

District Collector And Chairman ... vs M. Tripura Sundari Devi on 20 April, 1990

Equivalent citations: 1990 SCR (2) 559, 1990 SCC (3) 655, AIR ONLINE 1990 SC 73, 1990 (3) SCC 655, 1990 SCC (L&S) 520, (1990) 9 SERV LR 237, (1990) 1 CUR LR 770, (1990) 2 SERV LJ 95, (1990) 2 LAB LJ 153, (1990) 1 LAB LN 806, (1990) 1 KER LT 99, (1990) 14 ATC 766, (1990) 2 JT 169.2, 1990 UJ(SC) 1 710, (1990) 2 JT 169(2) (SC), 1990 UJ(SC) 710

Author: P.B. Sawant

Bench: P.B. Sawant, Kuldip Singh

PETITIONER:

DISTRICT COLLECTOR AND CHAIRMAN VIZIANAGARAM(SOCIAL WELFARE

Vs.

RESPONDENT:

M. TRIPURA SUNDARI DEVI

DATE OF JUDGMENT 20/04/1990

BENCH:

SAWANT, P.B.

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SAWANT, P.B.

KULDIP SINGH (J)

CITATION:

1990 SCR (2) 559

1990 SCC (3) 655

JT 1990 (2) 169

1990 SCALE (1) 806

ACT:

Constitution of India 1950: Article 16---Public services--Recruitment to--Qualifications mentioned in advertisement--Not relaxable unless clearly specified in the advertisement.

Civil Services: A.P. Government--Appointment of Grade I and Grade H Teachers--Appointment made in disregard of qualifications mentioned in advertisement--illegal.

HEADNOTE:

Pursuant to a newspaper advertisement by the State Government calling for applications for Grade-I and Grade-II

teacher posts (Post Graduate Teacher and Trained Graduate Teachers) the respondent in the appeal applied for the same.

The qualification prescribed in the advertisement was a second class degree in M.A. However, the respondent who held a third class degree in M.A. was selected, and an order was issued appointing her as a Post Graduate Teacher in Hindi, subject to the production of original certificates, and compliance with the other necessary formalities. When the respondent approached the authorities with her certificates, it was noticed that she was not qualified for the post, and was, therefore, not allowed to join service.

The respondent approached the State Administrative Tribunal for relief, which held that the appellants had issued the order of appointment knowing fully well that she was not qualified, and that she was selected for appointment because there was no other candidate available with better marks, and passed an Order directing the appellants to allow the respondent to join duty and pay her salary from the date she reported for duty.

The appellants appealed to this Court. Allowing the appeal, HELD: 1. When an advertisement mentions a particular qualification and an appointment is made in disregard of the same,

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it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. [562F]

2. It amounts to a fraud on the public to appoint persons with inferior qualifications unless it is clearly stated in the advertisement that the qualifications are relaxable. [562G]

3. No Court should be a party to the perpetuation of the fraudulent practice. The State Administrative Tribunal lost sight of this fact in the instant case. [562G]

4. It is common knowledge that sometimes either by mistake or otherwise the notes put up before the Selection Committee contain erroneous data prepared by the office and sometimes the Selection Committee proceeds on the basis that all those who appear before it, are otherwise qualified. However, the second stage at which the documents are scrutinised is when the higher authorities go through them at the time the candidate concerned approaches them for resuming duties along with the original certificates. It is at that stage that the mistake in the instant case was discovered, and the respondent was not permitted to resume her duties. There is nothing wrong in such action. [562B-C]

[The Court felt it would be unjust to deprive the respondent of the post at this stage, as she had subsequently acquired another degree in M.A. with second class and thereby qualified herself to be appointed, that she may be over-

aged for the post and many who were underqualified were appointed to the post earlier, and directed that she be appointed in the post from the beginning of the academic year 1990-1991.] [563B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2559 of From the Judgment and Order dated 31.8.1987 of A.P. Administrative Tribunal, Hyderabad in R.P. No. 393 i of 1987. K. Madhva Reddy and G. Prabhakar for the Appellants. Y.P. Rao for the Respondent.

