

(2009) 06 KAR CK 0092

In the Karnataka High Court

Case No : Writ Petition No's. 8951, 10138 and 24618 of 2003

Sangappa Chaluvadi

APPELLANT

Vs

The Post Master General, The Superintendent of Post Officer,
The Tahsildar and Shivanna
 Yankappa Vs Sri
Sharanabasappa K.
 Poormanand Nayak Vs Prakash V.
Nayak and The Superintendent of Post Offices

RESPONDENT

Date of Decision : 06-06-2009

Acts Referred:

Department Agents Rules — Rule 3 (3)

Citation : (2009) 06 KAR CK 0092

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Y. Lakshmikanth Reddy, in W.P. No. 24618/2003, Hanumantha Reddy Sahukar, in W.P. No. 8951/2003 and Padubidri Raghavendra Rao, in W.P. No. 10138/2003, for the Appellant; Mruthyunjaya Tata Bangi and M.B. Kanavi for R1 and R2, K.B. Adhyapak, AGA for R3 and R.A. Shiraguppi, for R4 in W.P. No. 24618/2003, R.S. Shiddapurkar, for R1, Mruthyunjaya Tata Bangi and M.B. Kanavi for R2 and R3 in W.P. No. 8951/2003, Mruthyunjaya Tata Bangi and M.B. Kanavi for R2 in W.P. No. 10138/2003, for the Respondent

Final Decision : Allowed

Judgement

Shylendra Kumar J.

1. These three writ petitions are by persons who had been initially appointed as Extra Departmental Branch Post Masters at Dondamballi village in Raichur district in W.P. No. 24618/2003, Papinayakanahalli in Bellary district in W.P. No. 8951/2003 and Pernankila village in W.P. No. 10138/2003 respectively, but whose appointments had come to be upset by the Bangalore Bench of the Central Administrative Tribunal in three separate orders at the instance of the rival unsuccessful candidates arrayed as Respondent No. 1 in W.P. No. 10138/2003 and W.P. No. 8951/2003, and as 4th Respondent in W.P. No. 24618/2003 respectively, holding that these Respondents, the applicants before

the tribunal who were more meritorious though, were not qualified as per the notification for not having income from landed property in their villages, was a requirement not necessary or tenable and therefore, had allowed the applications.

2. The writ Petitioners, having lost their appointments in terms of the orders passed by the tribunal, have come up before this Court in these writ petitions contending inter alia that the orders passed by the tribunal are neither tenable in law nor the tribunal has applied the relevant binding decisions holding the field and has ignored not only the earlier rulings of this Court, but also a binding and clinching judgment of the Supreme Court in the case of *Union of India v. Kameshwar Prasad*, (1997) 11 SCC 650 .

3. The brief facts are that the Postal Department was running their Post Offices in small and remote villages by appointing what was known as P & T Extra Departmental Agents who would act as a one man post office taking care of the postal requirements of the local population and virtually be in the position of Post Masters and not necessarily working on any fixed office hours, but catering to the needs, requirements and convenience of the villagers and get a fixed nominal remuneration and keep rendering service at the same place.

4. Such appointments were nevertheless governed by the Rules known as the Post and Telegraphic Extra Department Agents (Conduct and Service) Rules, 1964 which excluded the applicability of the Central Civil Services (Qualification, Control and Appeal) Rules, as per the Government notification dated 28.2.1957 issued under Rule 3(3) of the Department Agents Rules and as such, such appointees were virtually an authority to themselves not amenable to any disciplinary proceedings of the department.

5. Notwithstanding appointments to such posts being part of the employment by the State, the posts were being notified indicating the criteria and eligibility for the applicants, the terms and conditions of appointment, remuneration etc., and equal opportunity being extended to all interested persons and when it comes to question of competence for the post, merit being taken as the criteria for selecting the candidates who otherwise fully qualifies all requisites in terms of the rules and notification, notifying the filling up of the posts.

