

Suman Verma vs Union Of India & Others on 24 September, 2004

Equivalent citations: 2004 (8) JT 19, AIR 2004 SUPREME COURT 4800, 2004 (12) SCC 58, 2004 AIR SCW 5490, 2004 LAB. I. C. 4045, 2004 AIR - JHAR. H. C. R. 3015, 2005 (1) SERVLJ 380 SC, (2004) 8 JT 19 (SC), (2005) 1 SERVLJ 380, (2005) 1 JCR 63 (SC), 2004 (8) SCALE 153, 2004 (3) BLJR 2219, 2004 (6) SLT 234, 2004 (9) SRJ 326, (2004) 4 RAJ LW 602, (2005) 1 SCT 642, (2004) 6 SERVLR 138, (2004) 8 SUPREME 111, (2004) 8 SCALE 153, (2004) 4 ALL WC 3381

Bench: Arijit Pasayat, C.K. Thakker

CASE NO.:

Appeal (civil) 6275 of 2004

PETITIONER:

SUMAN VERMA

RESPONDENT:

UNION OF INDIA & OTHERS

DATE OF JUDGMENT: 24/09/2004

BENCH:

Arijit Pasayat & C.K. Thakker

JUDGMENT:

J U D G M E N T (Arising from Special Leave Petition (civil) No. 8809 of 2004) Thakker, J.

Leave granted.

The present appeal is filed against the judgment and order dated April 2, 2004 passed by the High Court of Judicature at Patna in C.W.J.C. No.4106 of 2004. By the said order, the High Court confirmed the order passed by the Central Administrative Tribunal ("CAT" for short) Patna Bench, Patna on March 9, 2004 in Original Application No.307 of 1997.

The case of the appellant herein is that she passed her Matriculation Examination from Bihar School Examination Board, Patna in 1983 in Second Division securing 531 marks out of 900 marks. She passed B.A. with Honours from Muzaffarpura in 1st Division in 1988. In the year 1996, she got her name enrolled with the Employment Exchange. She was possessing agricultural land of 10 Kathas having purchased from one Dwarka Prasad by a registered sale deed dated 1st March, 1995. She was also having a residential house in village Khajuhathi.

According to the appellant, a post of Extra Departmental Branch Post Master ("EDBPM" for short), Khajuhathi Post Office, Block Manjhi fell vacant as the EDBPM, Post Office, Khajuhathi got promotion. A notification was, therefore, issued for filling of the said vacancy and names of eligible candidates were called from Regional Employment Exchange, Chhapra vide a letter dated 14th October, 1996. According to the appellant, nine names were sent by the Employment Exchange. The appellant was found eligible, qualified and most suitable. Accordingly, the appellant was appointed to the said post by an order dated December 13, 1996. Since then, she is working as EDBPM, Khajuhathi.

The appellant stated that though respondent No.6 was neither eligible nor qualified to be appointed as EDBPM, she was aggrieved by the appointment of the appellant and the action taken by the authorities and approached the Central Administrative Tribunal (CAT) by filing Original Application challenging the appointment of the appellant. It was contended by respondent No.6 before the CAT that though she was eligible and qualified and was more meritorious inasmuch as she had obtained 584 marks out of 900 marks as against the appellant who had obtained 531 marks at the Matriculate examination, she was not appointed. It was also her case that she possessed agricultural land as required and proof of having possessed such agricultural land was produced by her. It was, therefore, obligatory for the authorities to consider her case and she ought to have been preferred as against the appellant.

The CAT after considering the rival contentions of the parties, allowed the petition holding that the case of the applicant before the CAT (respondent No.6 herein) had been ignored on flimsy grounds keeping aside the merits of the contesting candidates. Resultantly, the order dated 13th December, 1996 was set aside by the CAT and a direction was issued to appoint respondent No.6 (applicant before the CAT) forthwith. The Tribunal also observed that since respondent No.6 (appellant herein) was working since several years, on account of delay in disposal of the Original Application, the authorities were directed to consider if she could be appointed "in the vicinity if and when such vacancy arises" provided she is otherwise fit and eligible for such appointment.

Being aggrieved by the order passed by the CAT, the appellant approached the High Court of Patna. The High Court, however, confirmed the decision of CAT and dismissed the petition. Against the said decision, therefore, the appellant has approached this Court.

