

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 04.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.7734 of 2015
and M.P.No.1 of 2015

1. Union of India,
Rep. by the Director of Postal Services,
O/o. Postmaster General,
Southern Region (TN),
Madurai - 625 002.

2. Senior Superintendent of Post Offices,
Dindigul Division,
Dindigul - 624 001.

3. Assistant Superintendent of Post Offices,
Palani Sub Division,
Palani - 624 601. ... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104

2. M.Mahudeeswaran ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for a writ of certiorari, calling for the records from the file of the 1st respondent made in O.A.No.638 of 2012 dated 26.08.2014 and quash the same.

For Petitioners: Mr.Su.Srinivasan

For Respondents: Mr.R.Malaichamy (for R2)

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to the order passed in O.A.No.638 of 2012 dated 26.08.2014 on the file of the Central Administrative Tribunal, Madras, by which directions have been

issued to reinstate the 2nd respondent in service, but reposting would be with prospective effect.

2. Facts deduced from the material on record are that on 10.10.2011, the Assistant Superintendent of Post Offices, Palani Sub Division, Palani, the 3rd petitioner, issued a notification inviting applications for selection and appointment to the post of GDS MD-I, Ambiligai SO. The 2nd respondent applied for the post. Eligible candidates were called for interview on 01.12.2011. Out of three, one candidate did not attend the interview. Mr.K.Muruganandam, was provisionally selected as GDS MD-I. But, he did not join the post. Therefore, the 2nd respondent was provisionally appointed as GDS MD-I with effect from 17.12.2011, by the Assistant Superintendent of Posts, Palani, the 3rd petitioner.

3. When the matter stood thus, the 2nd respondent was abruptly terminated under Rule 8 (2) of GDS (Conduct and Engagement) Rules, 2011 vide order dated 28.05.2012 of the office of the Assistant Superintendent of Post Offices, Palani Sub Division, Palani, holding additional charge of Inspector of Posts, Vedasandur Sub Division. The said order has been challenged in O.A.No.638 of 2012, with a consequential prayer to set aside the same and for a direction to the petitioners/Appellants, to reinstate the 2nd respondent in service.

4. Before the Central Administrative Tribunal, petitioners have submitted that pursuant to the notification dated 10.10.2011, 10 applications were received. No candidate was sponsored by the Employment Exchange, Dindigul. All the 10 applications were duly verified and 5 candidates were short-listed for the vacancy and they were called for certificate verification on 01.12.2011. The order of merit as per the marks secured in SSLC, as tabulated in the counter affidavit, is extracted hereunder.

Sl.No	Name of the Candidate	Community	Marks in X standard
1	K.Muruganandam	BC	458
2	S.Suresh	BC	449
3	M.Magudeeswaran	OBC	407
4	R.Satishkumar	BC	378
5	M.Hamsaladevi	OBC	339

5. The petitioners have further submitted that out of five candidates called for certificate verification, on 09.12.2011 four candidates, attended the same. Candidate S.Suresh did not attend the certificate verification. Mr.M.Murgunandam, who secured higher marks of 458/500 was provisionally appointed as GDS MD-I. However, he submitted his resignation on 10.12.2011. Therefore, the 2nd respondent

who was in the 3rd position was offered provisional appointment.

6. The petitioners have submitted that complaints from local public of Ambilikai Village and nearby area were received alleging irregularities in the selection of GDS MD-I. Taking note of the same, the Director of Postal services, O/o. Postmaster General, Southern Region, Madurai, ordered for an enquiry into allegations made in the complaints and also to the selection and appointment of Shri M.Magudeeswaran as GDS MD-I, Ambilikai SO. On enquiry, it was found that the selection was not done, following the recruitment procedure by the appointing authority viz., Inspector of Posts, Vendasandur.

7. Before the Central Administrative Tribunal, the petitioners have further contended that the last date for the receipt of application was fixed on 08.11.2011. But the applications of Mr.Muruganandam, Mr.Suresh, Ms.M.Hamsaladevi, shortlisted for selection at Sl.Nos.1, 2 and 5 were actually received on 09.11.2011, after the last date. Therefore, they were ineligible for selection. Thus, when the irregularity in the selection was found, it was treated as cancelled by the Senior Superintendent of Post Offices, Dindigul Division, Dindigul, the 2nd petitioner. Pursuant to which, as per the provisions of Rule 8(2) and the Note below Rule 8 of the Gramin Dak Sevak (Conduct and Engagement) Rules 2011, the provisional selection of the 2nd respondent was terminated with effect from 28.05.2012 AN by the Assistant Superintendent of Post Offices, Palani Sub Division, Palani, who was holding the additional charge of Inspector of Posts, Vendasandur Sub Division.

