

Bimla Devi vs State Of H.P. & Ors on 30 September, 2010

Equivalent citations: 2010 AIR SCW 6170, 2011 (2) AIR JHAR R 328, (2010) 4 LAB LN 634, (2010) 6 ALLMR 925 (SC), (2011) 128 FACLR 758, (2011) 2 CGLJ 2

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Bench: J. M. Panchal, R. V. Raveendran

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8428 OF 2010

[ARISING OUT OF SLP (C) NO.8030 OF 2006]

BIMLA DEVI

..... APPELLANT

VS.

STATE OF HIMACHAL PRADESH & ORS.

..... RESPONDENTS

JUDGMENT

R. V. RAVEENDRAN J.

Leave granted.

2. Applications were invited from eligible candidates, by the Himachal Pradesh Public Service Commission for filling up one post of Instructor (Dress Making). The essential qualification prescribed for the post was as follows :

"Qualification Essential :

(i) Matric with Mathematics or its equivalent from a recognized University/Board.

(ii) One year National Trade Certificate in Dress Making

and one year National Trade Certificate in Embroidery and Needle Work.

(iii) Central Training for Instructor (CTI) course of one year duration in the related trade i.e. Dress Making or Embroidery (or Trades for which Craft Training Instructor Training facility is not available, at least four years experience in the trade concerned in an Industrial Training Institute and or in reputed Industrial concern).

(iv) At least two years experience in the Trade concerned."

3. Out of the 60 applications received, 14 candidates including the appellant and the fourth respondent were found eligible and called for interview on 31.5.1999. The Himachal Pradesh Sub-ordinate Services Selection Board (third respondent) held the interviews and selected the fourth respondent for the post in pursuance of which she was appointed on 8.7.1999.

4. Being aggrieved by her non-selection, the appellant filed an application (OA No.2406 of 1999) before the Himachal Pradesh Administrative Tribunal challenging her non-selection. The appellant contended that the fourth respondent was ineligible for the post and could not have been appointed, as she did not have a National Trade Certificate in Dress Making, but had only a National Trade Certificate in Cutting & Tailoring. The respondents resisted the petition on the ground that fourth respondent was recommended for the post by the third respondent as it considered that the National Trade Certificate in Cutting & Tailoring was equivalent to the National Trade Certificate in Dress Making and that the fourth respondent had the other requisite qualifications. It was also contended that the training in Cutting & Tailoring trade was virtually the same as training in the Dress Making trade. The Tribunal dismissed the application filed by the appellant on the ground that the third respondent (Sub-ordinate Services Selection Board) constituted by the State Government had found that the fourth respondent possessed the requisite qualifications and had also found that the National Trade Certificate in Cutting & Tailoring held by the fourth respondent was equivalent to a National Trade Certificate in Dress Making; and that in the absence of any mala fides or other irregularities in the process of selection, there could be no interference. The Tribunal relied upon the decision in Durga Devi & Anr.

vs. State of H.P - 1997 (4) SCC 575, which followed the decision in Dalpat Abasaheb Solunke vs. Dr. B.S. Mahajan - 1990 (1) SCC 305. The appellant challenged the order of the Tribunal by filing a writ petition before the Himachal Pradesh High Court. The said writ petition was dismissed by the High Court a brief order dated 16.11.2005 that no ground was made out to interfere with the order of the Tribunal. The said order of the High Court is challenged in this appeal by special leave.

4. The appellant has produced before this Court the syllabus for Dress Making Trade course and syllabus for Cutting & Sewing Trade course. She has also produced the minimum qualifications prescribed for admission to Cutting & Tailoring course and the minimum qualifications for the

Dress Making Trade course. These show that both Dress Making course and Cutting & Sewing course are one year courses, but the entry qualification for the two courses are different. For Dress Making course, the minimum educational qualification is 10th Class (Pass), whereas for Cutting & Sewing course, the minimum educational qualification is 8th Class (Pass). The syllabus for the Dress Making trade is also different from the syllabus of Cutting & Sewing trade, though there are some common features. After going through the syllabi for the two courses and the prescribed entry qualification for the two courses, there is no doubt that the Dress Making course is qualitatively different from Cutting & Sewing course, though there are several common features. If the contention of the respondents that the trade of Dress Making and the trade of Cutting & Sewing are the same is correct, then there was no need for different training schemes for Dress Making and Cutting & Tailoring. There is therefore, considerable force in appellant's contention that the assumption by the respondents that the two courses are identical, is not sound. But the appellant did not produce these materials (that is syllabi and entry qualifications for the two trades) either before the Selection Board, or the Tribunal or the High Court. Further what is produced before us is the syllabus for Cutting and Sewing trade course and not for Cutting & Tailoring trade course which has been considered to be equivalent to the Dress making trade course. Be that as it may.

5. The question is whether the difference between the two courses is so material as to invite interference with the decision of the Tribunal affirmed by the High Court. The Tribunal has recorded a finding of fact that the Himachal Pradesh Sub-ordinate Service Selection Board had bona fide proceeded on the impression that a certificate in Cutting & Tailoring trade was equivalent to as a certificate in Dress-Making trade. The Tribunal also found that there were no mala fides or irregularities in the process of selection and the fourth respondent possessed all other required qualifications. It is possible that having regard to the job requirements, the Selection Board proceeded on the basis that the National Trade Certificate in Cutting & Tailoring is equivalent to National Trade Certificate in Dress Making. It is also possible that the Sub-ordinate Service Selection Board was not aware of different syllabi being prescribed for the two courses by the Directorate-General of Employment and Training, Govt. of India, and had assumed that they were similar. Unfortunately, the appellant did not produce these material (extracted from the Training Manual for Industrial Training Institutes) before the Tribunal or before the High Court. Nor did she object to the appointment of the fourth respondent by bringing the said material to the notice of the Selection Board or the State Government. The fourth respondent who has been appointed in the year 1999 has in the meanwhile continued in employment for more than eleven years.

6. This Court in *Dalpat Abasaheb Solunke* (supra), held as follows :

"It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides, affecting the selection etc. It is not disputed that in

the present case the University had constituted the Committee in due compliance with the relevant status. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."

In Durga Devi (supra), this Court held as follows :

".....the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the selection committee."

Therefore, if the Selection Board which prescribed the qualifications for the post, bona fide proceeded on the basis that a Trade Certificate in Cutting & Tailoring is equivalent to a Trade Certificate in Dress Making, and on that basis made the appointment, and that has been accepted by the Tribunal and the High Court as proper, we do not consider it a fit case for interference after 11 years, even if appellant has made out some difference between the two trades.

7. Another aspect to be noticed is that there is no material to show that if fourth respondent had been found to be ineligible, the appellant would have been selected for appointment. There were 14 eligible candidates and the appellant would not automatically become entitled to appointment even if there was any infirmity in the selection and appointment of the third respondent. Be that as it may.

8. On the peculiar facts and circumstances we do not therefore propose to interfere with the appointment of fourth respondent or the decisions of the Tribunal and the High Court affirming the same. The appeal is therefore dismissed.

.....J (R. V. RAVEENDRAN)J (J. M. PANCHAL) New Delhi;

September 30, 2010