

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A. Abhishek Reddy

W.P. No. 23864 of 2019

Date: 08-11-2019

Between:

The Union of India
Rep. by the Chief Postmaster General
A.P. Circle, Hyderabad and 2 others

...Petitioners

And

Mr. S. Yesudas and 2 others

...Respondents

Counsel for the petitioners:

Mr. Namavarapu Rajeshwar Rao,
Asst. Solicitor General

Counsel for the respondent No. 1: Mr. R. Mahanti

The Court made the following:

Order: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

The Union of India (petitioners) is aggrieved by the order dated 25-02-2019, passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad, in O.A. No. 21/00551/2013, whereby the learned Tribunal has directed them, to promote respondent No. 1 (hereinafter referred as 'the applicant'), Mr. S. Yesudas, to the post of postman against the vacancy, which arose in the year 2007, and to grant him all consequential benefits.

Briefly, the facts of the case are that the applicant was working on the post of Grameen Dak Sevak. In his service record, his date of birth was shown as '02-01-1959'. He belongs to the Scheduled Caste Community. A notification was issued for recruitment to the posts of postmen/village postmen by promotion from the 25% quota among the Grameen Dak Sevaks on the basis of seniority in service. In the said notification, the vacancies for the years 2006, 2007 and 2008 were advertised. In response to the said notification, the applicant submitted his application. The Departmental

Promotion Committee (for short 'the DPC') met on 21-04-2011. Despite the fact that the applicant was eligible, and suitable for promotional post, his candidacy was rejected on the ground that he had crossed the upper age limit of 50 years. Hence, he was not promoted against the vacancy of the year 2007. Aggrieved by his non-promotion, the applicant filed the aforesaid OA before the learned Tribunal. By the impugned order dated 25-02-2019, the learned Tribunal has allowed the OA in the aforementioned terms. Hence, this petition before this Court.

Mr. Namavarapu Rajeshwar Rao, the learned Assistant Solicitor General, has pleaded that the learned Tribunal has erred in relying on Note 3 of the Schedule in the Department of Posts Multi Tasking Staff Recruitment Rules, 2010 (for short 'the Rules of 2010'). For, the said Rules were not applicable to a vacancy of the year 2007.

Secondly, the learned Tribunal is unjustified in holding that the upper age limit has to be seen on the "*first day of January of the year of the vacancy (ies)*". For, according to the

amended Rule 2 of the Department of Posts (Postman, Village Postman and Mail Guards) Recruitment Rules, 1989 (for short ‘the Rules of 1989’), the relevant date is “*the first of July of the year in which the examination is held.*”

Thirdly, the learned Assistant Solicitor General submits that the office memorandums dated 01-07-1998, and 11-07-2002, have been ignored by the learned Tribunal. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, the learned counsel for the applicant submits that even if the amended Rule 2 (a) (ii) of the Rules of 1989 were to be applied, even then on the first of July of the year in which the examination was held, the applicant would have been 51 years of old. As the said Rule permits age relaxation by five years, the applicant certainly would have been within the age limit. Therefore, even if Rule 2 (a) (ii) of the Rules of 1989 were to be applied, instead of Note 3 of the Rules of 2010, even then the applicant was well within the age limit.

Secondly, neither of the two office memorandums mentioned, hereinabove, deal with the promotional posts. In fact, both the memorandums deal with the posts of direct recruitment. Therefore, both the office memorandums are totally irrelevant for the controversy before this Court. Hence, according to the learned counsel for the applicant, the learned Tribunal was certainly justified in directing the petitioners, to promote the applicant against the vacancy of the year 2007, and to give him all consequential benefits.

In rejoinder, the learned Assistant Solicitor General submits that by now, the applicant has retired, and no fruitful purpose would be served by promoting him against the vacancy of the year 2007.

Heard the learned counsel for the parties, perused the impugned order, and examined the record.

Admittedly, the applicant was born on 02-01-1959. The amended Rule 2 (a) (ii) of the Rules of 1989, is as under:

“For Extra Departmental Agents, the upper age limit shall be 50 years with 5 years relaxation for the Scheduled Castes/Scheduled Tribes candidates as on 1st July of the year in which the examination is held and he should have completed a minimum of 5 years of satisfactory service as on 1st January of the year in which the examination is held”.

Thus, under the aforesaid provision, the applicant would be entitled to age relaxation of five years. The learned counsel for the applicant is justified in pleading that according to Rule 2 (a) (ii) of the Rules of 1989, the relevant date is, *“the first July of the year in which the examination was held”*. Undoubtedly, the examination in the present case was held in the year 2010. Therefore, on the first of July, 2010, the applicant would have been 51 years of old. However, the applicant would be entitled to age relaxation of five years under Rule 2 (a) (ii) of the Rules of 1989. Therefore, the petitioners were duty bound to consider his case against the vacancies of the year 2007. Hence, the conclusion drawn by the learned Tribunal cannot be faulted.

In catena of cases, the Hon’ble Supreme Court has opined that even if the conclusion is based on a wrong premise, the same cannot be faulted for that reason.

Therefore, even if the learned Tribunal is unjustified in applying Note 3 of the Rules of 2010, even then its conclusion that the applicant is entitled to be promoted against the vacancy of the year 2007 cannot be faulted.

A bare perusal of the office memorandums dated 01-07-1998 and 11-07-2002, clearly reveals that they deal with the posts of direct recruitment. Hence, they are inapplicable to a promotional post. Therefore, the learned Assistant Solicitor General is unjustified in relying on the said office memorandums, in order to plead that the learned Tribunal is not justified in ignoring these office memorandums. Since the office memorandums are not germane to the controversy in issue, the learned Tribunal is certainly justified in ignoring the same. Hence, the contention raised by the learned Assistant Solicitor General is clearly unacceptable.

Even if the applicant has retired, even then he cannot be denied his promotion against the vacancy of the year 2007. After all, the learned Tribunal had directed that “*all consequential benefits*” need to be given to the applicant.

Therefore, the petitioners are directed to give all the consequential benefits on a notional basis to the applicant (respondent No. 1). The consequential benefits shall be given to the applicant (respondent No.1) within a period of two months from the date of receipt of a certified copy of this order.

For the reasons stated above, this Court does not find any merit in the present writ petition. It is, hereby, dismissed.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, CJ)

(A. Abhishek Reddy, J)

Dt: 8th November, 2019
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