

| Serial No. of Order | Date of Order | Order with Signature | Office note as to action (if any) taken on order |
|---------------------|---------------|---|--|
| 16.1.2001 | | <p>Advocates are absent. They have been abstaining from attending Courts since 7.12.2000 protesting against the imposition of new Professional Tax by the State Government. The Apex Court in the case of Raymon Services (P)Ltd. vs. Subhash Kapoor reported in 2000 AIRSCW 4093 strongly deprecated the practice of Courts in allowing adjournment whenever there is boycott call from the Advocates and observed to the extent that the Courts adjourning the cases under such circumstance will be contributory ^{to} contempt of the Apex Court. In view of this we are not inclined to adjourn this Original Application posted to this day for regular hearing.</p> <p>Even parties are absent. Hence perused the records.</p> <p>In this case centring round the selection and appointment to the post of E.D.D.A., K.Sikharpur, the applicant earlier approached this Tribunal in O.A. No.520/94, which was disposed of on 8.9.1994 with the following directions.</p> <p>"The application is disposed of with a direction that if the selection is not yet over, the candidature of the applicant may be considered along with others and the suitability of all be adjudged, provided the applicant applies to the concerned appointing authority forthwith. As regards 'experience', although it is a desirable asset, it is left to the appointing authority to take this into consideration as per the rules of the department while making the selection. The case is thus disposed of".</p> <p>Pursuant to the direction of this Bench the candidature of the applicant was considered along with five others. Res. 5</p> | <p>Mr. Ashok Mishra has filed the counters on 27-3-95 & on behalf of R-1 do R-3. Counters copy has been served.</p> <p>R-4 & R-5 has no appearance.</p> <p>For further delivery.</p> <p><i>[Signature]</i> 6/4</p> <p>8 each.</p> <p>Council had been met.</p> <p>R. 4 and 5 not appeared.</p> <p>A. memo with</p> <p>Per order</p> <p><i>[Signature]</i> 8.2.2000</p> |

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

22-11-2000. Parties are absent on call. No steps taken to file rejoinder. This is a 1995 case. Put up before the Bench for further orders.

REGISTRAR

For further orders, Rejoinder not yet filed.

Bench

23.11.2000

Rejoinder not filed. Bench 14/12

For hearing. Bench 15/11/01

Shri Ramesh Ch. Tripathy being a Matriculate was ultimately selected and appointed.

In this application praying for quashing the selection and appointment of Respondent 5 and for appointment to the post of E.D.D.A., K. Sekharpur, retrospectively the case of the applicant is that his father Daitari Beja worked in that seat. In the year 1986 he fell ill, and due to prolonged illness he submitted application before the competent authority praying for invalid retirement. By letter dated 4.11.1991 Respondent No. 3 directed his father to appear before the C.D.M.O., Puri (Annexure-1) for necessary examination and issuance of certificate. Pursuant to this direction he appeared before the concerned medical authority and obtained the certificate dated 21.1.1992 under Annexure-2. However, no decision was taken on his prayer for retirement on invalidation ground and ultimately his father had to retire in January/94 on superannuation. During illness of his father till his retirement on superannuation he served as substitute in E.D.D.A. in place of his father to the satisfaction of all concerned. In view of this vast experience, he was entitled to be selected and appointed to the post in question in place of Respondent No. 5.

Respondent No. 5 though duly noticed neither entered appearance nor filed any written statement.

The Departmental respondents in their counter take the stand that experience, as substitute, as per rules, cannot be taken into consideration in selection to E.D. posts. Since applicant had passed 9th Class he did not come under the preferential category for passing H.S.C., which qualification was fulfilled by Respondent No. 5. Accordingly Respondent No. 5 was selected and appointed. It is their further case that as applicant's father did not appear before the CDMO, Puri for medical examination, as directed in their letter, but filed a Certificate obtained from one Dr. B. K. Pattnaik, Specialist in Medicine, he could not be considered under the rules for retirement

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OA-66/95

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

on invalidation.

No rejoinder has been filed.

Recruitment Rules of E.D. Agents provide the minimum qualification to be eligible to be selected and appointed as E.D.D.A. is pass in 8th Class, but pass in H.S.C./Matriculation would be preferred. Viewed from this angle applicant who has passed only 9th Class cannot be preferred over Respondent No.5, who has passed H.S.C. Examination. We, therefore, do not see any legal infirmity in selection and appointment of Res.5 on this ground.

However, the applicant claims for appointment to that post on the ground that he worked as substitute and as such his experience as substitute E.D.D.A. during illness of his father from 1986 till the date of his superannuation should have been taken into account. Law is well settled in the case of G.S.Parvati vs.S.D.I.(P) &Ors.(reported in 1991-93 A.T.F.B.Judgments) ^{Page-23} decided by the Full Bench of C.A.T. that substitute experience cannot be considered in selection and appointment of E.D. Agents. This has also been reiterated recently by the Bangalore Bench of C.A.T. consisting of five Members reported in 2000(2) ATJ 259 (D.M.Nagesh vs.Asst. Superintendent of Post Offices). Hence on the ground of substitute experience applicant cannot stand in a better footing than Respondent No.5, who has passed H.S.C. Examination.

In the result, we do not see any merit in this application which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAMAN

G.Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//

For him.
ad3 to 26.4.2000
A. Mani 44 W
L
20.4.20

Or. No 4 may be

For him.
ad3 to 12.8.2000

L
11.5.20

Or. No 5 may be

For him.
ad3 to 26.5.2000
R.4 also has no
present appearance

L
26.5.2000

None appears on behalf
of R-4 & 5-
Rejoinder not yet
filed.
For order pl.

H
16.11.2000 Regd.