

CASE NO.:
Appeal (civil) 1021 of 2007

PETITIONER:
Smt. Kiran Singh

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 27/02/2007

BENCH:
C. K. Thakker & Lokeshwar Singh Pantia

JUDGMENT:
J U D G M E N T
[Arising out of S. L. P. (C) No.11480-11481 of 2005]

Lokeshwar Singh Pantia, J.

Special leave granted.

This Civil Appeal is filed against the judgment and order dated 19/12/2003 in CMWP No. 56142/2003 and order dated 28.01.2005 in CMRA No. 9847/2004 of the High Court of Judicature, at Allahabad, whereby the High Court dismissed the Writ Petition and Review Application filed by the appellant.

The relevant facts giving rise to the filing of the appeal are as under:

The post of Extra Departmental Branch Post Master (hereinafter referred to as 'EDBPM') Unchagaon, District Jaunpur, fell vacant on 01.01.1996 due to retirement of Sri Raj Murthi Pandey on attaining the age of superannuation on 31.12.2005. The vacant post of EDBPM was notified to District Employment Officer, Jaunpur, vide Memo No. PFA-490 dated 06.11.1995 issued by the Superintendent of Post Offices, Jaunpur, requesting the former to sponsor the names of minimum three and maximum five eligible candidates for appointment to the post within a period of one month. Pursuant to the demand, the District Employment Officer, Jaunpur, on 13.11.1995 despatched a list of ten candidates including the name of Smt. Neelam Pandey, respondent no. 5 herein, for consideration to the post in question.

The Selection Committee did not consider the name of respondent No. 5. She approached the Central Administrative Tribunal (CAT), Allahabad Bench, Allahabad, by way of filing O.A. No. 1 of 1996. The CAT issued notice to the opposite parties on 02.01.1996 and by an interim order permitted the Superintendent of Post Offices to go on with the process of selection, but the result of selection was directed not to be declared until orders are passed by the Tribunal.

The Superintendent of Post Offices, Jaunpur, respondent No. 4 herein, instead of resorting to select the candidates from the names sent by the District Employment Officer, advertised the post on 17.01.1996 by inviting applications from public in general. The appellant and respondent No. 5 both applied afresh for appointment pursuant to the advertisement besides five more eligible candidates. Thereafter, respondent No. 4 vide his letter dated 18.04.1996 requested the District Magistrate, Jaunpur, to get the inquiry conducted from the concerned officers of Tehsil, Shahaganj, relating to character, antecedents, status and sources of income of the appellant and respondent No. 5. The officer-in-charge for District

Magistrate, Jaunpur, submitted his Report dated 04.06.1996 to respondent No. 4 with an endorsement in regard to the status and property income per month of the appellant as well as respondent No. 5. After judging the comparative merits including the essential eligibility criterion of possessing adequate means of livelihood from the income, the Competent Authority found the appellant to be more suitable candidate and, accordingly, selected her for appointment to the post. On receipt of the appointment letter, the appellant joined the post on 22.06.1996.

Respondent No.5 again approached the CAT by way of O.A. No. 1041 of 1996 assailing the appointment of the appellant on number of grounds. Respondent No. 5 on a misconception of the interim order dated 02.01.1996 earlier passed by the CAT in O.A. No. 1 of 1996 with regard to the selection of the appellant through the District Employment Office terminated her appointment/services on 08.10.1996. The appellant and the authorities filed separate counter affidavits in opposition to Application No. 1041 of 1996 filed before the CAT by respondent No. 5. They stated that the appointment of the appellant was duly made in accordance with the Service Rules and Circular dated 06.12.1993 issued by the Competent Authority. However, on 19.12.1996 the first Application being O.A. No. 1 of 1996, which was pending before the CAT, came to be dismissed as wholly infructuous and the interim order was also vacated.

On dismissal of O.A. No. 1 of 1996, the appellant was again appointed to hold the post vide Memo dated 01.01.1997 of respondent No. 4.

In the meantime, some complaint was received in the Office of Post Master General, Allahabad, respondent No. 2 herein, and after inquiry, respondent No. 2 issued directions to respondent No. 4 to get the income certificate of respondent No. 5 verified from the Competent Revenue Authority. Accordingly, on 17.04.2000 respondent No.4 requested the District Magistrate, Jaunpur, to do the needful. The District Magistrate, Jaunpur, vide his letter dated 13.02.2001 submitted the Report to respondent No. 4 whereby the monthly income of respondent No. 5 was confirmed to be Rs. 1000/-.

The appellant continued on the post till O.A. No. 1041 of 1996 was decided by the CAT on 24.11.2003 and the appointment of the appellant made on 01.01.1997 to the post of EDBPM was quashed with a direction to the authorities to appoint respondent No. 5 on the post within a period of one month from the date of the receipt of the said order.

Being aggrieved by the order of the CAT dated 24.11.2003, the Department and the appellant filed two separate writ petitions in the High Court of Judicature, Allahabad, at Allahabad. Writ Petition No. 9069 of 2003 filed by the Department was dismissed by the High Court on 03.03.2004 and Writ Petition No. 56142 of 2003 filed by the appellant was dismissed on 19.12.2003. Again, the Department and the appellant both filed Review/Recall Application before the High Court. From the records, it appears that the Review/Recall Application filed by the Department is still pending before the High Court, whereas the Review/Recall Application No. 9847 of 2004 filed by the appellant was rejected on 28.01.2005.

