

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.12797 of 2019

Date: 26.06.2019

Between:

J. Jagan

...Petitioner

And

Union of India,
Rep. by its Secretary,
Department of Atomic Energy,
B A R C, C S M, MUMBAI,
and others.

...Respondents

Counsel for the petitioner : Mr. M. V. Krishna Mohan

Counsel for the respondents: Mr. K. Lakshman
Assistant Solicitor General

The Court made the following:

ORDER: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The petitioner, Mr. J. Jagan, has challenged the legality of the order dated 23.07.2014, and of the order dated 06.11.2015. By the former order, the Central Administrative Tribunal, Hyderabad Bench, had dismissed the Original Application filed by the petitioner. By the latter order, the learned Tribunal had dismissed the Review Application filed by the petitioner.

Briefly, the facts of the case are that the petitioner had passed SSC; on 02.12.1984 he joined the Office of the respondent No.1 in the NFC Employees Co-operative House Building Society Limited as an Office Boy. Since then, he is continuously discharging his duties. Despite the fact that he has been working for the last twenty years, he was not treated as a departmental candidate on the ground that he is working for the NFC Employees Co-operative House Building Society Limited, which is an employees' co-operative society. Despite the fact that he had represented to the respondents, on several occasions, that he should be treated as a departmental candidate, the respondents have informed him that he cannot be treated as a departmental candidate. For, the employees of the department must have their names sponsored by the Employment Exchange whenever the department issues a notification for filling up any vacancy. Since the petitioner was never sponsored by the Employment Exchange, he cannot be considered as an employee of the department. The petitioner further pleads that in 2001 he was called for interview for the post of Helper (B). Though he attended the said interview, his case was not considered. The case of the petitioner is that similarly situated persons were given the benefit of age relaxation, such as,

Mrs. G. Saraladevi, who was, in fact, given age relaxation, and appointed as Salesman/Clerk.

Even subsequently, although advertisements for selections were issued by the department, the petitioner and others could not apply for these jobs, as they were barred by age. Therefore, the petitioner submitted several representations to the respondents praying for age relaxation, *inter alia*, on the ground that he has been in continuous service for a long time. Moreover, since the benefit of age relaxation was given to other employees, the petitioner pleaded that the same benefit should be given to him. Since the petitioner was not given the benefit of age relaxation, he filed an Original Application, namely, O.A.No.1228 of 2010, before the learned Tribunal for seeking age relaxation and for consideration of his application for Category No.6 (Auxiliary Post) as advertised on 17.07.2010. By order dated 22.11.2010, the learned Tribunal had directed the respondents to decide as to whether age relaxation should be given to the petitioner and others or not. Even though the petitioner brought the said order to the notice of the respondents, the Department of Atomic Energy did not give the benefit of age relaxation to the petitioner.

The petitioner further pleads that in the year 2010 there were 115 vacancies for the post of Attendant. Since the petitioner had applied for the said post, considering the fact that he had been working for the last twenty seven years, not only the benefit of age relaxation should have been given to him, but he should have also been absorbed in the post of Attendant by the respondent department. Since the same was not done, the petitioner had filed

O.A.No.428 of 2012 before the learned Tribunal. Since others had also filed similar Original Applications, by a common order dated 23.07.2014, the learned Tribunal dismissed the Original Applications filed by the petitioner and others.

Subsequently, the petitioner filed a Review Petition. However, even the said Review Petition was dismissed by the learned Tribunal by order dated 06.11.2015. Hence, the present Writ Petition before this Court.

The learned counsel for the petitioner submits that since the petitioner was working for many decades with the respondent department, since the benefit of age relaxation was granted to others, such as Mrs. Sarala Devi, Mr. A. Venkatesh, and Mr. D. Hanmantha Rao, the same benefit should have been extended to the petitioner. Therefore, the learned Tribunal was unjustified in dismissing the Original Application ostensibly on the ground that the case of the petitioner was not on equal footing as the case of those employees mentioned hereinabove. Since it was an error apparent on the face of the record, the learned Tribunal ought to have allowed the Review Application by the impugned order dated 06.11.2015, instead of dismissing the same.

On the other hand, the learned counsel for the respondent department submits that, in fact, the petitioner is not an employee of the respondent department. Instead, he is an employee of the Employees Co-operative House Building Society, a Society that was formed in the interest of the employees of the respondent department. Moreover, in the case of those who have been mentioned hereinabove, they had worked for the respondent

department. Hence, their cases can be differentiated from the case of the petitioner. Lastly, the issue whether to relax the age, or not is within the discretionary power of the respondents. Therefore, the petitioner cannot claim that his age should be relaxed. Therefore, the learned Tribunal was justified in dismissing the Original Application as well as the Review Application filed by the petitioner. Hence, the learned counsel has supported both the impugned orders.

Heard the learned counsel for the parties and perused the impugned orders.

Admittedly, the petitioner is not an employee of the department. But he, in fact, happens to be an employee of the NFC Employees Co-operative House Building Society Limited. Therefore, the petitioner is not justified in claiming that he has a right of absorption to the post of Attendant.

Furthermore, since the relaxation of age is within the discretionary power of the respondent department, the respondent department was free to take its own decision. The petitioner has nowhere pleaded that the decision suffers either from *mala fide*, or from arbitrariness. Therefore, the contention raised by the learned counsel for the petitioner that the petitioner has to be given the benefit of relaxation of age is clearly untenable.

Admittedly, the cases of Mrs. Sarala Devi, Mr. A. Venkatesh, and Mr. D. Hanmantha Rao stand on a different footing. For, while they are the employees of the department, the petitioner is not. Therefore, the learned counsel for the petitioner is unjustified in claiming that the case of the petitioner is on an

identical footing as that of the persons whose names have been mentioned hereinabove.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned orders. Hence, this writ petition is devoid of merit; it is, hereby, dismissed.

The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, CJ

Dr. SHAMEEM AKTHER, J

26.06.2019
vs

