

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 266 OF 2008

MONDAY, this the 15TH day of December, 2008.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Smt. Deepa Vinod
Gramin Dak Sevak Branch Postmaster
Vatanapally Beach PO, Trichur Division
Residing at "Kannikulangara House
Anthikad PO., Trichur District ... Applicant

(By Advocate Mr. Shafik M.A.)

versus

1. Union of India represented by the
Chief Postmaster General
Kerala Circle, Trivandrum
2. The Director of Postal Services
Central Region, Office of the Postmaster General
Central Region, Cochin
3. The Senior Superintendent of Post Offices
Thrissur Division, Thrissur ... Respondents

(By Advocate Mr. George Joseph)

The application having been heard on 02.12.2008, the Tribunal on 15.12.2008 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

An interesting question of law arises in this case. The Tribunal in its order dated 23rd September 1999 held that insisting upon 'independent income from landed or immovable property' at the time of application for the post of Extra Departmental Agent Branch Post Master, vide order dated 6th December, 1993 is unconstitutional. The Hon'ble High Court had, in its judgment dated 6th December, 2001, upheld the same. It was after about

36 months from the date of quashing of the said stipulation, that the D.G. Post by order dated 17th September, 2003, cancelled the already quashed stipulation contained in the aforesaid order dated 6th December, 1993. The question is as to the date from which the said stipulation is to be held as ineffective. Is it from the date when the Tribunal had held it as unconstitutional and hence quashed the same (i.e. 23rd September, 1999) or from the date of cancellation of the order by the D.G. Post (i.e. 6th December, 2003)? The legal validity of the appointment in January 2001, of the applicant who was not deriving any independent income from landed property or immovable assets, to the post of GDSBPM Vattanappalli Beach rests upon the answer to the above question.

2. Brief facts of the case. The appointment of the applicant as GDSBPM, Vattanappalli Branch Post Office was communicated vide order dated 16th January 2001 (Annexure A-1) and the applicant had taken up the job immediately thereafter. It was in June 2001, on a review of the appointment by the reviewing authority, that it was noticed that the applicant was appointed, despite the fact that the preferential condition of independent income from landed property or immovable assets was not fulfilled by her. As such, in June, 2001 the applicant was issued with a notice to show cause as to why her appointment should not be terminated, vide Annexure A-2. The applicant had given her explanation vide Annexure A-3 wherein she had emphasized that the pre-condition is only with reference to possession of adequate means of livelihood and here again, it has been held in the case of N. Shanmugasundaram vs Union of India 2000(2) ATJ 329 that this condition should be satisfied just before

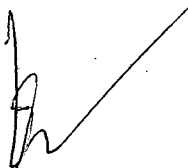
appointment (i.e. after selection). This requirement is fulfilled as she had been a partner in a business firm and in addition she had acquired immovable property by way of execution of a settlement deed dated 25th May, 2001. The applicant had moved this Tribunal in OA No. 590/2001 which was disposed of on 19th September 2003 holding, vide Annexure A-4 as under:-

"13. In the conspectus of the facts discussed above, we dispose of this application with a direction to the second respondent to consider the applicant alongwith other candidates who applied for the said post afresh with relative merits and other conditions as observed above and pass a speaking order with reference to the legal and factual position and if the applicant is found eligible and suitable for appointment, she may be appointed to the post of EDBPM, Vatanappally. This exercise shall be done within three months from the date of receipt of a copy of this order. Till then, the applicant shall be permitted to continue in the post of EDBPM, Vatanappally Beach Branch Office."

3. Review filed by the applicant was dismissed, vide Annexure A-5 order dated 07-05-2004.

4. In pursuance of the above said order dated 19th September, 2003, the applicant had passed the Annexure A-6 order dated 05-11-2003, which reads as under:-

