
(2002) 01 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18604 of 2001

N. Thirupathi Reddy

APPELLANT

Vs

Registrar, Central Administration Tribunal, Hyderabad and
Others

RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Citation : (2002) 2 ALD 531 : (2002) 2 ALT 176

Hon'ble Judges : V. Eswaraiyah, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : N. Subba Reddy, for P. Giri Krishna, for the Appellant; C.V. Ramulu, SC for Central Government and Koka raghava Rao, for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—This writ petition is directed against the order dated 19th July, 2001 passed by the Central Administrative Tribunal, Hyderabad in OA No. 649 of 2001, whereunder the Tribunal quashed the selection and appointment of the writ petitioner as Extra Departmental Branch Post-Master (EDBPM) (for short "the post"), Jillella village, Karimnagar district

2. Before advertizing to the question as to whether the impugned order passed by the Tribunal suffers from any legal infirmity requiring any correction as such by this Court, in exercise of its Certiorari jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ petition.

3. The second respondent herein issued notification dated 25-1-1999 inviting applications from the eligible candidates for the appointment to the post. The petitioner and the fifth respondent along with others applied to the post in response to the said notification. The writ petitioner was selected and appointed to the post on 3-4-1999.

4. The fifth respondent herein filed OA No. 649 of 2001 challenging the selection and appointment of the petitioner herein to the post. The petitioner's

appointment was impugned on the sole ground that as on the date of appointment, the petitioner was holding the post of President, Vijaya Primary Milk Producers" Co-operative Society Jillella (for short "the Society"). According to the fifth respondent, it is a disqualification operating against the petitioner for selection and appointment to the post. Reliance was placed upon the notification dated 25-1-1999 issued by the second respondent inviting applications from the eligible candidates for the selection and appointment to the post.

5. It would be appropriate to notice the portion in the notification, upon which reliance is placed by the fifth respondent before the Tribunal, and the same reads as follows:

"vi. No person holding an elective office will be considered for appointment to the post."

(The rest of the qualifications and other clauses of the notification need not be noticed, as they are not relevant for the present purpose).

6. The Tribunal, having adverted to the notification issued by the second respondent found that:

".....the candidates who aspire for the post under the Government should not possess elective post of any society or organization, cannot be said to be unlawful."

7. The Tribunal, having considered the stipulation in the said notification, quashed the selection and appointment of the petitioner herein to the post on the ground that he was holding an "elective office" as on the date of selection and appointment.

8. Mr. N. Subba Reddy, learned senior Counsel appearing on behalf of the petitioner contends that the notification issued by the second respondent herein inviting the applications from the eligible candidates to the post is required to be read along with the statutory rules known as Post and Telegraphs Extra Department Agents (Conduct) and Service Rules, 1964 (for short "the Rules"). Reliance is placed on Rule 18 of the Rules, which is to the following effect:

"18. Taking part in politics and elections :--

(1) No employee shall be a member of, or be otherwise associated with, any political party or any organization which takes part in politics nor shall he take part in, subscribe in aid of, or assist in any other manner any political movement or activity.

(2) It shall be the duty of every employee to endeavour to prevent any member of the family from taking part in, subscribing in aid, of or assisting in any other manner, any political movement or activity which is, or tends directly or indirectly to be, subversive of the Government as by law established, and where such

employee" is unable to prevent a member of his family from taking part in, or subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

(3) If any question arises whether any movement or activity falls within the scope of this rule, the decision of the Government thereon shall be final.

(4) No employee shall canvass or otherwise interfere or use his influence in connection with, or take part in, an election to any legislative or local authority:

(i) An employee qualified to vote at such election may exercise his right to vote but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted:

(ii) An employee shall not be deemed to have contravened the provisions of this rule by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation :--The display by an employee on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-rule."

9. A plain reading of the statutory; rule would clearly reveal that an employee of the Post and Telegraphs Department shall not be a member of, or be otherwise associated with any political party or any organization which take part in politics. The employees are precluded from participating in any political movement or activity. The Explanation to Rule 18 of the Rules would further clarify that even display by an employee on his person, vehicle or residence of any electoral symbol, is prohibited as such display may amount to using his influence in connection with the election.