We have heard the learned counsel for the parties. Mr. Goswami, learned senior counsel for the appellant strenuously urged that respondent No.6 was neither eligible nor qualified to be appointed as EDBPM and she was, therefore, rightly ignored by the authorities. Drawing the attention of the court to the notification issued by the authorities, the counsel submitted that it was absolutely necessary that the candidate must have possessed sufficient landed property in his/her name and he/she was required to produce the relevant record in token of having possessed such property. In the instant case, respondent No.6 did not possess immovable property and the said fact was duly considered by the authorities in its proper perspective and a decision was taken that she was not eligible. The CAT ought not to have interfered with such a decision and should not have issued direction to the authorities to appoint her. The order, therefore, deserves to be set aside. It was also argued that a totally irrelevant and extraneous factor was kept in mind by CAT of marks obtained by

two candidates at the Matriculation Examination. The counsel submitted that the necessary educational qualification was passing of Matriculation Examination and not marks obtained in the said examination. Once a candidate is eligible, his case is required to be considered in accordance with the guidelines and norms fixed by the Department and there can be no "preference" of one over the other. The said fact, therefore, should not have weighed with the authority and on that ground also, the decision is vulnerable. It was contended that a direction was issued by CAT to "appoint" respondent No.6. No such direction could have been issued by CAT even if it was satisfied that the action taken by the authorities was not in consonance with law. The limited direction which could be issued could be to set aside the decision taken by the authorities and to consider the matter afresh in accordance with law. Finally, it was submitted that the appellant was found to be most suitable by the authorities and was appointed as early as in 1996. About eight years are over and she is working as EDBPM. If at this stage, the appointment is cancelled, serious prejudice will be caused to her. It was, therefore, urged that even if this Court is of the view that the action taken by the authorities could not be termed legal or lawful, in peculiar facts and circumstances of the case, the appointment of the appellant may not be cancelled.

Mr. Harish Chandra, learned senior counsel for the Union of India supported the case of the appellant. It may, however, be stated that the authorities have not challenged the decision of CAT before the High Court or in this Court.

Mr. Amit Pawan, the learned counsel for respondent No.6, on the other hand, supported the order passed by the Tribunal and confirmed by the High Court. It was urged that respondent No.6 was eligible and qualified. She possessed agricultural property as per the requirement of the Notification. Referring to the conditions in the Notification issued by the Department of Posts, the counsel submitted that respondent NO.6 fulfilled all the conditions mentioned in the Notification. She was the permanent resident of the village. She had passed her Matriculate Examination and secured more marks than the marks secured by the appellant herein. She had adequate means of income from independent source of livelihood and necessary certificate had been produced by her. It was stated that pursuant to the gift deed dated October 14, 1996, she became the owner of agricultural land. The last date for submission of the applications was 12th November, 1996. Respondent No.6 became owner of agricultural land on October 29, 1996, i.e. before the last date of submission of application. The mutation entry, however, could be made on November 22, 1996. It is thus clear, submitted the counsel, that respondent No.6 became owner of immovable property prior to the last date of submission of application, but the mutation entry could be effected in Revenue Record subsequently. But from that, it cannot be said that respondent No. 6 did not possess agricultural land on the last date of submission of application. Entry in Revenue Record is immaterial so far as the title or ownership of the land is concerned. That fact, therefore, could not have been considered by the authorities and the CAT committed no error of law or of jurisdiction in setting aside the action of the authorities and directing them to appoint respondent No.6 as she was more meritorious. It was also submitted that since the relevant education qualification is Matriculation, marks obtained at the said examination would indeed be relevant and the Tribunal was wholly justified in placing reliance on marks obtained at the said examination. The order, therefore, required no interference. It was also confirmed by the High Court. Respondent No.6 had approached the CAT as soon as the action was taken by the department but CAT took time in final

disposal of the matter which should not come in the way of respondent No.6 in getting appropriate relief. In any case, appropriate observations have been made by the Tribunal to accommodate the appellant, if it is possible. The counsel, therefore, submitted that the appeal deserves to be dismissed.

Having heard the learned counsel for the parties and having gone through the record, we are of the view that the decision rendered by the CAT and confirmed by the High Court needs no interference. It is clear from the notification and the conditions laid down therein that both, appellant as well as respondent No. 6 were qualified. So far as education qualification is concerned, both have passed Matriculate examination. Clause D of the notification required a candidate to have passed Matriculate or equivalent examination. It also stated that no weightage would be given to higher qualification. It is thus clear that the authorities were to consider the factum of passing of Matriculation examination. From the record, it is further clear that whereas the appellant had obtained 531 marks out of 900 marks, respondent No. 6 had obtained 584 marks. Respondent No. 6 was thus more meritorious so far as marks obtained at the Matriculation examination was concerned. It may be stated at this stage that it is not even the case of the Department that respondent No. 6 did not possess requisite educational qualification.

The consideration weighed with the authority was that the appellant was having agricultural land in her name, while respondent No. 6 did not possess agricultural land and thus she was not eligible. Now, it is the case of respondent No. 6 that she had become owner of the agricultural land on the basis of the gift-deed dated October 14, 1996, before the last date of submission of application. Mutation entry could not be affected before 12th November, 1996 and it was done on 22nd November, 1996. CAT, in our opinion, rightly held that in the circumstances, it could not be held that respondent No. 6 did not possess agricultural land on the last date of submission of application form and it could not be said that she was not eligible.