"In the judgment dated 19.09.03 in O.A.No.590/2001 filed by Deepa Vinod, the Hon'ble Central Administrative Tribunal has directed the undersigned to consider the applicant alongwith the other candidates who applied for the post of Branch Postmaster, Vatanappally Beach PO afresh with relative merits and other conditions and pass a speaking order with reference to legal and factual position and to appoint the applicant if she is eligible and found suitable. The case file was accordingly called for and reviewed. It is seen from the file that the SSP, Thrissur Division had notified the vacancy to the Employment Exchange and also issued open notification. Short-listing was done by the SSP, based on the marks



obtained in SSLC by the candidates and the first 10 candidates were called for interview. Smt.P.Raji, who came first based on the marks did not have any income. For considering a candidate to the post of BPM he or she should have adequate means of livelihood. In this case, Smt.Raji did not have any income from any source. The second in the merit list is Smt.K.G.Krishnakumari, who got 410 marks out of 600 in SSLC. She has a personal annual income of Rs.28,000/- as per certificate issued by the Village Officer. The preferential condition for appointment as ED BPM that the candidate should have independent income derived from land or immovable property as struck down by the Hon'ble Central Administrative Tribunal in O.A 1514/97 and is therefore, not in existence. Hence, the selection as per existing conditions should go to Smt.K.G.Krishna Kumari. If she is still interested to take up the job and also if she agrees to reside within the delivery area of the BO and to offer accommodation for the PO, SSP, Thrissur Division may take necessary action accordingly. Even though for ED appointment no waiting list need be kept, in this particular case, if the above candidate is not interested to join the post or is not agreeable to the conditions stated, SSP may appoint Smt.A.D.Reetha, the 3rd in the merit list who is having 389 marks out of 600 in SSLC and who is having personal independent income as per the certificate issued by the Tahsildar received with the application, subject to the conditions that she is still having the income and she will reside within the delivery area of the BO and offer accommodation for the PO. In case Smt.Reetha also is not interested or does not satisfy the above conditions, the SSP may allow Smt. Deepa Vino, the applicant in the OA to continue as BPM, if she is residing within the delivery area of Vatanapally Beach PO. Action as above should be completed by the SSP, Thruissur Division within a period of three weeks and compliance reported. In case either Smt.K.G.Krishna Kumary or Smt.A.D.Reetha is appointed as BPM the services of Smt.Deepa Vinod will stand terminated in consequence of judgment referred to."

5. The applicant filed WP(C) No. 14664/2004 challenging the order dated 19th September 2003 (Ex. P5), Review order dated 05-05-2004 (Ex P 10) and order dated 05-11-2003 (Ex P-7). By an interim order dated 17th May 2004, the High Court stayed the impugned orders. Annexure A-7 refers. The writ petition was disposed of vide judgment dated 21st February 2008 wherein the High Court has held as under:-



" We find considerable force in the submission of the learned Senior Counsel that the Tribunal was only called upon to decide the validity of Annexure A-5 order, which was impugned in Ext.P1 Original Application. The Tribunal could have either dismissed the O.A holding that it is only a notice or could have quashed it, holding that the condition regarding income from the landed property has already been held to be unconstitutional by this Court. Instead of choosing one of the aforesaid options, ~~the~~ Tribunal had made a further enquiry into other collateral matters and gave a direction to the appointing authority to make a fresh selection. In that process, the selection and appointment of the petitioner stood set aside, without there being any challenge to it by the rival candidates or any decision of the reviewing Authority. We are of the view that the course followed by the Tribunal is plainly illegal. Accordingly, Exts.P5 and P10 orders are quashed. Ext.P7 begin an order passed, based on Ext.P5 order, same is also quashed. Since Annexure A-5 is only a notice, we leave it to the competent authority to take a decision in the matter. Instead of the Appointing Authority, we feel, the Reviewing Authority shall do that. The said Authority shall take a decision, after affording an opportunity of being heard to the petitioner and other affected parties, if any, as to whether it should stick to the stand taken by it earlier which led to issuance of Annexure A-5 order/notice. The Writ Petitioner shall produce a copy of this judgment before the Reviewing Authority within one month from today. The Reviewing Authority shall take a decision in the matter within two months from the date of receipt of a copy of this judgment."

6. It is in compliance with the above judgment of the High Court that the impugned Annexure A 1 has been passed and the same is as under:-

" I examined all the records and considered the submissions made by the petitioner and the other two affected parties. According to the instructions in force at the time of selection of the petitioner for appointment to the post of BPM, Vatanappally Beach, a candidate who had independent income derived from landed property or immovable assets had to be given preference in selection and appointment as BPM. The petitioner had no income derived from landed property or immovable assets as on 27.10.2000, the last date fixed for receipt of applications for the aforesaid post, by the SSP, Thrissur. The selection of the candidate for appointment as BPM was therefore erroneous. The preferential condition of income derived from landed property or immovable assets for selection of

