

SUNIL KUMAR SINGH
v.
UNION OF INDIA AND ORS.

JANUARY 4, 2005.

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Service Law—Post and Telegraph Department—Contractual appointment of Extra Department Delivery Agent(EDDA)/Extra Departmental Mail Carrier(EDMC)—Criminal case instituted against him—Initially his bail application was rejected by the Magistrate but subsequently bail was granted by the Sessions Judge—Authorities concerned though aware of the criminal case, permitted him to join after release from custody—Tribunal set aside the appointment of Appellant and directed fresh selection out of candidates other than the Appellant—High Court upheld the order—On appeal, held: Whether Appellant deserved to be continued was not independently examined by the authorities—By the time High Court decided the matter, Appellant had already been acquitted—The effect of such acquittal was also not considered by High Court—Non-appearance of Appellant before Tribunal could not be the determinative factor—It is also not clear whether order of Tribunal directing fresh consideration has been carried out or not—In such peculiar circumstances, matter remitted to High Court for fresh consideration—At the same time official Respondents permitted to consider whether contractual appointment of Appellant is to be continued or not.

The Appellant was selected and posted on contractual basis as Extra Departmental Delivery Agent(EDDA)-cum-Extra Departmental Mail Carrier(EDMC) in the post office. Pursuant to Appellant joining the post, a petition was filed before CAT by Respondent No.6 claiming that he had secured higher marks than the Appellant and that Appellant was involved in a criminal case of kidnapping a college going girl. Though Appellant did not appear before the CAT, the official Respondents took the stand that he was allowed to join only after clean report about him was given by the Officer-in-Charge of the Police Station.

The Tribunal set aside the appointment order and directed that fresh selection should be made and the candidates other than the Appellant were to be considered for appointment. High Court affirmed the same.

A In appeal to this Court, the Appellant submitted that a false case had been lodged against him which was amply proved by his acquittal by the Trial Court, it was a clean acquittal and not on technical ground; and that there was no material to show that the Appellant had any criminal antecedents, or that he was an undesirable person.

B The official Respondents however submitted that the fact that the Appellant was involved in a criminal charge made him undesirable and therefore this Court should not interfere under Art.136 of the Constitution.

Disposing of the appeal, the Court

C HELD: 1.1. The conclusions of the CAT as upheld by the High Court revolve round the appellant facing a criminal trial. At the time of issuing appointment order the case had not been initiated. Though the case was instituted, the same has ended in acquittal. It was open to the concerned official respondents to terminate the contractual appointment.

D It is to be noted that the appellant was permitted to join after his release from custody. Though, the authorities were aware of the criminal case against him, they did not put an end to the contractual appointment. It was only pursuant to the CAT's order on the basis of a petition filed by an unsuccessful candidate that the appointment was nullified. Whether the appellant deserved to be continued had not been independently examined

E by the authorities. By the time the High Court decided the matter, the appellant had already been acquitted. The effect of such acquittal has also not been considered by the High Court. Mere non-appearance of the appellant before CAT could not have held to be the determinative factor. It is also not clear from the records whether the order of the CAT directing

F fresh consideration has been carried out or not. [28-G-H; 29-A-B]

1.2. In the peculiar circumstances the matter is remitted to the High Court for a fresh consideration. At the same time it is open to the official respondents to consider whether the contractual appointment of appellant is to be continued or not in the background facts of the case. [29-C]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13 of 2005.

From the Judgment and Order dated 17.7.2003 of the Patna High Court in C.W.J.C. No. 3059 of 2000.

H Sanjeev Kumar and Rameshwar Prasad Goyal for the Appellant.

