
(2011) 08 SC CK 0002

In the Supreme Court Of India

Case No : Civil Appeal No. 7390 of 2011 (Arising out of SLP (Civil) No. 20405 of 2008)

V. Gopal

APPELLANT

Vs

P. Ganaselvaudayakumari and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Citation : (2011) 131 FLR 8 : (2011) 131 FLR 7 : (2011) 8 MLJ 109 : (2011) 9 SCALE 393

Hon'ble Judges : R.M. Lodha, J;Aftab Alam, J

Bench : Division Bench

Advocate : Malini Poduval and Babita Sant, for the Appellant; K.V. Mohan and Shyam D. Nandan for Subramonium Prasad, for the Respondent

Final Decision : Disposed Of

Judgement

Aftab Alam, J.—Leave granted.

2. On December 5, 1991, a notice was issued under the hand of the Director, Social Welfare Department, Government of Tamil Nadu, inviting applications from persons working in the department for appointment to the post of P.G. Assistant in M.A. (Political Science) in the Government Higher Secondary School for the blind. The last date for submission of application was December 15, 1991. The educational qualifications required from the candidates were a Master's degree in Political Science and a Bachelor's degree in Education. Apart from the academic qualification prescribed in the notice, Government Order No. 511-Education dated March 16, 1959, provided that No. person would be eligible for appointment to a post of the School Assistant in Government School for the blind unless he possessed the Government Certificate of Competency in teaching the blind. The Government Order, however, made a relaxation, in case No. suitable and qualified person was available and in that regard provided as follows:

Provided that if a suitable and qualified persons not available a person not

possessing the certificate or Senior Diploma may be appointed but such person must obtain the Senior Diploma in the teaching the Blind within a period of Four Years from the date of his appointment to the said post.

The Respondent - P. Ganaselvaudayakumari was at that time working as Secondary Grade Teacher in the Government School for the blind, Sivaganga. She possessed the necessary academic qualifications and she also had the Senior Diploma in teaching the blind as required under the Government Order dated March 16, 1959. She made an application for the post of P.G. Assistant (Political Science) but instead of sending it directly to the office of the Director, Social Welfare, she submitted it to the Headmaster of her school, on December 12, 1991. The Headmaster forwarded her application to the District Social Welfare Officer, Sivaganga, with whom it lay for some time before he finally sent it with a covering letter dated December 24, 1991 to the Office of the Director, Social Welfare. The application was, thus, received in that office on December 25, 1991, ten days after the last date for submission of applications. In the meanwhile, the Appellant was appointed to the post vide proceedings dated December 24, 1991.

3. It may be noted here that at the time of his appointment, the Appellant did not possess the Senior Diploma in teaching the blind and hence, his appointment was subject to the condition that he should take the diploma in question within a period of three years, failing which he would be reverted back as Assistant.

4. The Respondent challenged the appointment of the Appellant in preference to her by filing O.A. No. 5603/1993 before the Tamil Nadu Administrative Tribunal, Madras. The Tribunal held it was not open to her to question the Appellant's appointment since her own application was not submitted within time and, therefore, could not be taken into consideration. The Tribunal further noticed that by the time the case was taken up for hearing before it, the Respondent had acquired the Senior Diploma in teaching the blind. The Tribunal, therefore, did not interfere with his appointment and disposed of the O.A. with a direction to the Director of Rehabilitation of the Disabled to consider the case of the Respondent for posting as P.G. Assistant in the available vacancy or in the next vacancy.

5. Dissatisfied with the order of the Tribunal, the Respondent moved the Madras High Court in W.P. No. 8482/2003. The High Court, very curiously, held the Appellant responsible for the District Social Welfare Officer, Sivaganga, not sending the Respondent's application so as to reach the office of the Director, Social Welfare, in time. The suspicion of the High Court is based solely on the fact that the Appellant worked as an Assistant in the same Directorate. The High Court observed:

Therefore, it may be possible that the fourth Respondent, working as an Assistant in the very same Directorate, after coming to know of the Petitioner's eligibility, might have successfully blocked the Petitioner's application reaching the Directorate. The allegation of mala fide was also alleged against the second

Respondent Department in paragraph 6 of the Original Application. It was not denied by the official Respondents.

(emphasis added)

The High Court further observed:

The needle of suspicion points towards the fourth Respondent's complicity in this matter, who was working in the very same Directorate and who belonged to the Ministerial service and who had No. teaching experience whatsoever before his appointment, was having an eye over the very same post.

The High Court further observed that the application of the Appellant was liable to be rejected on the threshold because he belonged to ministerial service and did not have any teaching experience.

6. The High Court, accordingly, directed for the removal of the Appellant from the post of P.G. Assistant (Political Science) and for the appointment of the Respondent in his place. The Appellant has now brought this matter before this Court.

7. We completely fail to see how the High Court could make such grave and serious charge against the Appellant purely on assumption. We have gone through the petition filed by the Respondent before the Administrative Tribunal. In paragraph 7 of her petition she stated as follows:

The applicant states that though she had been representing to Respondents from 2.4.90 itself that she is fully qualified to the post of P.G. Assistant, her representations went unanswered. The Respondent could have rejected her representation dt. 24.6.92 that Mr. V. Gopal had been appointed. But suppressing this fact of irregular appointment in a mala fide manner the Respondents had not replied to the representations of the applicant. Hence the action of the Respondents is discriminatory and arbitrary.

She never even alleged that the Appellant was instrumental in causing her application to reach the office of the Director, Social Welfare, long after the last date for submission of applications. There was, therefore, No. occasion for the Appellant to give any reply to her vague allegation of mala-fide.

8. Secondly, we see No. sanction for the view that a person belonging to the ministerial service was not qualified for appointment to the post. From the plain language of the appointment notice, there is No. such restriction discernible.

9. The Respondent's challenge to the appointment of the Appellant on the post of PG Assistant must, therefore, fail for the simple reason that her own application in response to the appointment notice was submitted long after the last date fixed in the notice and hence, it could not be taken into consideration.

10. We repeatedly asked the counsel why did the Respondent not sent her application to the Director's office directly and why she submitted it to the

Headmaster of her school. Was there any rule or administrative instruction obliging her to make the application only through the head of the institution where she was working at that time? (In the notice inviting applications there was No. such restriction!) We were not made aware of any provision, statutory or administrative, making such restriction. It, therefore, cannot be said that the Respondent was following any rule or instruction in adopting that course. If her application reached the office of the Director, Social Welfare late, she alone is responsible for that. We, thus, find No. merit in the Respondent's challenge to the appointment of the Appellant to the post in question.

11. The matter, however, does not seem to end here. In the proceedings dated December 24, 1991, by which the Appellant was appointed, the date of his application is mentioned as July 17, 1991. This appears to us quite inexplicable as the notice inviting applications is itself dated December 5, 1991. The counsel, appearing for the Appellant, failed to give any satisfactory explanation for this anomaly. We, therefore, feel that the whole process of selection and appointment was quite irregular and unsatisfactory and in those circumstances, we are unable even to sustain the appointment of the Appellant to the post of P.G. Assistant (Political Science). We, accordingly, direct the concerned authority to take fresh steps for filling up the said post in accordance with the rules. The process of selection and appointment must be completed within three months from today. Needless to say that every eligible candidate for the post on the date of the notice for appointment would be entitled to make application and selection will be made in accordance with the rules.

12. Since the Appellant is working on the post for the past about 20 years, he would continue on it till a fresh appointment is made, as directed above.

13. The appeal is disposed of with the aforesaid observations and directions.