10. The Director General (Posts), New Delhi, vide instructions dated 14-1-1970, clarified the rule and accordingly issued instructions declaring that no person holding the "elective officer" be appointed as Extra Departmental Agent. Reliance is placed upon Rule 18 of the Rule referred to above for issuing such instructions. The object of the rule is to prevent an employee from participating in any political activity either through any political party or an organization, which takes part in politics. Such a rule appears to have been incorporated with a view to prevent the employees from politicizing the office. No serious exception, perhaps, can be taken in the matter.

11. But the question that falls for consideration is as to whether the petitioner could be regarded as a member of, or be otherwise associated with any political party or any organisation, which takes part in politics?

12. The petitioner, at the relevant time, was elected as the President of the Society. The Society itself appears to have been registered under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964. By no stretch of

imagination, the Society itself could be characterised as political party or an organization and taking part in politics. The Society, obviously, consists of milk producers as its members. There is no accusation or allegation against the petitioner that his candidature to the post of President of the Society is sponsored by any political party or organisation, it is true that the petitioner, as on the date, was holding an "elected post", The post of the President of the Society cannot be said to be elected office associated with any political party or any organization.

13. Mr. Koka Raghava Rao, learned Counsel appearing for the fifth respondent, however, would submit that the plain reading of the notification issued by the second respondent inviting applications from the eligible candidates to the post, would make it clear that any person holding an "elective office" cannot be considered for selection and appointment to the post. Learned Counsel would contend that the expression "elective office" includes even the elective office of the President of a Co-operative Society. We are unable to persuade ourselves to accept the submission made by the learned Counsel for the fifth respondent. In our considered opinion, the stipulation so provided in the notification dated 25-1-1999 by the second respondent herein is required to be read along with the statutory rules to appreciate the true purport and meaning of the expression "elective office" used in the notification. If the expression "elective office" so used in the notification would make clear that every elected office held by a candidate or a person would not be a disqualification for selection and appointment to the post. In our considered opinion, only such "elective office", which have anything to do with any political party or organization, which takes part in politics alone and the persons holding such "elective office" are ineligible for selection and appointment to the post.

14. Let us view the issue slightly from a different angle. Employees themselves may form a co-operative credit society. One amongst them may be elected as President or office bearer of such society. Does it mean that such an employee, on his election to the office, would cease to be an employee of the department? In our considered opinion, such an interpretation of the rule or the notification would lead to disastrous consequences. There may be voluntary associations and the bye-laws or the rules of such association may provide for election of its office bearers; if the submission made by the learned Counsel for the fifth respondent is to be accepted, even such office bearers of such associations would be ineligible for selection and appointment as Extra Departmental Branch Post-Master. In our considered opinion, the submission so made to disqualifying the persons holding an "elective office" from consideration for appointment to the post cannot be read in the manner suggested by the learned Counsel for the fifth respondent.

15. For the aforesaid reasons, we are of the considered opinion that the order, under challenge, suffers from incurable legal infirmities. The Tribunal committed a clear error apparent on the face of record requiring correction by this Court in

exercise of its Certiorari jurisdiction.

16. Mr. Koka Raghava Rao, learned Counsel for the fifth respondent, however, submits that the petitioner having received the notice in OA No. 649 of 2001 did not appear in the Tribunal and resisted the application filed by the fifth respondent. May be so, the official respondents filed counter-affidavit and contested the matter justifying the selection and appointment of the petitioner herein as Extra Departmental Branch Post Master. The interpretation of the rule and the notification does not depend upon the absence or presence of the party before the Tribunal. In view of our conclusions that the impugned order suffers from legal infirmities, we have no option, but to interfere in the matter and set aside the impugned order of the Tribunal. The impugned order of the Tribunal is accordingly, set aside.

17. The writ petition is, accordingly allowed. The petitioner's appointment as Extra Departmental Branch Post Master, Jillella, Karimnagar District shall, accordingly stand restored. No order as to costs.