Hence, the appellant has filed this appeal challenging the impugned orders of the High Court.

We have heard the learned counsel for the parties and perused the material on record.

Mr. T.N. Singh, Advocate appearing on behalf of the appellant, contended that the appellant was selected by the

Competent Authority strictly following the existing Rules and Circular dated 06.12.1993, which provides one of the eligibility criteria or preference of income and ownership of property. However, the CAT as well as the Division Bench of the High Court have committed a grave and manifest error of law quashing the appointment of the appellant for no valid reasons. He submitted that the appointment of the appellant by the respondents/authorities on 01.01.1997 was in fact not challenged by respondent No. 5 before the CAT, yet her selection was set aside and respondent No.5, being not eligible, has been ordered to be appointed against the post, therefore, the order has resulted in miscarriage of justice to the appellant.

Per contra, the learned counsel for the contesting respondent No. 5 has sought to support the judgment of the Division Bench of the High Court to contend that admittedly, respondent No. 5 stood first in the merit list having secured 66.30 per cent marks in the High School Examination as against the appellant who secured 65.80 per cent marks and that being the admitted position, the CAT has rightly quashed the appointment of the appellant, which order has been upheld by the High Court and this Court in exercise of its powers under Article 136 of the Constitution of India will not be obliged to go into the question of facts thereby praying for the dismissal of the appeal.

Mr. B. Dutta, learned ASG appearing on behalf of other respondents, supported and adopted the arguments of the learned counsel appearing on behalf of the appellant and contended that the appellant was selected by the Selection Committee in accordance with the Rules/Instructions governing the service conditions of the post in question and, therefore, the order of the CAT as well as the High Court are manifestly erroneous and not sustainable.

We have given our careful consideration to the respective contentions of the respective parties.

It is not in dispute that the appellant secured 65.80 per cent marks in High School Examination as against respondent No. 5 who secured 66.30 per cent marks in the said examination. The essential educational qualification for the post of ED Sub- Post Masters and ED Branch Post Masters as per the Rules is Matriculation. The Assistant Director General (Training) vide copy of communication No. 17-104/93 \026 Ed & Trg., Department of Post, New Delhi, emphasized that in case of appointment of ED Sub-Post Masters/ED Branch Post Masters, preference may be given to those candidates whose "adequate means of livelihood is derived from landed property or immovable assets" if they are otherwise eligible for appointment and the income of property in the name of the guardians of the candidates will not make them eligible for consideration for appointment as ED agents in the Department. On perusal of the letter dated 18.04.1996 submitted by respondent No. 4 to the District Magistrate, Jaunpur, regarding verification of income and sources of income of respondent No. 5, who is married to Sanjeev Kumar Pandey, resident of Jaigaon Post Office and Tehsil Shahganj, District Jaunpur, the Tehsildar Shahganj in his Report dated 22.04.1996 submitted that Smt. Neelam Pandey has fifteen decimal of land in her name, which is unarable and the land is full of rubbles (Kankar). He further stated that the applicant does not have any income from agriculture.

In response to the letter No.P.F.A 499 Jaunpur dated 18.04.1996 addressed by respondent No.4 to the District Magistrate, Jaunpur, the Tehsildar Shahganj reported on 22.05.1996 that Smt. Kiran, appellant herein, holds 32 1/2 130 decimal land in Gata No. and her monthly income is

Rs.1,000/- and annual income is Rs.12,000/-. The Selection Committee, on receipt of the testimonials of the candidates who appeared for interview to the post of EDBPM, found the appellant suitable for appointment on the vacant post in ED Branch in terms of the Service Rules for Postal ED Staff and as per the criterion laid down by Assistant Director General (Training), Department of Post, New Delhi, in Circular No. STA/19/4/3 dated 06.12.1993. The appellant after selection has been continuously discharging her duties and functions as EDBPM since 01.01.1997 till July 2004.

The CAT allowed the application of respondent No.5 merely on the sole ground that as respondent No.5 has secured more marks in the High School Examination as against the appellant but it has lost sight of the other eligibility conditions contained in the Service Rules and the Circular governing the selection of the candidate to the post in question. The High Court in its impugned orders has not recorded independent reasons except to agree with the order of the CAT.

In the facts and circumstances of the case, in our view the order of the CAT which has been affirmed by the High Court is manifestly erroneous and cannot be sustained. The appellant and respondent No.5 both have qualified the High School Examination by securing first division. The eligibility and criterion for the selection of the candidate to the post of EDBPM as per the Service Rules was not only the merit between the two candidates in High School Examination but the additional criterion was that the candidate must be one who has "adequate means of livelihood derived from landed property or immovable assets" if the candidate is otherwise eligible for appointment. The instructions governing the eligibility of the candidates also provide that no weightage will be given for any higher qualification. The appellant has fulfilled the essential qualification and required eligibility criterion and as such her selection to hold the post in question was valid whereas respondent No. 5 was not eligible to be appointed on the post for lack of income criterion in terms of the Circular.

In that view of the matter, the impugned judgment and order of the High Court dated 19.12.2003 passed in CMWP No.56142 of 2003 and order dated 28.01.2005 recorded in CM Review/Recall Application No.9847 of 2004 are quashed and set aside. As a result thereof, the order dated 24.11.2003 of the CAT in OA No.1041 of 1996 by which the application of respondent No.5 has been allowed and appointment of the appellant has been set aside, shall also stand quashed and set aside.

In the result, this appeal is allowed accordingly. Parties shall bear their own costs.