6. For our purpose, it is sufficient to mention here that the notifications which had been issued and published by the Postal Department for filling up the three posts had indicated that the persons applying to this post should own landed property which fetches them adequate income which could act as a supplementary income to such persons and provide adequate means of livelihood even otherwise than the remuneration received by them and this had been indicated to be a preferential criteria. The relevant criteria which prescribed the preferential qualification as per Clause 6(v) of the notification dated 5.10.2001 notified for filling of the post at BPM Dharmasagara BO A/W Papinayakanahalli SO (copy produced as Annexure-B4 to W.P. No. 8951/2003) reads as under:

(v) INCOME AND PROPERTY:

(a) The candidate should have an independent source of income for his/her livelihood. Income certificate in candidate's own name (indicating clearly the source of income) issued by Tahsildar, should be furnished in the enclosed proforma. Income in the name of guardian/others will not make the candidate eligible for the post. Only such candidates who fulfil this condition and all other eligibility conditions, will be eligible to apply for the post.

(b) Preference will be given to those candidates who derive income from the landed property/immovable assets in their own name. A copy of the record of rights of property issued in respect of property in the name of candidate only, should be enclosed. Joint property or hereditary property not transferred in the name of the candidate, will not be considered as property in the name of the candidate. The landed property/immovable assets purchased/transferred in the name of the candidate subsequent to the submission of application but before the last date for receipt of applications, will be considered only if the copy of record of rights as mentioned above, and income certificate issued by Tahsildar indicating the income such property, are submitted to reach the undersigned on or before the last date fixed for receipt of applications.

7. The only other criteria of merit was the minimum educational qualification such as SSLC or 10th Standard marks and the marks obtained in this examination constituting the merit of a candidate.

8. The authorities, noticing that the writ Petitioners had a preferential qualification of deriving income from landed property or owning landed property producing income, had confined the consideration for selection amongst the candidates having preferential qualification and when there were candidates more than one having preferential qualification, then, applied the merit criteria and a person with higher merit was selected.

9. It is such selections which had been questioned by the Respondents before the Central Administrative Tribunal, Bangalore Bench contending inter alia that the applicants though had higher merit in the sense that, they had better marks in SSLC examination, their case had not been considered nor were they given appointment, but persons with lower merit such as the writ Petitioners who had lesser marks in SSLC examination had been appointed and such appointment was bad and violative of Articles 14 and 16 and therefore, the appointment should be set aside.

10. The Tribunal, which examined their case, found merit in their claims and purporting to follow an earlier Full bench decision of the Central Administrative Tribunal holding that fixing a preferential qualification criteria such as, owning or deriving income from landed property, cannot be termed as preferential requirement nor can it be a criteria for a preference when merit alone should be the criteria, keeping in view the judgment of the Supreme Court in *Indira Sawhney and Ors. v. Union of India* and Ors. 1992 SUPP (3) SCC 217 and had allowed many such applications at the instance of non-appointees who had been

kept out of appointment only for the reason that they had no preferential qualification of landed property, had allowed the applications and set aside the appointments made in favour of the present writ Petitioners. The tribunal had also directed the department to redo the selection process.

11. Petitioners, facing the threat of losing jobs which, they had obtained on the strength of the preferential qualification of owning landed property, have approached this Court. This Court had admitted the writ petitions and orders of the tribunal has been stayed.

12. We have heard Sri Hanumantha Reddy Sahukar, learned Counsel appearing on behalf of the Petitioners and Sri M.B. Kanavi and Sri Mruthyunjaya Tata Bangi, learned Central Government Standing Counsel appearing on behalf of Respondent - Postal Department as also Mr. Adhyapak, learned AGA who appears for Respondent No. 3 -Tahsildar in W.P. No. 24618/2003.

13. Learned Counsel for the Petitioners submits that these petitions had been admitted and the orders of the tribunal had been stayed and on the strength of the stay order, the Petitioners have continued to function in that post.

14. We have noticed that two Division Benches of this Court had allowed similar writ petitions setting aside the orders passed by the tribunal in identical circumstances in terms of the judgment dated 31.8.2000 rendered in W.P. No. 45730/1999 in the case of The Chief Post Master General in Karnataka v. H.N. Dayananda and Anr. judgment dated 4.9.2002 rendered in W.P. No. 13348/2002 in the case of Ujjappa Channabasappa Kodigoudar v. Ramesh and Ors.

