

(2010) 08 PAT CK 0116

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11452 of 2007

Sri Janmejy Kumar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0116

Hon'ble Judges : Shiva Kirti Singh, J; Hemant Kumar Srivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard the parties.

2. Petitioner has preferred this writ petition against the judgment and order dated 21.06.2007 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as "the Tribunal") in O.A. No. 209 of 2001 whereby petitioner's appointment on the post of Extra Departmental Branch Postmaster (EDBPM for brevity) Bindusar in account with Gausala Road, Siwan stands quashed only on the basis of Full Bench decision of the Central Administrative Tribunal, Bangalore which held that the property qualification prescribed for appointment to the post of EDBPM was invalid. That decision of the Full Bench is dated 02.12.2002.

3. Learned Counsel for the petitioner has made a frontal assault upon the ground for cancelling his appointment on the basis of Division Bench Judgment of this Court in case of Anil Kumar @ Anil Kumar Mehta v. The Union of India and Ors. reported in 2007(4) PLJR 349. A copy of that judgment has been annexed as annexure 6 to the present writ petition. In that judgment the Division Bench held that since the appointment in question had been made in the year 1999 whereas the order of the Full Bench came in the year 2002, therefore, only on the basis of later Full Bench Judgment of CAT, Bangalore the condition in the advertisement which was basis for selection and appointment could not be avoided. In this case

also the appointment was made on 25.01.2001 i.e. before the Full Bench Judgment of CAT Bangalore. In this case also the advertisement contains condition of property qualification requirement.

4. In our considered view the very basis for passing the impugned order cannot be sustained in view of the aforesaid Division Bench Judgment which has been followed by another Division Bench recently in a judgment and order passed on 08.03.2010 in CWJC No. 235 of 2005 Santosh Kumar Singh v. Union of India and three analogous cases.

5. In view of the aforesaid legal position, the parties have tried to advance the submissions on facts and merits of their individual cases. The petitioner has alleged that respondent No. 4 who was applicant before the Tribunal did not fulfil the condition contained in paragraphs 3, 4 and 5 of the advertisement relating to residence and property. This was strongly refuted by learned Counsel appearing for respondent No. 4 by placing reliance upon the facts as well as some judgments and circulars issued by the Director General of Postal Department in the year 1993.

6. On the other hand, on behalf of respondent No. 4 also a challenge was made on facts that the writ petitioner himself does not qualify and does not have any land as required under the advertisement.

7. We are faced with a situation where the parties have raised disputes of facts and to decide their claims, finding will be required to be given in respect of such disputes. In such circumstances, we find it proper to set aside the impugned order and to remit the matter back to the Tribunal for fresh decision on merits in accordance with law.

8. It will be open for any of the parties to seek appropriate interim relief from the Tribunal itself. In order to avoid delay in disposal of the matter by the Tribunal, the parties will appear before the Tribunal within four weeks from today preferably with a copy of this order so that the Tribunal may fix a date and proceed to decide the matter expeditiously in accordance with law.

9. In the interest of justice, we would like to indicate for the benefit of Tribunal that if it feels that any condition/ conditions in the advertisement are contrary to circulars of the department issued earlier or in the teeth of Supreme Court judgment, then it may consider the option of setting aside appointment made and interfering with advertisement itself. In that case it may order the respondents-authorities to issue fresh advertisement and to make fresh selection and appointment in accordance with law.

10. The writ petition is allowed to the aforesaid extent. No costs.