

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 7065 of 2005

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ORDER: (per Hon'ble Sri Justice G. Chandraiah)

The writ petitioner is aggrieved by the action of the respondents in not appointing him as Lower Division Clerk in the 3rd respondent's office.

2. Filtering the averments in the writ affidavit, the pleaded case of the petitioner is as follows:

The 3rd respondent issued a notification on 04.09.2000 calling for applications for filling up the post of Lower Division Clerk in Military Engineering Service. The petitioner, who was serving as a regular Mazdoor in the office of the 4th respondent i.e. DGNP (Vizag), submitted his application for the said post. A written test was conducted on 28.11.2000, followed by an interview on 29.11.2000. Though the petitioner was selected, appointment orders were not issued on the ground that he was serving in the office of the 4th respondent. The petitioner made a representation to the authorities on 11.07.2001, but there was no response. Aggrieved thereby, the petitioner approached the Tribunal by way of filing OA No.1660 of 2001. The Tribunal, by its orders dated 02.01.2002, disposed the OA directing the respondent authorities to consider the representation dated 11.07.2001 submitted by the petitioner. Pursuant to the direction of the Tribunal, the 3rd respondent, vide his letter dated 15.05.2002, rejected the representation of the petitioner. Challenging the rejection,

the petitioner filed OA No.1104 of 2002 seeking to direct the respondent authorities to consider his candidature for appointment as Lower Division Clerk. The Tribunal, by its orders dated 21.07.2003, allowed the OA, the operative portion of which reads as under:

“In the result, this OA is allowed setting aside the impugned order dt. 15.5.2002 declaring the same as arbitrary, illegal and unjust and directing the respondents to consider the candidature of the applicant for the post of LDC in MES and to appoint him for the said post if he is found selected on the basis of the merit subject to the approval of the selection proceedings by the competent authority. It is further made clear that if any ban is imposed in respect of he recruitment for the post pertaining to the selection made in the year 2000, the case of the applicant is to be considered as and when the ban is lifted for the available post under OBC category and if the ban imposed does not apply to the above said selection of the year 2000, the respondents shall consider the candidature of the applicant for the said post.”

Alleging that the respondent authorities have not complied with the orders of the Tribunal in OA No.1104 of 2002, inasmuch as the respondents have not appointed him as Lower Division Clerk, the petitioner moved a contempt petition before the Tribunal in C.P.No.64 of 2004. The respondent authorities filed their written statement stating that pursuant to the orders of the Tribunal in OA No.1104 of 2002, the candidature of the petitioner was considered, but no appointments could be made against the notification published in the year 2000 as the selection proceedings itself were not approved by the competent authority and that the ban imposed on the recruitment was also not lifted.

The Tribunal, after hearing both the sides, passed orders dated 09.12.2004, dismissing the contempt case by observing that though the order passed by the Tribunal in OA No.1104 of 2002 was a direction to the respondents to consider the candidature of the petitioner for appointment as Lower Division Clerk, but since the selection

proceedings pertaining to the recruitment notification of the year 2000 itself were not approved by the competent authority, the respondent authorities could not make appointments and hence it cannot be said that the respondents have disobeyed the orders of the Tribunal. The Tribunal, in its orders dated 09.12.2004 in the contempt petition, further observed that the remedy of the petitioner is to approach the Tribunal on the original side i.e., by way of filing an OA, seeking a direction to the competent authority to approve the selection proceedings, if so advised.

The petitioner again approached the Tribunal by way of filing OA No.102 of 2005. The Tribunal, by its orders dated 09.02.2005, rejected the application of the petitioner by holding that until and unless the selection proceedings pertaining to the recruitment notification are approved by the competent authority, the petitioner cannot claim any right of appointment. The Tribunal further observed that though the petitioner may be right in taking the plea that in spite of a ban, posts were advertised, but that plea by itself is no ground to give a direction to the respondent authorities to appoint the petitioner, as even after a person is selected, he has not inherent right for appointment.

Calling in question the legality of the orders passed by the Tribunal in OA No.102 of 2005, dated 09.02.2005 and also the action of the 3rd respondent in rejecting the candidature of the petitioner for appointment as Lower Division Clerk, by letter No.11500/285/124/E1LC dated 19.08.2004, the petitioner seeks a writ of mandamus directing the competent authority to approve and issue appointment orders to the petitioner as Lower Division Clerk against the recruitment notification of the year 2000.

3. Heard.

4. The precise case of the petitioner is that though he appeared for the selection process for the post of Lower Division Clerk against

the recruitment notification of the year 2000 issued by the 3rd respondent, the respondent authorities have not considered his candidature for appointment to the post. As can be culled out from the pleadings and submissions made, it is clear that the petitioner approached the Tribunal and the Tribunal directed the respondent authorities to consider the candidature of the petitioner if he is found eligible, and subject to the condition that the selection process is approved by the competent authority. The stand of the respondent authorities is that though tests were conducted, the selection process was not approved by the competent authority and the ban that was imposed on recruitment was not lifted and hence no appointments could be made against the notification issued in the year 2000.

5. It is the consistent stand of the respondent authorities that the selection process was not approved by the competent authority and the ban on recruitment was not lifted. In that view of the matter, the question of directing the respondent authorities to appoint a candidate who has taken part in the said selection process, which was not approved, does not arise. Further, no material is placed before us to show that the selection process was approved by the competent authority or that the ban on recruitment has been lifted. Hence, we do not find any infirmity in the impugned orders warranting interference exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

6. The writ petition is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

22nd December, 2015

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