

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dated 2.3.2001

Heard Shri S. Das, the learned counsel for the petitioner and Shri S.B. Jena, the learned Addl. Standing Counsel for the respondents and perused the records.

In this O.A. the petitioner has prayed for quashing the order of appointment issued in favour of Shri Arakhita Muni (Res.5) to the post of EDBPM, Sahashpur B.O. and directing the departmental authorities to issue appointment order in his favour. Departmental respondents have filed their counter opposing the prayer of the applicant. Respondent No.5 appeared through his counsel Shri D.N. Mishra, but he has not filed counter. Shri Mishra is also absent when called.

For the purpose of deciding this O.A. it is not necessary to go into too many facts of this case. The admitted position is that a vacancy arose in the post of EDBPM, Sahashpur B.O. Applicant has stated that his father, incumbent EDBPM resigned from service. Respondents have pointed that the incumbent EDBPM was removed from service. In any case nothing turns on this difference. For filling up of the post of EDBPM, Sahashpur five candidates including the applicant and Res.5 were considered and Res.5 was ultimately selected and appointed to that post. Learned counsel for the petitioner has challenged the selection and appointment of Res.5 on various grounds which are discussed below.

The first point urged by the learned counsel for the petitioner is that the departmental respondents have illegally rejected his candidature on the ground as mentioned in the counter that along with his application, the applicant had given a income certificate in the name of his father and not in his own name. It is submitted by the learned counsel that the applicant had obtained an income certificate in his own name from Tahasildar in January, 1993, much before the process of selection was initiated. It is submitted by Shri Das that this income certificate in the name of the applicant was submitted along with his application for the post in question, but this income certificate has been suppressed and his

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candidature has been illegally rejected. We are not inclined to accept this submission, because, this has not been mentioned in the pleadings. Moreover from the check list, which is a contemporaneous document and has been enclosed by the departmental respondents at Annexure-R/1, we do find that against the name of the applicant, it has been mentioned that his income certificate showing income of Rs.9000/- is stands in the name of his father, who has also given a Power of Attorney. This goes to show that along with his application the petitioner has filed an income certificate, which is in the name of his father. In view of this, we find no illegality in rejecting the candidature of the applicant on this ground. Even granting for argument sake that applicant had filed income certificate in his own name and the same is correct, still he could not have been selected in the face of Res.5, who has got higher percentage of marks.

It is submitted by the learned counsel for the petitioner that Res.5 has passed H.S.C. from Board of Secondary Education, Madhya Pradesh and the marksheet produced by him is not genuine and also the percentage of marks has not been correctly worked out. We are not inclined to accept this submission because these are not the averments made in the Original Application itself. It has been mentioned in the check list that the selected candidate Res.5 has passed H.S.C. ^{under M.P. Board.} Petitioner's contention that Res.5 having passed H.S.C. from Board of Secondary Education, M.P. by itself would not disentitle him for being considered to the post in question. There is no material to show that he has produced false marks sheet and/or his percentage of marks has not been correctly worked out. This contention is therefore, held to be without any merit and the same is rejected.

Instructions are very clear that amongst the eligible candidates, the candidate securing the highest percentage of marks in the H.S.C. must be taken as most meritorious and this having been done in the instant case, we find no illegality involved in this case. It is submitted by the learned counsel for the petitioner that during the incumbency of his

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if father he had worked as substitute for four months and this experience as substitute should have been taken into consideration. Law is well settled that experience gained by a person as substitute EDEPM cannot be taken into consideration because the substitute works at the risk and responsibility of the regular incumbent. If such experience is given weightage then it will always be open for an incumbent to go on leave and induct one of his relations as substitute, thereby giving ^{him} ~~an~~ undue advantage ^{as a} ~~the~~ candidate working as substitute over the fresh candidates when any vacancy in the E.D.Post arises. This has been the consistent view taken by us and there are also similar decisions of other Benches of the Tribunal in this regard. In view of this we hold that the applicant's experience as substitute could not have been taken into consideration by the departmental respondents at the time of selection to the post in question. ~~fax the~~

In the light of our discussions held above, we hold that the applicant is not entitled to any of the reliefs claimed in this application, which is accordingly rejected, but without any order as to costs.

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MEMBER (JUDICIAL)

Somnath Ganguly
VICE-CHAIRMAN
2.3.2001