The Judgment of the Court was delivered by SAWANT, J. The admitted facts in the present case are that the respondent applied for Grade-I and Grade-II teacher posts (Post Graduate Teacher and Trained Graduate Teacher posts respectively) in September, 1985 pursuant to a news- paper's advertisement calling for applications for the said posts. Admittedly, the qualification prescribed in the advertisement for the said posts was a second class degree in M.A., and the respondent held a third class degree in M.A. However, it appears that on December 27, 1985, an order was issued wrongly by the first appellant appointing her as a Post Graduate Teacher in Hindi. The order stated that her appointment was subject to the production of original certificates and to the compliance with the other necessary formalities. When pursuant to the order, the respondent approached the authorities with the certificates, it was noticed that the respondent was not qualified for the post. She was, therefore, not allowed to join the service, and was sent back.

2. The respondent thereafter approached the Andhra Pradesh Administrative Tribunal at Hyderabad representing to the Tribunal that pursuant to the order of December 27, 1985 she had joined her duties on January 2, 1986 and that she should be allowed to continue in service with all the benefits from that day. The Tribunal passed the impugned order directing the appellants to allow her to join the duties and to pay to her salary from the date she reported for her duties in compliance with the order of December 27, 1985. The Tribunal also awarded costs against the appellants.

3. We are of the view that the Tribunal is clearly in error. The reasons given by the Tribunal in support of its order are, firstly, that the appellants had issued the order of appointment knowing fully well that she was not qualified, and secondly, that she was selected for the appointment because there was no other candidate available with better marks.

4. It has been brought to our notice during the course of the arguments that the original selection was made by mistake on the presumption that the respondent had satisfied the qualification requirements as stated in the advertisement, without scrutinising the certificates copies of which were sent with her application. The Selection Committee presumed that all those who had applied in response to the advertisement must have had the requisite qualifications needed for the posts. However, the order appointing the respondent had made it clear that the respondent should come along with the original certificates. When the respondent approached the appellants with the originals of the certificates which were scrutinised, it was found that in fact she was short of the

qualifications. It is in these circumstances, that she was not allowed to join the service. It cannot, therefore, be said that the appellants had selected the respondent with the knowledge that she was under-qualified. According to us, there is a good deal of force in this contention. It is common knowledge that sometimes either by mistake or otherwise the notes put up before the Selection Committee contain erroneous data prepared by the office, and sometimes the Selection Committee proceeds on the basis that all those who appear before it, are otherwise qualified. However, the second stage at which the documents are scrutinised is when the higher authorities go through them at the time the candidate concerned approaches them for resuming duties along with the original certificates. It is at that stage that the mistake was discovered in the present case and the respondent was not permitted to resume her duties. We see nothing wrong in this action.

5. The observation of the Tribunal that there were no other candidates available with better marks is, in the circumstances, a halftruth because assuming that she had better mark among those who had applied, it seems that no one with second class had applied or the applications only of the third-class candidates were considered. If so, they were the applications of those third-class candidates who had applied and not of all those who would have applied had the advertisement given an indication that those with a third-class degree could also apply.

6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.

7. We are, however, informed that the respondent subsequently acquired another degree in M.A. with second class and has qualified herself to be appointed to the said post. Whatever the merits of the decision given by the Tribunal, we cannot forget that she was entitled to rely upon it till this time where she had succeeded. She was not allowed to join service on January 2, 1986 and thereafter she had approached the Tribunal in January 1987. The decision of the Tribunal was of 31st August, 1987 and thereafter the present Civil Appeal was pending in this Court from December 1987 till this day. Considering the fact that she is compelled to serve, that she has acquired the requisite qualification, that today she may be overaged for the post and the further fact that many who were underqualified were appointed to the post earlier, we feel that it will be unjust to deprive her of the post at this stage. We, therefore, set aside the impugned order of the Tribunal but allow the appeal partially and direct that the respondent should be appointed in the post from the beginning of the ensuing academic year 1990-

91. Since Shri Madhav Reddy contended that there is no vacant post at present, we further direct that, if necessary, a post be created to accommodate her. She will, however, not be entitled to any benefits including back wages till her appointment.

The parties will bear their own costs.

N.V.K.
allowed.

Appeal