
(2017) 08 AP CK 0026
In the Andhra Pradesh High Court
Case No : 29842 of 2011

The Union of India

APPELLANT

Vs

M.Bhaskar Chetty

RESPONDENT

Date of Decision : 16-08-2017

Acts Referred:

Citation : (2017) 08 AP CK 0026

Hon'ble Judges : C.V.Nagarjuna Reddy, Gudiseva Shyam Prasad

Bench : DIVISON BENCH

Advocate : B.Narasimha Sharma, D.Satyavathi

Judgement

1. The Union of India and its functionaries of Department of Telecommunications feeling aggrieved by common order dated 12-08-2011 of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for short, "the Tribunal") in O.A.Nos. 177 and 182 of 2011 filed these Writ Petitions respectively.

2. We have heard Sri B.Narasimha Sarma, learned counsel for the petitioners, and Smt. D.Satyavathi, learned counsel for respondent No. 1 in W.P.No. 29842 of 2011 and respondent Nos. 1 to 3 in W.P.No. 30132 of 2011 (hereinafter referred to as "the private respondents").

3. The brief facts leading to the filing of these Writ Petitions are stated hereunder: The private respondents are working as Telecom Mechanics. The post of Telecom Technical Assistant (for short, "TTA") is next promotional post. 40% of these posts are reserved for Limited Departmental Competitive Examination (for short, "LDCE"). As per the regulations of petitioner No. 2 under this category, posts will be filled up on the basis of marks obtained in LDCE. For being promoted as TTA under LDCE quota, a candidate must be working as Telecom Mechanic holding 10 + 2 standard certificate or its equivalent. Certain vacancies of TTA were notified under LDCE quota on 19-11-2010. The notification has fixed 01-07-2008 as the cut-off date for determining eligibility of the candidates. Admittedly, none of the private respondents have acquired the qualification of 10

+ 2 as on 01-07-2008. As they have not received call letters, they filed the abovementioned O.As. before the Tribunal. They have secured an interim order pending the O.As., on the strength of which they have appeared for the examination. During hearing of the main O.As., it was found that all the private respondents were qualified for promotion. It is however pleaded by the petitioners that as none of the private respondents have acquired qualification on the cut-off date, they were not eligible to appear in the examination and that therefore they were not entitled to be appointed merely because they were permitted to appear for the examination on the strength of interim order and got qualified. It was pleaded on behalf of the private respondents that service regulations did not provide for a cut-off date and since, as on the date of notification, all the private respondents have acquired the qualification, they cannot be deprived of promotion on the ground that they did not fulfill the criterion of acquiring qualification as on the cut-off date fixed under the notification. The Tribunal accepted the plea of the petitioners that even in the absence of service regulations prescribing cut-off date, the executive is well within its powers to fix the cut-off date as long as it is not arbitrary. In coming to this conclusion, the Tribunal has followed the ratio in *Union of India Vs. Sudhir Kumar Jaiswal*. On this aspect, the Tribunal observed as under: "We are convinced that the decision to fix the cut off date was taken by the competent authority and the decision was taken well in advance of the examination and the reason for fixing the cut off date as mentioned by the respondents is also convincing. We are therefore of the considered view that the applicants have not made out a case." Having held as above, the Tribunal further held that although on merits the applicants were found ineligible to appear for the examination, as they were issued hall tickets by the petitioners on the basis of interim order of the Tribunal, it will be unfair to ask them to sit for the examination again once they became eligible. Accordingly, the Tribunal directed the petitioners that the private respondents should be declared to have passed the exam successfully and that they would not be required to sit for the exam again after they became eligible for appearing in the said examination. A declaration was also made that the private respondents will be considered for promotion if they are otherwise eligible and fit along with the other successful candidates in the examination to be held later. Feeling aggrieved by this part of the order, the respondents before the Tribunal filed these Writ Petitions.

4. Learned counsel for the petitioners submitted that once it has held that the petitioners have correctly fixed the cut-off date and having found that the private respondents did not possess the prescribed qualification, the Tribunal has exceeded its jurisdiction in holding that the private respondents need not appear for fresh examination and that they should be declared to have been qualified for being promoted in their due turn without there being any need for them to appear for examination again. Smt. D.Satyavathi, learned counsel for the private respondents, however, submitted that since the service regulations did not prescribe any cut-off date, the petitioners have committed an error in fixing the

cut-off date; that in any event as on the date of the notification, the private respondents have acquired the qualification and that therefore, it will be highly unjust and inequitable to deprive them of the benefit of their passing the examination.

5. We have carefully considered the respective submissions of learned counsel for both parties. A perusal of the notification dated 19-11-2010 shows that 40% vacancies under LDCE quota were calculated as on 31-03-2008. Clause 3 of the notification reads as under: "It is therefore requested all the Heads of SSAs/Units to issue the Notification in your SSA/Unit for calling the applications from the eligible candidates notifying the vacancy position as on 31-3-2008 with communal break-up with a copy to this office. The cut-off date for determining the eligibility of an official shall be 1-7-2008." As held by the Tribunal, even if the service regulations did not prescribe any particular cut-off date for holding qualifications, an employer is entitled to fix a cut-off date and Courts will not interfere with the exercise of such power by the employer unless the same is found arbitrary or discriminatory. The Tribunal has therefore arrived at a right conclusion that fixing of 01-07-2008 as cut-off date for determining eligibility does not suffer from any illegality or arbitrariness. This being the position, we do not find any justification whatsoever for the Tribunal to grant relief to the private respondents as noted hereinbefore. The private respondents cannot be conferred with the undue advantage of being declared as qualified on the mere providence of their securing an interim order, by virtue of which they were permitted to appear for the examination. But for the said interim order, the private respondents would not have been allowed to appear in the examination. The private respondents have taken a calculated risk by approaching the Tribunal and obtaining an interim order and they would sink or sail depending on the result of the O.As. The Tribunal, in our opinion, has misdirected itself by extending misplaced sympathies to the private respondents. When the private respondents were not qualified for being considered for promotion, they were not entitled to be appointed merely because they were permitted to appear in the written examination which they would not have been permitted at all but for the interim order. Showing such consideration in favour of the private respondents would amount to placing premium on the persons who had no qualification for being considered for promotion.

6. For the aforementioned reasons, we are of the opinion that the Tribunal has committed a serious jurisdictional error in granting relief to the private respondents. Accordingly, the order of the Tribunal is set aside. O.A.Nos. 177 and 182 of 2011 are dismissed. The Writ Petitions are allowed.

7. As a sequel to disposal of the Writ Petitions, W.P.M.P.Nos. 37338 of 2011 and 9414 of 2014 and W.V.M.P.No. 366 of 2013 shall stand closed as infructuous.