

DUSHASAN PATRA.

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APPLICANT.

:VERSUS:

UNION OF INDIA & ORS. ....

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RESPONDENTS.

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15. ORDER DATED 08-08-2001.

Heard Shri P.K.padhi, learned Counsel for the Applicant and Shri S.Behera, learned Additional Standing Counsel appearing for the Respondents and have also perused the records.

In this Original Application, the applicant has prayed for quashing the appointment of Respondent No.3 as E.D.B.P.M.Podua Branch Post Office and for a direction to the Superintendent of Post Offices, Keonjhar Division, Respondent No.2 to select any candidate from SC community from amongst the existing candidates.

Departmental Respondents have filed counter opposing the prayer of the applicant. Notice was issued to private Respondent No.3 through dusti service but it is submitted by Shri Padhi, learned counsel for the Applicant that Respondent No.3 refused to accept the notice and therefore, the applicant had sent the notice to Respondent No.3 through Registered Post with AD and has filed the AD. Respondent No.3 has not appeared or filed any counter.

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Contd....Order No.15, Dt.08-08-2001.

For the purpose of considering this petition, it is not necessary to go into too many facts of this case. The admitted position is that the post of EDBPM, Podua Branch post Office fell vacant from 24.4.1998 on superannuation of the regular incumbent and the District Employment Officer was addressed in letter dated 19.3.98 at Annexure-R/1 to sponsor names of the candidates for the post. In this letter it was mentioned that at least three SC candidates should be sponsored to fill up the post and if no SC candidate is nominated the vacancy will be treated as un-reserved and will be offered to candidate of unreserved community. Employment Exchange sponsored several names who were asked to file detailed application with necessary documentation. 9(nine) applications including that of the petitioner, was received and it was found that applicant was the only person belonging to SC community but along with his application, the applicant has submitted an Income certificate not in his own name but in the name of his father. As three SC candidates were not available, public notice was issued in letter dated 22.6.1998 at Annexure-3 to the O.A. In this notice, it was mentioned in para-5 that preference will be given to candidates belonging to SC and if no SC community is available, the vacancy will be treated as un-reserved. It further appears that in response to the public notice four applications including the application of the applicant were received. Respondents have stated that details of these four candidates are at Annexure-6 and from this it appears that

Contd....order dt.8.8.2001.

only two candidates including the applicant belong to SC Community. Respondents have stated that as minimum three candidates were required for consideration in order to give element of competitiveness the vacancy was treated as unreserved and Res.No.3 who belongs to OBC and was treated as one belonging to general category was selected and appointed as amongst the four candidates, she has got the highest percentage of marks in the HSC examination.

Learned counsel for the applicant has challenged the selection of the Respondent No.3 on two grounds which are discussed below. The first ground urged by learned counsel for the applicant that in the public notice at Annexure-3, it was mentioned that if no SC community is available the post will be treated as unreserved but as the applicant had duly applied and there were two persons belonging to SC community, the post should not have been treated to be filled up by an unreserved candidate. We are unable to accept this contention because circular of the Director General of Posts provides that at least three candidates belonging to a particular community must be available to impart the required element of competitiveness in a selection. It is also to be noted that in the notice at Annexure-3, it was mentioned that preference will be given to the persons belonging to SC community and the post was not as such reserved for SC community. Respondents have stated that the matter was referred to the Postmaster General and direction was received to finalise the selection from amongst the existing candidates. As only two persons

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belonging to SC community were available, it was not possible for the Respondent No.2 to give preference to SC community while filling up of the post because three candidates were not there. We find no illegality in this. The next ground urged by learned counsel for the applicant is that in several cases for filling up of the post public notice has been issued more than once but in this case without issuing public notice once again asking for applications from SC candidates to apply, the post was filled up by a candidate belonging to general community. Re-notification of vacancy <sup>would have involved</sup> ~~can not take~~ more time and it is for the Departmental Authorities to decide whether in a given case they would go for re-notification or they would treat the vacancy unreserved. In any case, in the instant case at Annexure-3 it was specifically mentioned that if no SC community is available, the post will be treated as unreserved and to be filled up by an unreserved candidate. In view of this we find no illegality in the Departmental Authorities in not renotifying the vacancy. We also find that the selected candidate has got higher percentage of mark in HSC examination. The applicant has got 299 marks out of 750 representing 39.86% whereas the Respondent No.3 has got 312 marks out of 750 representing 41.60%. As the instruction of DG posts provides that amongst the eligible candidate person who has secured the highest percentage of marks in HSC examn.

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O. A. No. 266/2000

Contd...Order dated 8.3.2001.

is to be treated as most meritorious we find no illegality in the selection of Respondent No.3 for the post.

In view of our discussions made above, we hold that the application is without any merit and the same is rejected. NO costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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DOMNATH SOM  
VICE-CHAIRMAN  
*8/8/2001*

KNM/CM.

Three copies of  
final order  
dt. 8.8.01 issued  
to counsel for  
both sides.

*Pro*

*Ds*  
*10/8/01*

*S.O (J)*