

Purushottam vs Chairman, M.S.E.B. And Anr. on 11 May, 1999

Equivalent citations: [2000(84)FLR295], JT1999(9)SC334, (1999)6SCC49, 1999 AIR SCW 4747, 1999 (6) SCC 49, (1999) 4 LAB LN 61, (2000) 84 FACLR 295, (2000) 1 SCT 1121, 1999 SCC (L&S) 1050, (2000) 1 SERVLR 62, (1999) 10 SUPREME 474, (2000) 1 CURLR 450, (1999) 9 JT 334 (SC)

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Bench: U.C. Banerjee

ORDER

1. Leave granted.

2. These appeals are directed against the judgment of the Bombay High Court dated 3-8-1995 refusing to issue a mandamus to the respondents to recruit him to the post to which he was selected as well as against the order refusing to review the said judgment dated 3-8-1995. The appellant undisputably was selected for the post of Assistant Personnel Officer meant for a Scheduled Tribe category. He had produced the certificate of the Magistrate indicating that he belongs to 'Halba' caste which is undoubtedly the Scheduled Tribe, but the employer in accordance with the procedure prescribed referred his case to the Caste Scrutiny Committee for verification. The said committee being of the opinion that the appellant does not belong to Halba caste denied him the right to be employed notwithstanding his selection for the post in question. The said order of the Scrutiny Committee was upheld in appeal but a writ petition being carried, the High Court in WP No. 445 of 1993 came to the conclusion that the appellant does belong to the Halba caste and therefore he was kept illegally out of employment. The High Court, therefore, directed the employer Maharashtra State Electricity Board to consider the case of the appellant for appointment to the post of Assistant Personnel Officer for which he had been duly selected. After the said judgment the appellant approached the authority but the authority not having given the appointment in question, he again moved the High Court. By the impugned judgment, the High Court was persuaded to accept the contention of the Maharashtra State Electricity Board that in the meantime somebody else has been appointed to the post and as such there is no vacancy and further in terms of Regulation 29 the panel of selected persons in which the appellant was included has expired and therefore there is no legal right of the appellant to be enforced with by issuance of a mandamus. .

3. Mr. Deshpande the learned Counsel appearing for the appellant contends that the appellant having been duly selected for the post in question and being illegally kept out of the appointment on account of the so-called decision of this screening committee, once the High Court reversed the decision of the screening committee his right to be appointed cannot be taken away on the ground either of expiry of the panel under Regulation 29 or that of non-availability of post, some other person having been appointed. Mr. Bhasme, the learned Counsel appearing for the Board, on the other hand, contended that subsequent to the earlier order of the High Court, the appellant did

move in a contempt petition and that contempt petition was dropped which would substantiate the stand of the Board that they have not violated the Court's direction and therefore in the absence of any vacancy the question of any appointment to the post would not arise.

4. In view of the rival submission the question that arises for consideration is whether a duly-selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr. Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature.

5. The appeals are allowed.