

(2006) 12 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal No. 5868 of 2006 (Arising out of S.L.P. (C) No. 20233 of 2005)

The Superintendent of Post Offices and Others

APPELLANT

Vs

R. Valasina Babu

RESPONDENT

Date of Decision : 14-12-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) AIRSCW 6764 : (2007) AIRSCW 1099 : (2007) 3 CTC 204 : (2007) 112 FLR 914 : (2007) 1 LLJ 1039 : (2007) 2 SCALE 115 : (2007) 2 SCC 335 : (2006) SCR 1094 Supp : (2007) 1 Supreme 738 : (2007) 1 UJ 265

Hon'ble Judges : S. B. Sinha, J;Markandey Katju, J

Bench : Division Bench

Advocate : T.S. Doabia, Manis Sharma, Manpreet Singh Doabi and V.K. Verma, for the Appellant; H.S. Gururaja Rao Y. Ramesh and Y. Raja Gopala Rao, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Leave granted.

2. This appeal is directed against the judgment and order dated 13.4.2005 passed by the High. Court of Judicature at Andhra Pradesh whereby and whereunder the writ petition filed by the appellants herein, assailing the order of the Central Administrative Tribunal Hyderabad Bench dated 22.4.1999 in the Original Application filed by the respondent herein, was allowed.

3. Respondent herein claimed himself to be a member of Scheduled Caste community known as 'Mala'. He was appointed as a Postal Assistant in the office of the Superintendent of Post Offices, Adilabad Postal Division on 28.7.1980 against a vacancy reserved for Scheduled Castes community. In support of his claim that he belonged to 'Mala' community, he had produced a certificate dated 27.12.1980. On an information received that the respondent in fact belonged to Christian community, a disciplinary proceeding against him was initiated. During

the pendency of the said inquiry proceedings, the Collector, Adilabad District also initiated a proceeding for cancellation of the Caste Certificate issued in favour of the respondent and by an order dated 28.11.1990 the Caste Certificate granted in his favour was cancelled. The said order was brought on records of the disciplinary proceedings.

4. The inquiry Officer, however, opined that keeping in view the fact that on the date when the charge memo dated 1.3.1989 was issued, the certificate produced by the respondent having not been cancelled, the same cannot be said to have been proved. The disciplinary authority disagreed with the said finding of the inquiry Officer. Before the disciplinary authority also the said Caste Certificate dated 28.11.1990 was produced. Another opportunity of hearing was given to the respondent by the Disciplinary Authority. By an order dated 30.9.1992 it was held as follows:

Considering all the aspects of the case and the fact that the Govt. Servant furnished false information at the time of appointment I.P. Pandu, Supdt. of Post Office, Adilabad Division- 504001 hereby order that Shri R. Valasina Babu, Postal Assistant Adilabad Division be 'dismissed' from service with immediate effect which shall ordinarily be a dis-qualification for future employment under the Government.

A departmental appeal preferred there against was dismissed.

5. Questioning the said order of the Disciplinary Authority as also that of the Appellate Authority, an Original Application was filed by the respondent before the Central Administrative Tribunal By reason of a judgment and order dated 22.4.1999 the Central Administrative Tribunal, Hyderabad Bench refused to take into consideration the event which had taken place subsequent to the initiation of the disciplinary proceeding namely, the order dated 28.11.1990 passed by the Collector, Karimnagar cancelling the Caste Certificate granted in favour of the respondent as the same was not a subject matter in the Charge Memo dated 1.3.1989. It was opined that as the said order was not annexed with the chargesheet the same could not have been taken into consideration by the Disciplinary Authority, It was, however, directed as follows:

The respondents are at liberty to proceed against the applicant, if they so desire, on the basis of the order passed by the Collector, Karimnager dated 28.11.1990 cancelling the Certificate of Caste dated 27.12.1980, produced by the applicant Before doing so, they may ascertain whether the said cancellation order dated 28.11.1990 pertains to the Certificate of Caste produced by (he applicant dated 27.12.1980.

The High Court by reason of the impugned judgment although noticed the said fact but agreeing with the judgment of the Tribunal dismissed the writ petition. The appellant is thus, before us.

6. The short question which arises for our consideration is as to whether the

Disciplinary Authority and consequently the Appellate Authority could have taken into consideration the subsequent event in the Departmental proceedings.

