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Syed Husain Ansari Vs Central Administrative Tribunal and Others

Court: Allahabad High Court

Date of Decision: Nov. 11, 2013

Citation: (2013) 10 ADJ 166 : (2014) 2 ALJ 610 : (2014) 102 ALR 502 : (2014) 140 FLR 980

Hon'ble Judges: Rajes Kumar, J; Mahesh Chandra Tripathi, J

Bench: Division Bench

Judgement

Rajes Kumar and Mahesh Chandra Tripathi, JJ.
Heard Sri H.N. Singh, Senior Advocate appearing on behalf of the petitioner, Sri H.C.

Dubey, Advocate appears on behalf of respondent Nos. 2 to 5 and Sri Avnish Tripathi, Advocate appears on behalf of respondent No. 6. List

revised.

2. Counsel for the respondent No. 6 is not present.

3. By means of the present petition, the petitioner is challenging the order dated 18.1.2005 passed by Central Administrative Tribunal, Allahabad

Bench Allahabad in Original Application No. 472 of 1997, Shyam Bihari v. Union of India and others which is annexed as Annexure No. 1 to the

writ petition.

4. It appears that an advertisement was made for one post of Extra Departmental Delivery Agent in the Department of respondent Nos. 2 to 5.

Since the post was one, it was for general category. However, from the perusal of the order of the Central Administrative Tribunal, it appears that

the preference has been given to the Scheduled Caste candidate. Both the petitioner as well as Shyam Bihari-respondent No. 6 applied for the

said post. It appears that the petitioner obtained 60.8% marks and Shyam Bihari obtained 57.3% marks. The petitioner being obtained higher

marks has been given appointment which has been challenged by Shyam Bihari by way of Original Application No. 472 of 1997 mainly on the

ground that being a Scheduled Caste candidate, he may be given preference. The Original Application has been allowed on the ground that Shyam

Bihari obtained highest marks amongst all the Scheduled Caste candidate and even though the advertisement has not been filed but the claim in the

Original Application that the advertisement provides the preference to the Scheduled Caste candidate which has not been denied in the counter-

affidavit. It has been held that the preference should be given to the Scheduled Caste candidate and therefore, the appointment of the respondent

No. 6 has been upheld and the appointment of the petitioner has been set aside. However, an observation has been made that the petitioner may

stake his claim for alternative appointment under Rules of ED Agent having regard to the provision contained in DC (P & T) letter No. 43-4/77-

pen dated 23.2.1979.

5. Learned Counsel for the petitioner submitted that the post being one, was unreserved post. There is no dispute that the petitioner obtained

60.8% marks and the respondent No. 6 obtained 57.3 % marks higher than the marks of respondent No. 6. The Central Administrative Tribunal

has wrongly given the interpretation of the word preference. The preference means that if the two candidates get equal marks then the question of

preference arises and the preference would be given to the class to whom the preference is provided under the advertisement.

6. Reliance has been placed on the decision of the Hon''ble Supreme Court in the case of The Secretary, Andhra Pradesh Public Service

Commission Vs. Y.V.V.R. Srinivasulu and Others, .

7. Learned Counsel for the respondent Nos. 2 to 5 is not able to dispute the contention of the learned Counsel for the petitioner. We find

substance in the argument of learned Counsel for the petitioner.

8. The Hon''ble Apex Court in the case of The Secretary, Andhra Pradesh Public Service Commission v. Y.V.V.R. Srinivasulu and others (supra)

has held as follows:

10. Both on account of the scheme of selection and the various stages disclosed as necessary to be undergone by every candidate and the manner

of actual selection for the appointment in question, the candidates were required to be selected finally for appointment on the basis of the ranks

obtained by them in terms of the inter se ranking based on the merit of their respective performance. There is no escape for anyone from this

ordeal and claim for any en bloc favoured treatment merely because, anyone of them happened to possess an additional qualification than the

relevant basic/general qualification essential for even applying to the post. The word ""preference"" in our view is capable of different shades of

meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an

isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for

selection in the case involve, a qualifying test, a written examination and oral test or interview and the final list of selection has to be on the basis of

the marks obtained in them. The suitability and all round merit, if had to be adjudged in that manner only what justification could there be for

overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also

been envisaged. The rules do not provide for separate classification of those candidates or apply different norms of selection for them. The

"preference" envisaged in the rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin

to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional

qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme

of selection envisaged through Public Service Commission, on the basis of merit performance but also would work great hardship and injustice to

those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional

qualification too, and demonstrate their superiority, merit wise and their suitability for the post. It is not to be viewed as a preferential right

conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all

candidates who are eligible are taken for consideration and when anyone or more of them are found equally positioned, by using the additional

qualification as a tilting factor, in their favour, vis-Ã¯Â¿Â½-vis others in the matter of actual selection.

11. Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or

factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, de hors their intrinsic

worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme

of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be

preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according

en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to

be considered....

9. In Executive Officer Vs. E. Tirupalu and others, C.R. Siva Reddy and another, T. Venkateswarlu and another, C. Vani, , the Hon"ble Supreme

Court held that where rules provide for preference to a particular class of candidates, that preference under the Rules cannot be applied

irrespective of the merit of candidates, the inmates have to be given appointment. It means that the merit of the candidates being equal, preference

would be given to the inmates of the class which is to be given preferential right and it certainly does not mean an automatic appointment without

considering the cases of other candidates. Therefore, even if the rules provide for preferential right, candidates having such subjects would have

preferential right only when they compete with other candidates and are found on equal footings, otherwise not.

10. The Supreme Court in The Secretary, Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others, , dealing with the

issue held as under:

The ""preference"" envisaged in the Rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference

akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional

qualification cannot be enforced as a rule of reservation or rule of complete precedence.... It is not to be viewed as a preferential right conferred

even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all

candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional

qualification as a tilting factor, in their favour vis-Ã¯Â¿Â½-vis others in the matter of actual selection.

Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or

factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, de hors their intrinsic

worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme

of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be

preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according

en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to

be considered.... The word first has to be construed in the context of even giving preference only in the order and manner indicated therein, inter se

among more than one holding such different class of degrees in addition and not to be interpreted vis-Ã¯Â¿Â½-vis others who do not possess such

additional qualification, to completely exclude them en bloc.

11. In State of U.P. and another v. Om Prakash and others 2006 (111) FLR 226 (SC), after considering the earlier judgments on the issue, the

Hon''ble Apex Court held that the word ""preference"" would mean that when the claims of all candidates who are eligible and who possess the

requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally

positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-Ã¯Â¿Â½-vis others in the merit list prepared

by the Commission. But ""preference"" does not mean en bloc preference irrespective of inter se merit and suitability.

12. The aforesaid view has been taken by a Division Bench of this Court in the case of Parvati Devi Mishra Vs. State of U.P. and Others, .

13. In view of law laid down above, we are of the opinion that the impugned order dated 18.1.2005 passed by the Central Administrative Tribunal

is not sustainable and is liable to be set aside.

14. In the result, the writ petition is allowed. The impugned order dated 18.1.2005 passed in Original Application No. 472 of 1997 is set aside.

15. Learned Counsel for the petitioner states that in view of the interim order, the petitioner is working on the said post. In view of above, we

uphold appointment of petitioner and respondents are directed not to interfere in the working of the petitioner and provide him all consequential

benefits.