

(2012) 03 CAL CK 0003

Calcutta High Court

Case No: W.P.C.T. No. 744 of 2011

M. Ramesh

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: March 16, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2012) 133 FLR 875

Hon'ble Judges: Shubhro Kamal Mukherjee, J; Dipankar Datta, J

Bench: Division Bench

Advocate: Anjili Nag, D. Illango, Mrs. P. Maya and Pradeshi Munda, for the Appellant; Santosh Kumar Mandal and Satish Chandra Mishra, for the Respondent

Judgement

Shubhro Kamal Mukherjee, J.

This is an application under Article 226 of the Constitution of India challenging judgment and order dated February 16, 2011 passed by the Central Administrative Tribunal Calcutta Bench, Circuit at Port Blair, in Original Application No. 21/AN/2011. By the order impugned the Tribunal rejected the Original Application filed by the Writ petitioner.

2. Mr. Santosh Kumar Mandal, learned Government Pleader appears and accepts notice on behalf of the respondent Nos. 1 to 5.

3. The Directorate of Education, Andaman & Nicobar Administration at Port Blair notified 80 (eighty) vacancies of Primary School teachers in different mediums, that is, English, Bengali and Tamil, in the Daily Telegrams dated June 18, 2008. In the notice it was indicated that out of 80 (eighty) vacancies, 50 (fifty) vacancies were for general category and 30 (thirty) vacancies were for Other Backward Classes category. The last date for submission of application was fixed on July 14, 2008.

4. Certain complaints were received by the Administration that no reservation was made for physically challenged persons and for meritorious sports persons although there were instructions in this behalf. On receipt of such representations, the Administration re-examined the matter and decided to reserve two posts of Primary School Teachers one for physically challenged person (orthopedic) and one for meritorious sports person.
5. Consequently, a corrigendum was issued on July 11, 2008. The last date for submission of the application was, therefore, extended up to July 31st 2008. In the advertisement it was indicated that the said reservation would not remain confined to any particular medium. The said reservation was common for all the said mediums.
6. The private respondent No. 6, Shrimati Sandhya Kispotta, applied as a general category candidate in Hindi medium prior to publication of the corrigendum, that is, on July 7, 2008.
7. This writ petitioner, also, applied for the post of Primary School Teacher (English Medium) under meritorious sports person quota.
8. Shrimati Sandhya Kispotta, inspite of publication of such corrigendum, did not submit any application indicating her option for the meritorious sports person quota.
9. However, it is an admitted position that the said Shrimati Sandhya Kispotta is much better placed as a sports person than this writ petitioner.
10. At the time of holding of the interview on August 17, 2008 for the first time she opted for meritorious sports person-category. Her request was accepted and she was accommodated as a Primary School Teacher under meritorious sports person quota.
11. The writ petitioner, therefore, approached the Tribunal indicating that as the said Shrimati Sandhya Kispotta did not apply for the post of Primary School Teacher under meritorious sports person quota, she could not, at the interview stage, have opted for meritorious sports person quota thereby depriving the right of the writ petitioner for appointment under the said quota. According to the writ petitioner, he is the only available candidate, who applied under the meritorious sports person quota.
12. The Tribunal, however, rejected the original application of the writ petitioner on the ground that Shrimati Sandhya Kispotta was an outstanding sports person and certainly better placed than that of the writ petitioner. The Tribunal proceeded on the basis that subsequent to the publication of the corrigendum, as aforesaid, the said Shrimati Sandhya Kispotta came to know that there was one post reserved for meritorious sports persons and, accordingly, she requested for change of her category from general category to meritorious sports person category.
13. Mr. Mandal, learned Government Pleader, in his usual fairness, submits that Shrimati Sandhya Kispotta did not exercise her option before the last date for submission of

application, but, she exercised her option on August 17, 2008.

14. The Tribunal, in our view, misdirected itself in considering the case of the writ petitioner. The Tribunal was right that the said Shrimati Sandhya Kispotta was appointed as a meritorious sports person and her appointment was adjusted in the post based roster against the appropriate category.

15. What the Tribunal missed is that the writ petitioner was the only candidate, who applied under the meritorious sports person quota and the said Shrimati Sandhya Kispotta did not exercise her option for appointment in the post of Primary School Teacher under meritorious sports person quota except at the interview stage.

16. We hold that the authorities showed undue advantage to the said Shrimati Sandhya Kispotta in permitting her to change her category from general category to the meritorious sports person category at the interview stage on August 17, 2008. Last date of submission of the application was August 31, 2008. She should have, in our view, opted for change of category prior to the last date of the submission of the application.

17. Normally, we should have cancelled the appointment of the said Shrimati Sandhya Kispotta in the meritorious sports person quota, but she has, already, been appointed as a teacher and she is successfully performing her duties. Undoubtedly she is an outstanding sports person and took part in number of competitions at national level.

18. We, therefore, feel that justice would be subserved if the Administration is directed to appoint this writ petitioner as a Primary School Teacher (English medium), as a special case, in the next available vacancy, but the writ petitioner shall not be entitled to claim his seniority from the date when the Primary Teachers under the recruitment notification were appointed. He shall be entitled to get his seniority and all other consequential benefits prospectively.

19. With the aforesaid directions, the writ petition stands disposed of. We make no order as to costs.

Dipankar Datta, J.

I agree.