. The instructions only contain various guidelines including preference given to certain categories. The question involved is also not whether the post is reserved or not. Therefore, this decision is not all applicable to the facts of the present case.

The writ petitions are accordingly dismissed. Dismissal of both the writ petitions shall not stand in the way of the respondents 1 & 2 for considering the petitioner in future for any other vacancy in accordance with the Rules. No costs.