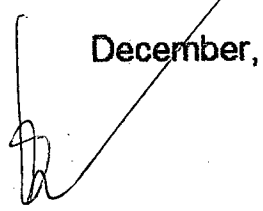


BPMs was in force till the condition was deleted by the DG Posts vide letter No.22-12/2001-GDS dated 19.09.2003. I am not competent to relax any of the conditions for recruitment to the post of BPM or any other Extra Departmental (now GDS) posts. I find no reason to deviate from the earlier stand which led to the issuance of the notice dated 5.6.2001 by the SSP, Thrissur. The erroneous selection and appointment of Smt. Deepa Vinod, petitioner, as BPM, Vatanappally Beach is hereby ordered to be cancelled. The appointing authority is directed to select the most meritorious candidate who satisfied the preferential condition regarding income derived from landed property or immovable assets, from among the candidates who attended verification of documents on 14.11.2000 for selection of BPM, Vatanappally Beach, adhering to the instructions for selection of BPMs in force as on 14.11.2000. Smt. Deepa Vinod may be relieved from the post of BPM, Vatanappally Beach when the selected candidate joins the post."

7. The applicant has challenged the legal validity of the above mentioned order on various grounds as contained in para 5 of the O.A.

8. Respondents have contested the OA. Their contention is that the applicant's income from share in the partnership in the firm cannot be taken as income from immovable or landed property and it was on this ground that the applicant has not fulfilled the pre-requisite of possession of independent income from landed or immovable property that the show cause notice was issued. The review conducted was in accordance with the provisions contained in order dated 13th November 1997 vide Annexure R-1.

9. Counsel for the applicant submitted that once the Court has declared as null and void of a provision as contained in order dated 6th December, 1993, the same comes into effect from the very moment the



judgment was passed. In the instant case, such a decision was pronounced by the Tribunal as early as 23rd September 1999. It was this decision that was upheld by the High Court by its order dated 6th December, 2001. Thus, the provisions contained in OM dated 6th December 1993 became non-est from that date and the formal order dated 17th September 2003 issued by the DG is one of formality. It cannot be construed to mean that the preferential condition existed till 16th September 2003 for, in that case it would amount to the decision of the Tribunal taking effect only if formal communication is issued by the D.G.

10. Counsel for the respondents invited the attention of the Tribunal to the contents of Annexure R-2 (which is the same as impugned order herein).

11. Arguments were heard and documents perused. When a judicial body strikes a particular administrative order as illegal, the said order becomes non-est from that very moment. Withdrawal of the said letter by the administrative authorities is only a formality or an information to all concerned about the lifelessness of that order from the date it was held as illegal. The pre-condition of having independent income from landed or immovable property had been laid down in order dated 6th December, 1993. The Tribunal, in its order dated 23rd September, 1999 in OA No. 1514/1997 considered the legal validity of this order. It has observed in that order, as under:-

8. *The larger point that calls for determination is this case is whether the stipulation contained in the letter of D.G., Posts*

dated 6.12.93 (Annexure-A8) that

"... However, it may be laid down that in the case of appointment of ED Sub Postmasters/Branch Post Masters preference may be given to those candidates whose 'adequate means of livelihood' is derived from landed property or immovable assets if they are otherwise eligible for the appointment. Heads of Circles may be asked to issue suitable instruction to the appointing authorities on these lines so that they could follow these while making appointments to the posts of EDSPM/EDBPM. In respect of other EDAs, the present 'adequate means of livelihood' will hold good."

Is ultra vires and unconstitutional and therefore void?

12. After duly considering the above issue, the Tribunal ultimately held as under:-

"The following stipulation in the letter of the D.G., Posts (Annexure A8)

'It is not necessary to quantify 'adequate means of livelihood.' However, it may be laid down that in the case of appointment of ED sub Postmasters/Branch Postmasters preference may be give to those candidates whose 'adequate means of livelihood' is derived from landed property or immovable assets if they are otherwise eligible for the appointment. Heads of Circles may be asked to issue suitable instructions to the appointing authorities on these lines so that they could follow these while making appointments to the posts of EDSPM/EDBPM. In respect of other EDAs, the present 'adequate means of livelihood' will hold good.

and the instruction contained in Annexure A-7 regarding that are declared as ultra-vires and unconstitutional and are quashed."