8. By way of rejoinder, the 2nd respondent, has submitted that when the recommended candidate did not join the post for one reason or the other, vacancy has to be filled up by the next meritorious candidate in the selected list without going for a fresh selection. According to him, he had submitted the application well within the time and therefore, his provisional selection ought not to have been cancelled or terminated, citing Rule 8 (2) of GDS (Conduct and Engagement) Rules 2011. It was also his contention that no opportunity was given before cancellation. Reliance has also been made to a decision of the Hyderabad Bench in O.A.No.604 of 2000 and O.A.No.1315 of 2000.

9. Having considered the rival contentions, vide order dated 26.08.2014 in O.A.No.638 of 2012, the Central Administrative Tribunal Madras, has ordered as hereunder

"8. There is no dispute that the Applicant was offered the appointment, since the first meritorious person who was offered the appointment did not join the post. From the fact submitted it is also clear that the Applicant had submitted his application for the post within the time limit mentioned in the

notification. The irregularity pointed out in the reply statement relates to the fact that 3 applications which were received one day after the last date mentioned in the notification were also taken up for consideration. It is also noted that there were no candidates sponsored by the local employment exchange. In as much as the 3rd respondent went ahead with the selection process by calling all the candidates who have applied for the post including the 3 candidates who had submitted the application one day after the last date, we find that there is no justification in terminating the appointment granted to the Applicant. In this case the Applicant was the next meritorious candidate who was available to be appointed from the select list. The Applicant had also worked the post for nearly a period of 5 months. It is not the case that the selection of the Applicant was irregular by way of superseding some other meritorious candidate who had applied for the post in response to the notification or sponsored by the employment exchange. We are of the view that the action of the Respondents in terminating the appointment of the Applicant under the circumstances mentioned above is not justifiable.

9. The Applicant has established his case for grant of the relief prayed for and accordingly, the impugned order is set aside and the Respondents are directed to reinstate the Applicant into service. The reposing of the Applicant will, however, be only with prospective effect. OA is allowed to the extent mentioned above. No order as to costs."

10. Being aggrieved by the same, the appellants / petitioner in the present writ petition have reiterated the abovesaid grounds. Reliance has also been made to a decision in *Bedanga Talukdar v. Saifudaulah Khan*, reported in (2011) 12 SC 85 wherein, the Hon'ble Supreme Court held as follows:

"29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with [Article 14](#) of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the

relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of respondent No. 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India."

11. Attention of this Court was also invited to a memorandum dated 07.11.2012 issued to Mr.D.Columbus, Inspector of Posts (U/s), Vendasandur Sub Division under Rule 14 of the Central Civil Services (Classification, Control and Appeal), Rules, 1965, wherein charges have been framed against the said Inspector of Posts. Reference has been made as to how notifications have to be issued and applications be received. Added further learned Central Government Standing Counsel submitted that had there been wide publicity in the nearby villages, the selection could have been made from better candidates. According to him, (i) notification has not been issued covering all the instructions properly (ii) inclusion of three candidates in the short list whose applications were received belatedly (iii) prescribed time of 15 days not given in the notice for verification. The above issues have to be addressed in the disciplinary proceedings initiated against Mr.D.Columbus, Inspector of Posts, Vendasandur.

12. Mr.Su.Srinivasan, learned counsel for the petitioners further submitted that it was only a provisional selection and the same does not confer any right on the 2nd respondent.

13. Per contra, to sustain the order of the tribunal, Mr.R.Malaichamy, learned counsel for the 2nd respondent submitted that there was no foul play or misrepresentation on the part of the 2nd respondent and for the reasons stated supra, prayed to sustain the order of the tribunal.

14. Heard the learned counsel for the parties and perused the materials available on record.

15. As per the procedure, notification, dated 10.10.2011, inviting applications for filling up of the vacancy of Gramin Dak Sevak (Mail Deliverer-I), the Sub Post Master, Ambilikai SO-624 612, has to be exhibited in the Office Notice Board. The Village Administrative Officer, Ambilikai Village, has to give wide publicity in his village, regarding the vacancy. As many as 10 applications have been received. There was no list from the Employment Exchange, Dindigul.

16. The Nominated Co-ordinating Officer for Selection Process is the Inspector of Posts, Natham Sub-Division. 10 applications have been opened in the presence of the co-ordinating officer. Out of 10 applications, five candidates were shortlisted, as per the marks obtained in SSLC. Applicants in Sl.Nos.1, 2 and 5 have been received belatedly on 09.11.2011, though the last date was 08.11.2011. Sl.Nos.3 and 4 were absent.