Our attention in this connection was invited by learned counsel for both the parties to a decision in *Rekha Chatravarti v. University of Rajasthan* (1993) Supp. 3 SCC 168. In that case, an advertisement/notification was issued inviting applications for the post of Assistant Professors having requisite qualifications. Some candidates had no requisite qualification. They, however, acquired such qualification afterwards. The question before this Court was whether such candidates could be treated as qualified, eligible and having acquired necessary qualification at the relevant date. This Court held that the candidate must be qualified on the last date of making application for the post advertised or on the date specifically mentioned in the advertisement/notification. Qualifications acquired by a candidate after such date cannot be taken as qualification for the post and he cannot be appointed.

One of the guidelines issued by this Court reads;

"B. The candidates selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualifications acquired by the candidates after the said date should not be taken into consideration, as that would

be arbitrary and result in discrimination. It must be remembered that when the advertisement/notification represents that the candidate must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration." (emphasis supplied) Learned counsel for the appellant submitted that respondent No. 6 got her name mutated in Revenue Records on November 22, 1996 and that is the relevant date. Last date of submission of application was 12th November, 1996. The ratio laid down in Rekha Chaturvedi thus applies to the case on hand and as respondent No. 6 was not eligible, her case could not be considered.

In our considered opinion, however, the learned counsel for respondent No. 6 is right in submitting that respondent No. 6 had become owner of agricultural land in October, 1996. The relevant date for consideration was November 12, 1996 and before that date, she possessed such property. Rekha Chaturvedi, in our view, supports respondent No. 6 rather than the appellant. When respondent No. 6 became the owner of the property in October, 1996 before the last date of submission of application, she could be said to be possessing agricultural land and, hence, she was eligible. In our opinion, owning of agricultural property and getting the name entered in Revenue Record are two different and distinct things. Mutation entry does not confer right or title to the property. Though the law is very well settled, in our opinion, the CAT was right in relying upon the decision of this Court in Sawarni v. Inder Kaur and Others AIR 1996 SC 2823 wherein this Court held that mutation entry neither creates nor extinguishes title or ownership.

In view of settled legal position, in our judgment, CAT as well as the High Court were right in holding that though respondent No. 6 was eligible having possessed agricultural land, her case was ignored by the authorities and hence, the action was illegal and improper. In view of the fact that respondent No. 6 was more meritorious, since she had obtained more marks than the appellant, the direction of CAT to appoint her cannot be said to be illegal or unlawful. The said direction is, therefore, not interfered with. CAT has also referred to para 2 of the Executive Order dated May 10, 1991, issued by the Director General of Post, New Delhi, which reads thus;

"The deciding factor for the selection of ED BPMs/ED SPMs should be the income and property and not the marks, has been examined threadbare but cannot be agreed to as this will introduce an element of competitiveness in the matter of possession of property and earning or income for determining the merit of candidates for appointment as ED Agents. Proof of financial status is not only subject to manipulation but is also detrimental to merit. When the Constitution of India guarantees equal opportunity to all for their advancement, the reasonable course

would be offer ED employment to the person who secured maximum marks in the examination which made him eligible for the appointment, provided the candidate has the prescribed minimum level of property and income so that he has adequate means of livelihood apart from the ED Allowance."

Regarding appointment and continuance of the appellant for a period of almost eight years in service, it may be stated that respondent No. 6 had approached a competent Tribunal for ventilating her grievance immediately after the issuance of order in favour of the appellant. It was because of the pendency of the matter before the Tribunal that respondent No. 6 could not get the case decided and the matter finally adjudicated. The learned counsel for respondent No. 6 is, therefore, right in submitting that the said fact should not cause prejudice to respondent No. 6 who had approached the Tribunal in time. To us, the CAT is right in considering the matter in its entirety and in making observations that the case of the appellant herein be considered for appointment as EDBPM in the nearby vicinity if otherwise she is fit.

No doubt relying on Rekha Chaturvedi, the learned counsel for the appellant submitted that in that case this Court after holding the selection process unlawful, did not interfere with the action and refused to set aside illegal appointment on the ground that the case was heard after eight years. In the case on hand, however, respondent No. 6 had approached the Tribunal immediately, the Tribunal considered the facts and circumstances of the case and granted relief to respondent No. 6 and also made suitable observations so that the present appellant may be accommodated if possible. Moreover that order was confirmed by the High Court. We, therefore, see no reason to disturb that direction.

For the foregoing reasons, the appeal deserves to be dismissed and is, accordingly, dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.