

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.420/1999

Friday, this the 6th day of July, 2001.

CORAM;

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Sujatha.M.K.
Manjakotil House,
Thozhupada.P.O.
Chelakara(via),
Trichur-680 586. - Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. Senior Superintendent of Post Offices,
Trichur Division,
Trichur-680 001.
2. The Post Master General,
Central Region,
Kochi.
3. The Chief Post Master General,
Kerala Circle,
Trivandrum.
4. Union of India represented by
the Secretary,
Ministry of Communications,
New Delhi.
5. Shaharban,
D/o Abdullakkutty,
Thonikkadavil House,
Thozhupadam.P.O.
Chelakara(via),
Trichur-680 586. - Respondents

By Advocate Mr A.Sathianathan, ACGSC(for R.1 to 4)

By Advocate Mr Shafik.M.A.(for R-5)

The application having been heard on 6.7.2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to declare that Clause 3 of A-1 is illegal and violative of Part-III of the Constitution so far as it enables the respondents to overlook the merit on the basis of ownership of landed property, to direct respondents to make appointment to the post of Extra Departmental Branch Post Master(EDBPM for short), Thozhupadam, strictly in accordance with merit of candidates who appeared for the interview and in the alternative, to declare that the applicant is also entitled to be considered eligible for appointment as EDBPM, Thozhupadam, treating her as having the preferential qualification of ownership of landed property and direct respondents to consider her for appointment accordingly.

2. Based on the notification, the applicant applied for the post of EDBPM, Thozhupadam. She was called for interview along with 8 others. She has secured 708 marks, out of 1200 in SSC examination. In accordance with Clause 3 of A-1 notification, she produced certificate showing the independent income from tuition classes conducted by her on the date of interview. The 5th respondent has got only 217 marks out of 600 in the SSLC. It is learnt that the candidate with lesser mark is preferred because she had produced proof to show that there is income from land to her. Giving preference based on landed property, ignoring the merit of the candidates, is arbitrary. Applicant has landed property in her name.



3. Official respondents resist the O.A. contending that as per the provisions, preference will be given to candidates who have independent income from landed property. Applicant has not produced any document to show that she was having independent income.

4. The 5th respondent contend that she has acquired 320 marks out of 600 in the SSLC examination. The averment to the contra in the O.A. is false. She was selected considering her better merit and her selection cannot be said to be one made giving preference for her independent income from landed property.

5. In the reply statement, it is stated that the interview/selection for the post in question took place on 16.3.1999. That is not disputed by the applicant.

6. This R-2 is an income certificate issued by the Tahsildar, Talappilly and produced by the applicant before the authority concerned. It says that the applicant's family has got a total annual income of Rs.12,000/-. What is required is not the family income, but independent income, since the requirement is the applicant's adequate means of livelihood. So R-2 cannot be of any help to the applicant and based on R-2, the applicant cannot say that the applicant has got adequate means of livelihood by way of independent income.



7. In para 4.4 of the O.A. it is stated thus:

"In accordance with the Clause 3 of the A-1 notification, the applicant produced certificate showing independent income from tuition classes conducted by her on the date of interview."

There is no iota of evidence to show that the applicant had produced any certificate showing any independent income by conducting tuition or otherwise on the date of the interview. A-4 is relied on by the applicant. It is dated 12.7.99. There it is stated that what is shown in R-2, the income certificate, should be read and understood as the independent income of the applicant. The applicant cannot seek an appointment by putting the cart before the horse. It is very much evident that the applicant had not produced any certificate showing independent income from tuition classes conducted by the applicant as on the date of the interview. That being so, it is very clear that the applicant is pretty well aware what is stated in the O.A. is not true and has come forward with a false averment. When a party makes a false averment, it can be said that it is with the intention to mislead the Tribunal. He who deliberately attempts to mislead the Tribunal should face and suffer the consequence. The consequence is dismissal of the O.A. It is needless to say that one who approaches the Tribunal should come with clean hands.



8. The first relief sought is to declare Clause 3 of A-1 to the extent it gives preference to those who have got landed property. The condition prescribing preference for candidates having income from landed property has been struck down by this Bench of the Tribunal in O.A.1514/97. That being so, it is unnecessary to grant the declaration sought.

9. The second relief sought is to direct the respondents to make appointment to the post of EDBPM, Thozhupadam strictly in accordance with the merit of the candidates who appeared for the interview. Here the authority concerned has acted in accordance with the departmental instructions with regard to the selection of EDBPM. One of the conditions is that the candidates should have independent means of income. The applicant has admittedly, no independent income as on the date of the selection. That being so, she cannot be selected. Making a selection could only be in accordance with the instructions in force, since there are no recruitment rules in force. There cannot be a direction to the contra. What the applicant means by merit, is the marks obtained in the Matriculation Examination. Even if the applicant has got more marks than the private respondent, unless the applicant satisfies the other eligibility conditions, she cannot be selected.

10. There is an alternative relief sought to declare that the applicant is entitled to be considered as eligible for appointment as EDBPM, Thozhupadam, treating her as having the

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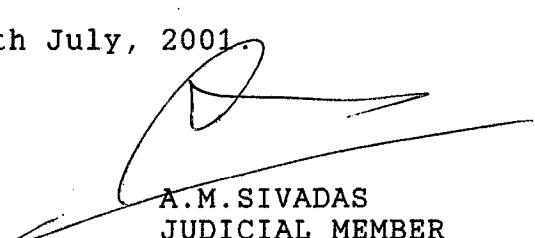
preferential qualification of ownership of landed property. It is not a matter to be deemed. It should be a matter of fact. It is not a matter of treating or presuming or deeming that one owns landed property. Owning landed property is fact. That apart, in the light of the ruling of this bench of the Tribunal in O.A.1514/97, the question of income from landed property does not assume importance. That being so, there is no necessity to treat the applicant as having preferential qualification of ownership of landed property.

11. R-2 also contains the application submitted by the applicant. There she has stated her annual independent income as Rs.6000/-. Now the stand of the applicant is that she has got annual independent income of Rs.12,000/-. R-2 also contains a declaration given by the applicant's husband wherein the annual family income is shown as Rs.35,000/-. This shows that the applicant has no inconsistent case with regard to the income, whether independent income or family income.

12. Accordingly, the O.A. is dismissed. No costs.

Dated, the 6th July, 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of the Memo No.B0/Thozhupadam issued by the 1st respondent dated 25.1.99.
2. A-4: True copy of the letter No.A4.17778/99 dated 12.7.99 issued by the Tahsildar to the applicant together with the English translation of the same.
3. R-2: True copy of the application together with documents attached to it submitted by the applicant.