
(2001) 07 AP CK 0020
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6177 of 2001

N. Prasad Babu

APPELLANT

Vs

The Divisional Railway Manager, S.C. Rly

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 ALD 312 Supp

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : J.M. Naidu, for the Appellant; Pushpendar Kaur, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—An order dated 31.1.2000 passed by the Senior Divisional Personnel Officer of South Central Railway was the subject matter of an original application before the Central Administrative Tribunal which is in the following terms:

As per the employment notification No. 1/99 for recruitment of teachers, no posts have been earmarked for unreserved candidates. The posts were either earmarked for SC or OBC. As you do not belong to either SC or OBC community your candidature is not a valid one.

For the post of Physical Training Instructor (English Medium) category 4, 5 names were short listed. Four candidates are having post graduate qualification in academic with first class in M.PEd and the fifth candidate is having post graduate qualification in academic with first class in B.P.Ed and II class in M.P.Ed. You are having only graduate (iii class) in academic with first class in B.P Ed. But No. M.P.Ed. Based on merit also you have not come up for consideration to be called for the selection.

For the post of Physical Training Instructor (Telugu Medium) category 5, 5 names were short listed. Four candidates are having post graduate qualification in

academic with certificates of B.P.Ed and M.P.Ed and the fifth candidate is having post graduate (previous) qualification in academic with B.P.Ed and M.P.Ed. Your qualification is less than the above candidates. You are having qualification of BA and B.P.Ed with no post graduate in academic or Physical Education. As such here also you have not come up within the field for consideration to be called for the selection.

2. The factual matrix of the matter, shortly stated, is as follows: The petitioner had been working on part-time basis in the railway school (Telugu medium) having been appointed by the Head Mistress. An employment notification was issued by the 2nd respondent herein on 10.5.1999 inviting applications from the eligible candidates. The essential qualifications for the said post were:

3. The petitioner applied for the said post. Interview was sought to be conducted only of Scheduled Castes candidates. The petitioner filed an application before the Central Administrative Tribunal which was marked as Original Application No.1248 of 1999 and by an order dated 30.8.1999 it was disposed of directing :

It is a fact that the applicant apprehends that he will not be called for the selection for the post of which advertisement was issued by notification No. 1/99. Wide publicity has been given for selection and the apex court also held that event hose who are not sponsored by the Employment Exchange, if they apply in response to the notification, they should be considered.

In view of the above, there should be no reservation on the part of the respondents to consider the case of the applicant if he is otherwise found fit and there is no short-listing of candidates due to the very large number of candidates responded to the notification and the applicant does not come within the short-listed candidates.

4. Despite the same, the petitioner was not called for interview. He filed another Original Application being No. 242 of 2000 inter alia contending that only four candidates who were having experience certificate in English and Telugu media were short-listed. It was contended:

The petitioner further submit that for the post of English medium Physical Training Instructor, one Sri Sangeetha Rao (SC) has not filed Experience certificate. Similarly, for Telugu Medium Physical Training Instructor, one Sri Praveen (OBC) is not having the experience certificate. It is submitted that the respondents have filed the document through their standing counsel showing only 4 candidates are having the experience certificate in each medium. The document, dated 21.10.2000 filed through the standing counsel is filed as material paper-II.

The petitioner further submit that as per notification condition No. V that "only candidates possessing higher qualifications with experience in teaching will be preferred" it is submitted that in as much as Sri Sangeetha Rao and Sri Praveen who are not enclosed their experience certificates along with the application,

their applications have to be rejected by the respondents and his application has to be considered by the department as they are bound to consider 5 candidates for 1 post as per a notification condition No. XIX. The petitioner further submit that in para XVI of the notification deals with invalid applications. As per condition XVI (ii) "the applications which suffer from incomplete or ineligible and not submitted in prescribed form will be rejected". Condition XVI (ix) says that "applications which suffer from without the copies of educational qualifications certificates (academic/technical) and marks lists, will be rejected". therefore he is eligible for the post.

5. The Tribunal rejected the contentions raised on behalf of the petitioner inter alia on the ground that the petitioner has been given a fair consideration. It was further found as of fact that the persons having higher qualifications were selected.

6. Mr. J.M. Naidu, the learned counsel appearing on behalf of the petitioner, inter alia submitted that a single post cannot be reserved and having regard to the fact that the petitioner had experience, the person having higher qualification only could not have been selected. The learned counsel would contend that as the petitioner had five years of experience, he could not have been ignored. He would further contend that the learned Tribunal ought to have directed the respondents to place the entire records before it.

7. Mrs. Pushpendar Kaur, the learned counsel appearing on behalf of the respondents, inter alia submitted that the post was reserved only for the Scheduled Caste candidates and no illegality has been committed by the selection Committee.

8. From a perusal of a letter dated 21.10.2000 it appears that the screening committee recommended the names of the following persons:

English medium:

1. T. Sravan Kumar OBC
2. K. David Raju OBC
3. P. Sangeetha Rao SC
4. P. Lazarus OBC
5. Ch. Koteswara Rao OBC

Telugu medium:

1. K. David Raju OBC
2. T. Sravan Kumar OBC
3. Ch. Koteswara Rao OBC
4. Y. Srinivasa Rao, OBC

5. Praveen OBC

9. It is not in dispute that the petitioner does not have a masters degree. If the persons having the masters degree having been short-listed for appointment, no exception thereto can be taken. Furthermore, even the experience of the respective candidates had been taken into consideration. The petitioner if not selected on merit by the selection committee, this court in exercise of its jurisdiction under Article 226 cannot interfere therewith. Judicial review as is well known is concerned with the decision making process and not the merit of the decision itself.

10. Furthermore, as noticed hereinbefore, the allegations made in this writ petition had not been made before the tribunal. From the order passed by the learned Tribunal it does not appear that even the question as to whether the post being a single post could be reserved for the Scheduled Caste candidates or not had also not been raised. It appears that the respondents have categorically stated that the petitioner having no degree of M.P.Ed, he could not be considered. If short-listing is made on the basis of higher qualification, no fault can be found therewith. It is now trite that the authorities can shortlist the candidates on the basis of a higher qualification although the lower qualification has been prescribed in the recruitment notification. The discrimination, if any, must be in relation to the persons who are similarly situated.

11. Having regard to the facts and circumstances of this case we are of the opinion that no case has been made out for interference with the impugned judgment. Accordingly the writ petition is dismissed. There shall be no order as to costs.