

**(2000) 04 AP CK 0011**

**Andhra Pradesh High Court**

**Case No:** WA No. 292 of 2000

Senior Divisional Manager, LIC of  
India, Nellore and another

APPELLANT

Vs

Chinni Balagandadhar Tilak

RESPONDENT

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**Date of Decision:** April 21, 2000

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

**Citation:** (2000) 5 ALD 477 : (2000) 3 ALT 428

**Hon'ble Judges:** M.S. Liberhan, C.J; V.V.S. Rao, J

**Bench:** Division Bench

**Advocate:** Mr. J.V. Suryanarayana Rao, SC for LIC, for the Appellant; Mr. M.S.N. Prasad, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

M.S. Liberhan, C.J.

The Life Insurance Corporation of India has filed this writ appeal against the order dated 9-2-2000, passed by the learned single Judge in WP No. 1800 of 2000.

2. The respondent (hereinafter referred to as "the petitioner") has impugned the action of the appellants (hereinafter referred to as "the respondents") in not calling him for interview for promotion to the post of Higher Grade Assistant and calling other candidates, who have neither passed the departmental promotion test nor are possessing the required technical qualifications, as arbitrary, illegal and violative of Article 14 of the Constitution of India.

3. The respondents issued a notification on 30-10-1999 calling for applications from eligible employees for promotion to 12 posts of Higher Grade Assistants. It was made clear in the notification that the conditions of eligibility, including service and qualifications would be reckoned as on 1-10-1999. The eligibility of the petitioner to

apply for the post is not in dispute. It is also not disputed that a single panel of all eligible candidates in the order of merit was prepared in accordance with the Life Insurance Corporation of India Class III and Class IV Employees (Promotion) Rules, 1987, and that out of the said empanelled candidates, candidates in the order of merit equal to five times the number of vacancies available will have to be called for interview. In the instant case, though there were 12 vacancies available, the respondents had called 99 candidates for interview instead of calling 60 candidates in the ratio of 1:5 on the ground that certain candidates secured equal number of marks.

4. The learned single Judge observed that when more than one candidate secured equal number of marks, under general principle of law, the seniority will be fixed on the basis of age of the candidates. The learned single Judge further holding that the respondents could not have called more than 60 candidates against 12 vacancies for interview, quashed the selection, though at the same time found that the petitioner does not fall within the zone of consideration and as such cannot make any grievance for not being called for interview for the post of Higher Grade Assistant.

5. It is not disputed that, according to the Rules, the merit list is prepared on the basis of the total marks secured by the candidates on three counts viz., seniority, qualification and work record. In the instant case, the merit list was prepared not just on the basis of seniority, but it was prepared on the basis of the marks secured by the candidates for seniority, work record, written test, interview etc., and as certain candidates scored equal number of marks, in order to treat them equally, more number of candidates against each available vacancy were called for interview over and above the ratio fixed by the Rules at 5 candidates against each available vacancy.

6. Nothing has been brought to our notice either from the Rules Instructions issued, the consequences arising out of, if candidates over and above the ratio fixed by the Rules are called for interview against each available vacancy. Hence, without expressing any opinion with respect to mandatory nature of the Rules and the consequences arising therefrom in calling more number of candidates for interview against each available vacancy than the ratio fixed by the Rules at 5, we restrain ourselves by observing that in the facts and circumstances of the case since more number of candidates had secured equal number of marks, in order to treat them equally, the respondents were fully justified in calling 99 candidates over the above the ratio and ignoring proportionality ordained by the Rules at 5 candidates against each available vacancy. Moreover, by calling more number of candidates for interview, the respondents had an opportunity of selecting more suitable and meritorious candidates for promotion.

7. Thus the order of the learned single Judge finding fault with the respondents in calling more number of candidates for interview against each available vacancy than the ratio fixed by the Rules cannot be sustained in view of the observations made

above. Merely because the respondents have called more number of candidates for interview against each available vacancy than the ratio fixed by the Rules, it will not give the petitioner a cause of action to file the writ petition, who had not even fallen within the zone of the consideration for promotion.

8. Hence, the selection made by the respondents cannot be set aside in a writ proceeding simply on the ground that more number of candidates were called for interview against each available vacancy than the ratio fixed by the Rules and more especially when the petitioner has not even fallen within the zone of consideration for promotion.

9. The claim of the petitioner being limited to the extent that he has not been called for interview and not considered for selection, the learned single Judge ought not to have set aside the selection list, which was prepared pursuant to the interview, and that too without making the candidates called for the interview a party to the proceedings. Thus, the learned single Judge has passed an adverse order against the interviewers, behind their back in violation of the principles of natural justice.

10. It may be noticed that the petitioner has impugned non-inclusion of his name in the zone of consideration for promotion only on the ground that though he is highly qualified, he has been kept out of the zone of consideration for promotion by the respondents by awarding him less marks for work record. Awarding marks for work record is the sole prerogative of the employer and this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India, cannot substitute its opinion of awarding marks by re-appreciating the work record of an employee, unless and until it is shown that there are mala fides and perversity in awarding of marks but nothing of that nature has been pointed out.

11. The fact to be noticed before conclusion the judgment is that after completion of interviews, selection list has been prepared and the selected candidates have already been promoted.

12. At this stage, the learned Counsel for the respondents was fair enough in stating and giving an undertaking that the case of the petitioner would be considered in accordance with the Rules as and when vacancies arise, after awarding him marks for work record and on other counts. The learned Counsel for the petitioner is satisfied with the undertaking given by the Counsel for the respondents.

13. In view of the observations made above, and in view of the undertaking given by the respondents that the case of the petitioner would be considered for promotion in accordance with the Rules as and when vacancies arise after awarding him marks for work record and on other counts, we allow the writ appeal and set aside the order of the learned single Judge, and dispose of the writ petition in the above terms. No costs.