15. In these two orders, the earlier Division Benches of this Court had occasion to refer and follow the judgment of the Supreme Court in the case of Union of India v. Kameshwar Prasad, (1997) 11 SCC 650 . In this judgment of the Supreme Court, the Supreme Court had occasion to examine the very rules and the prescription of the preferential qualification and taking notice of the peculiar nature of the appointment, the need to fulfil the requirements of rural communities dispersed in remote areas had characterized the rules governing such appointment as a complete code by itself and did not find occasion to hold the rules prescribing for a preferential qualification as bad in law nor was inclined to disturb the appointments made on the basis of preferential qualification.

16. While such was the view taken by the Supreme Court and it is this view which is being followed or applied by the two earlier Division Bench rulings of our High Court referred to above, Sri Kanavi, learned Counsel for the Department has brought to our notice another ruling of the Division Bench of our High Court rendered in W.P. No. 31312/2003 on 25.11.2004 in the case of Sri Mareppa v. H. Lakshamana and Anr. declining to interfere with a like order of the tribunal noticing subsequent modification of the rule as per the circular issued in this regard by the Central Government which has been given effect from 17.9.2003 and reflecting amendment to the rule, deleting the preferential qualification criteria.

17. On an examination of the submissions made at the bar and after perusal of the impugned orders and the judgments brought to our notice by the learned Counsel for the parties, we notice that the Supreme Court had occasion to examine the validity of the very rule and a judgment rendered directly in the context of examining the validity of the very rule, is a judgment which is the law of the land declared by the Supreme Court and binds all other Courts. While examining validity of appointments of the present nature and all appointments which were notified for being filled up based on the rule as it existed in the year 2000 i.e., before the amendments made in the year 2001 and the preferential qualification having been expressly notified as a preferential qualification which will be accorded its due weightage and notified for the benefit of the applicants, the view taken by the two Division Benches of this Court in Writ Petition Nos. 45730/1999 and 13348/2002, is a view that is consistently taken for examining the appointments made prior to the amendment of the rules.

18. The Supreme Court and the two Division Bench decisions of this Court, having found nothing wrong in applying the preferential qualification as a criteria for making selection, we are afraid that the tribunal has committed a serious error in ignoring such legal position and in upsetting such appointments purporting to follow the ruling in INDIRA SAWHNEY's case or the Full Bench decision of the Central Administrative Tribunal.

19. So far as INDIRA SAWHNEY's case is concerned, while it was generally mentioned that merit should be the criteria, that cannot be applied in all situations where, to meet a local requirement, certain variations have been made, even in this case merit was never sacrificed, in the sense, in respect of eligible candidates even now, selection is on merit i.e., persons with higher marks in the qualifying examination are selected in preference to persons with lesser marks when such candidates have the preferential qualification.

20. The view taken by the Full Bench of the Central Administrative Tribunal while does not appeal to us, is obviously at variance with the law laid down by the Supreme Court in KAMESHWAR PRASAD'S case and cannot be a criteria for deciding cases of appointments prior to the amendment of the rule.

21. Sri Kanavi, learned Standing Counsel has also brought to our notice that, while the department itself has now amended the rules and the qualifying criteria has now been done away, that it can now definitely be applied for selection and appointment to be made or made subsequent to the amendments but the same cannot be applied to appointments that had been made prior to the amendment and on the basis of the rules as had held the field at the relevant time indicating the preferential qualification.

22. In fact, a clarificatory communication issued by the Government of India, Ministry of Communications, Department of Posts from the office of the Assistant Director General (GDS), New Delhi dated 23.2.2004 addressed to all Principal/Chief Post Masters General, Post Masters General etc., has very clearly indicated

that though the said rule has been amended, the appointments made prior to 17.9.2003 should not be disturbed either based on the Full Bench ruling of the Central Administrative Tribunal or for any other reason and it only indicates that the earlier appointments have been even in the understanding of the department, are governed by the rule as it prevailed and with the preferential qualification criteria being applied.

23. In this view of the facts and law, we have to allow these writ petitions, set aside the orders passed by the Central Administrative Tribunal on the three applications referred to above and restore the orders of the department appointing the Petitioners as Extra Departmental Branch Post Masters.

24. In the result, these writ petitions are allowed. Rule made absolute.