13. The department had taken up the matter in appeal before the High Court in OP No. 1422 of 2000(S) and the High Court in its judgment dated 6th December, 2001 has held as under:-

th

"The legality of the following stipulation laid down by the Director General of Post dated 6-12-1993 while considering the appointment of ED Sub Postmasters/Branch Post Masters is under challenge in all these cases:-


'in the case of appointment of ED Sub Postmasters/Branch Post Masters preference may be given to those candidates whose 'adequate means of livelihood' is derived from landed property or immovable assets if they are otherwise eligible for the appointment. Heads of Circles may be asked to issue suitable instruction to the appointing authorities on these lines so that they could follow these while making appointments to the posts of EDSPM/EDBPM. In respect of other EDAs, the present 'adequate means of livelihood' will hold good.'

.....
Tribunal repelled the contention and found that stipulation made by Director General of Posts that preference should be given to those candidates who have independent means of livelihood and income derived from the landed property or immovable assets is illegal and violative of Article 14 of the Constitution of India. ...

.....
We do not find any discernible principle emerging from the stipulation that preference would be given to those who have landed property or immovable assets, and that their adequate means of livelihood is derived from those sets. People..... The classification therefore made between person who have landed and other immovable assets deriving income for adequate livelihood and others is therefore, discriminatory and illegal. We declare so.

We, therefore, uphold the decision of the Tribunal in all these cases and dismiss the writ petitions."

14. Thus, the stipulation as in order dated 6th December, 1993 of the D.G. Post, declared as unconstitutional and hence quashed by the Tribunal in its order dated 23rd September 1999, which declaration has been upheld by the High Court in its order dated 6th December, 2001, stood already removed from the said order of the D.G. As such, further cancellation of that provision in a later order of the D.G. cannot mean that the said stipulation had been alive till the cancellation of the order by the D.G.

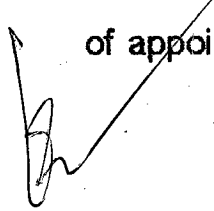


15. In the instant case, the selection of the applicant as GDS had taken place in January, 2001 when she did not fulfill the pre-condition of independent income from landed property or immovable assets. Since by that time, the decision of the Tribunal was already pronounced, the pre-requisite condition cannot be said to have existed at the time of the appointment of the applicant. Hence, there is no question of her appointment being held to be illegal.

16 The Director of Postal Services vide the order dated 9th May 2008 has held as under:-

" The preferential condition of income derived from landed property or immovable assets for selection of BPMs was in force till the condition was deleted by the DG Posts vide letter No. 22-12/2001-GDS dated 17th September, 2003. I am not competent to relax any of the conditions for recruitment to the post of BPMs or any other Extra Departmental (now GDS) posts. I find no reason to deviate from the earlier stand which led to the issuance of the notice dated 5-6-2001 by the SSP, Thrissur. The erroneous selection and appointment of Smt. Deepa Vinod, petitioner, as BPM, Vatanappally Beach is hereby ordered to be cancelled. The appointing authority is directed to select the most meritorious candidate who satisfied the preferential condition regarding income derived from landed property or immovable assets, from among the candidates who attended verification of documents on 14-11-2000 for selection of BPM, Vatanappally Beach, adhering to the instructions for selection of BPMs in force as on 14-11-2000. Smt. Deepa Vinod may be relieved from the post of BPM Vatanappally Beach when the selected candidate joins the post. "

17. The above order being based on the premises that as on the date of appointment of the applicant in 2001, the pre-condition of independent



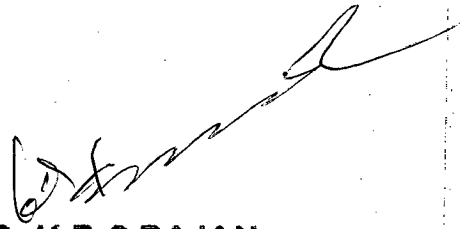
income derived from landed property did exist, whereas it did not, is patently illegal and unjust. Hence, the said order dated 9th May 2008 impugned in this OA is hereby quashed and set aside.

18. In the result the **O.A. is allowed**. Respondents are directed not to disturb the appointment of the applicant to the post of GDSBPM Vatanappally Beach on the score of her not having any independent income from landed property or immovable assets on the date of application in November, 2000.

19. No cost.

Dated, the 15th December, 2008.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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