17. The 2nd respondent, who had secured 407 marks out of 500 marks in SSLC, has been provisionally appointed to the post of Gramin Dak Sevak (Mail Deliverer-I), from 09.11.2011, vide Memo No.GDS/ABK SO/GDS MD 1 - Dlgs, dated 01.12.2011. Thereafter, some complaints seemed to have been received, alleging irregularity in selection. Without providing an opportunity to the 2nd respondent, his provisional appointment has been cancelled.

18. Though on the basis of the Charge Memo, dated 07.11.2012, issued by the Inspector of Posts, Vendasandur Sub Division, Mr.Su.Srinivasan, learned counsel for the petitioners strenuously contended that if the 2nd respondent is allowed to continue, by an order of re-posting, even taking it for granted prospectively, that would be an impediment in the process of finalisation of the action against the Inspector of Posts, Vendasandur Sub Division and also contended that when the irregularity into the selection is being enquired into, the petitioners ought not to have been directed to report the 2nd respondent in service, this Court is not inclined to accept the said contentions, for the reason that even as per the version of the petitioners, as many as 10 applications, have been received, for the post of Gramin Dak Sevak (Mail Deliverer-I), from local notification. The Village Administrative Officer, Ambilikai Village, has to give wide publicity in the Village. The Sub-Post Offices, Dindigul Division, should be given information, by registered post with Acknowledgement Card. It should be displayed in the Office Notice Board of the Inspector of Posts, Vendasandur Sub Division.

19. The contention that if wide publicity is given, there would have been more meritorious candidates would apply for recruitment of the abovesaid post, cannot be countenanced, for the reason that 10 candidates have already appeared and in reality, the said post does not require a candidate with any

extra-ordinary calibre and higher marks. He is only a mail deliverer and with the above qualification, he can certainly perform the work.

20. Out of five shortlisted candidates, Mr.Muruganandam, who had been provisionally selected and issued with appointment order on 01.12.2011, has not accepted the same. Admittedly, he had submitted the application on 09.11.2011, much after the last date, ie., on 08.11.2011 and therefore, he had not taken up the abovesaid post. The second candidate, Mr.S.Suresh, has also submitted an application on 09.11.2011 and he did not appear for certificate verification. Mr.R.Satish Kumar, Sl.No.3 in the shortlisted candidates, had not attended the certificate verification. Sl.No.5, Mr.M.Hamsaladevi, has also submitted her application belatedly. The only person, who had submitted his application, in time, is the 2nd respondent.

21. Merely because, a clear 15 days' time was not given for certificate verification, the same would not affect the eligibility of the 2nd respondent. The allegations against the Inspector of Posts, Vendasandur, are three fold,

(i) Notification has not been issued, covering all the instructions.

(ii) Inclusion of the names of the candidates, who submitted their applications, belatedly.

(iii) Prescribed time of 15 days was not given for certificate verification.

22. Inclusion of three candidates in the shortlisted, also cannot be put against the 2nd respondent, as one among them, had declined to take up the abovesaid post. The only other irregularity, against the the Inspector of Posts, Vendasandur Sub Division and incidentally put against the 2nd respondent is that, the notification has not been issued, covering all the instructions. As observed earlier, the work of Gramin Dak Sevak is just like postman (Mail Deliverer)

23. In Bedanaga Talukdar v. Saifudaullah Khan reported in 2011 (12) SCC 85, at Paragraph 29, the Hon'ble Supreme Court held as follows:

"29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the

advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India."

24. Reading of the judgment indicates that there shall be no relaxation of the terms and conditions of the advertisement and any such relaxation given to the candidate to become eligible, in the absence of any provision, would be contrary to the mandate of Articles 14 and 15 of the Constitution of India. The said judgment may not in strict sense, be applicable to the facts of the case.

25. It is also to be noted that no opportunity has been given to the 2nd respondent before cancelling the appointment. The contention of the appellants that it is only the provisional selection and therefore, the same cannot be given weightage, cannot be countenanced.

26. For the reasons, stated supra, this Court is not inclined to interfere with the order made by the Central Administrative Tribunal in O.A.No.638 of 2012, dated 26.08.2014. Hence, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(J)

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Sub Assistant Registrar

ars/skm

To

1. The Director of Postal Services,
Union of India,
O/o. Postmaster General,
Southern Region (TN),
Madurai - 625 002.

2. Senior Superintendent of Post Offices,
Dindigul Division,
Dindigul - 624 001.

3. Assistant Superintendent of Post Offices,
Palani Sub Division,
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4. The Registrar, Central Administrative Tribunal,
Chennai. 600 104.

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