Mr. Gururaja Rao, learned senior counsel appearing on behalf of the respondent would submit that the certificate produced by the respondent having never been the subject matter of the inquiry proceedings before the Collector, the purported order dated 27.2.1980 was wholly inadmissible in law. It was, furthermore, submitted that no opportunity of hearing having been given to the respondent by the Collector in relation therein, the same could not have been taken into consideration by the Disciplinary Authority or by the Appellate Authority. Learned Counsel drawing our attention to the operative portion of the judgment of the Tribunal would contend that although a fresh departmental proceeding could be initiated, the same having not been taken recourse to, it is impermissible for the appellants now to rest their case on the order of the Collector

7. Equality clauses contained in Article 14 and 16 of the Constitution, envisage that all the citizens of India shall get an opportunity to be considered for appointment in all the civil posts. Clause (4) of Article 16, however, provides for an exception. When a public employment is obtained on a vacancy reserved for a particular category of candidate, he must fulfill the criteria laid down therefore. When the vacancy was to be filled by a Scheduled Castes or Scheduled Tribes candidate for whom the post was created, the candidate must be one who belongs to that category. If the selected does not fulfill the said basic criteria, his appointment cannot be allowed to be continued. It is not in dispute that the vacancy in question was reserved for the Scheduled Castes candidate. It is also not disputed that the respondent obtained appointment in the post of Postal Assistant on the premise that he was a member of Scheduled Caste being belonging to 'Mala' community. It has furthermore not been denied or disputed that a proceeding was initiated by the Collector of Adilabad District. Before us the said order dated 28.11.1990 has been produced by the respondent himself; from a bare perusal whereof it would appear that the respondent was given an opportunity of hearing in the proceeding initiated by the said authority. Therein it was categorically held that despite several opportunities having been given and despite the fact that the respondent had promised that he would produce the relevant documents in support of his case in the second or third week of June, 1990, he failed and/or neglected to do so. On the aforementioned premise the learned Collector, Adilabad District observed as follows:

...The Superintendent of Post Offices, Adilabad informed through his letter dated 16.7.1990 that this office Memo dated 5.7.1990 could not be served on the said Ramdas Velisina Babu as he was on medical leave upto 18.6.1990. The respondent neither filed any documentary evidence as called for in this office memo dated 28.3.1990 nor filed any petition seeking time to file the documentary evidence.

In view of the above and under the provisions of G.O. Ms. No. 282 SWD dated 19.12.1988 the Caste Certificate No. A8/20293/79 dated 3.10.1979 issued by

the then Tahsildar Karimnagar as belonging 'Mala' caste in favour of Sri Ramdas Valisina Babu S/o Mallikarjuna Rao R/o Karimnagar is hereby cancelled.

Once the certificate on the basis whereof the respondent obtained employment stood cancelled, even no question of allowing him to continue in service would arise, if he had been appointed on the basis of such a Certificate.

8. The date of Caste Certificate as was emphasized by the learned senior counsel appearing for the respondent, in our opinion, is not of much significance. The certificate might have originally been issued by one officer of the department but similar certificate on subsequent date might have been issued by another officer of the department. It is also not correct to contend that no opportunity of hearing was given to the respondent by the Collector.

The crux of the matter, therefore, was as to whether the respondent belongs to the Scheduled Caste community or not if he was not, the question as to whether the disciplinary proceeding initiated against him relying on and on the basis of a particular Caste Certificate in our opinion, pales into insignificance. Furthermore, the Tribunal and the High Court were not correct in holding that in the departmental proceedings no subsequent event could be taken into consideration. We have reproduced hereinbefore the order of the Collector from a perusal whereof it would appear that the said proceeding was initiated at the instance of the Superintendent of Post Offices. Thus, the respondent was aware of the fact that a proceeding had been initiated against him for cancellation of the certificate before the competent authority. Once the Caste Certificate issued by the Revenue Department of the State of Andhra Pradesh issued in favour of the respondent is cancelled, the original certificate on the basis whereof another certificate was obtained would be non-est in the eye of law. Any other or further certificate issued on the basis shall also be non-est.

9. In the aforementioned situation, we see no reason as to why the inquiry officer or for that matter disciplinary authority could not have taken into consideration the subsequent event. Moreover, as noticed hereinbefore, the disciplinary authority had given another opportunity of hearing and the respondent availed the same. He also preferred an appeal against the order of the disciplinary authority. In this view of the matter, the Tribunal as also the High Court, in our opinion, committed a manifest error of law in allowing the Original Application filed by the respondent on the premise that the said order dated 18.11.1990 passed by the Collector should not have been taken into consideration by the Disciplinary Authority or by the Appellate Authority.

10. The question in regard to effect of obtaining appointment by producing false certificate came up for consideration in State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, wherein this Court opined that the concerned authorities would have jurisdiction, to go into the said question and pass an appropriate order. The effect of cancellation of such Caste Certificate had also been noticed in the light of two Judge Bench decision of this Court in Bank of

India and Another Vs. Avinash D. Mandivikar and Others, , wherein it was held that if the employee concerned having played fraud in obtaining an appointment, he should not be allowed to get the benefits thereof, as the foundation of appointment collapses.

11. In this view of the matter, we are of the opinion that in a case of this nature, it might not have been necessary to initiate any disciplinary proceeding against the respondent.

For the reasons aforementioned, the impugned judgment cannot be sustained. The appeal is allowed. No costs.