Vivek K. Tankha, Ms. Pareena Swarup, H.K. Upadhayay, Surya Singh, Amit Singh and V.K. Verma for the Respondents. A

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Patna High Court, affirming order of the Central Administrative Tribunal, Patna Bench (in short the 'CAT') holding that the appellant's appointment as "Extra Departmental Delivery Agent" (in short 'EDDA')/Extra Departmental Mail Carrier (in short 'EDMC') was not legal. B

Background facts in a nutshell are as follows: C

A new post office was ordered to be opened at village Madhubani under Karnaut sub post office in Muzaffarpur postal division in the year 1993. A requisition was sent to the employment exchange calling for the names of qualified candidates for making appointment to the post of EDDA-cum-EDMC. The minimum qualification was matriculation and local candidates were to be given preference. Seven names were forwarded by the employment exchange including the name of appellant and one Kamlesh Prasad Singh (respondent No. 6 in this appeal). After interview, by the Sub-divisional Inspector of post offices, appellant was selected. It is to be noted that preference was to be given to the candidate who had secured highest marks in the matriculation examination amongst candidates. A letter of appointment was issued on 25.10.1993. It was clearly indicated in the order that the appointment is of a contractual nature, liable to be terminated by notification in writing and the conduct and service is governed by the Post and Telegraph Extra Department (Conduct and Service) Rules, 1964, (in short 'the Conduct Rules'). The appellant joined the post on 26.4.1994. A petition was filed before the CAT by aforesaid Kamlesh Prasad Singh taking the stand that he had secured higher marks than the present appellant. Further he was involved in a criminal case of kidnapping a college going girl. Initially his bail application was rejected by the learned CJM, but subsequently bail was granted by the Sessions Judge. Though the present appellant did not appear before the CAT, the official respondents took the stand that he was allowed to join only after clean report about him was given by the Officer-in-Charge, Sahebganj Police Station. CAT was of the view that merely because the officer-in charge had not given adverse report that was not relevant. The case against the present appellant might not even stand in the criminal court. D E F G H

A But the fact is that he faced a criminal charge and there was strong possibility of his appointment resulting in criminalization of government office. It was further held that though candidate with higher marks is a good criteria for appointment, but that cannot be the sole criteria. The appointment for the post of EDDA is not prescribed under any statutory rule, but under executive instructions. When there is a possibility of criminalization of office administration such candidate should not be appointed. Accordingly appointment order was set aside and it was held that fresh selection should be made and the candidates other than the present appellant were to be considered for appointment. Appellant questioned legality of the CAT's order before the Patna High Court. By the impugned order, the High Court dismissed the application on the ground that though the circumstance of his facing a criminal charge was indicated in the petition and allegations were made, the appellant did not come forward to deny the statement and the allegation and therefore order of the CAT did not warrant interference.

D Learned counsel for the appellant submitted that the appellant had applied for the post on 18.8.1993, interview was held on 27.9.1993 and appointment was made on 12.10.1993. A false case was lodged on 15.10.1993. That the case was falsely lodged has been amply proved by acquittal of the appellant by the trial court. It was clearly observed in the judgment that the case was falsely hoisted. The acquittal was not on technical ground, but on the other hand was clean acquittal. Reference was made to evidence of certain witnesses who clearly stated that the appellant had no role to play in the alleged crime. It was further submitted that there was no material to show that the appellant had any criminal antecedents, or that he was undesirable person.

F Learned counsel for the official respondents submitted that the fact that the appellant was involved in a criminal charge makes him undesirable. Therefore, this Court should not interfere while exercising jurisdiction under Article 136 of the Constitution of India, 1950 (in short 'the Constitution').

G We find that the conclusions of the CAT as upheld by the High Court revolve round the appellant facing a criminal trial. At the time of issuing appointment order the case had not been initiated. Though the case was instituted, the same has ended in acquittal. It was open to the concerned official respondents to terminate the contractual appointment. It is to be noted that the appellant was permitted to join after his release from custody. Though the authorities were aware of the criminal case against him, they did not put an end to the contractual appointment. It was only pursuant to the CAT's

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order on the basis of a petition filed by an unsuccessful candidate that the appointment was nullified. Whether the appellant deserved to be continued had not been independently examined by the authorities. By the time the High Court decided the matter, the appellant had already been acquitted. The effect of such acquittal has also not been considered by the High Court. Mere non-appearance before CAT could not have held to be the determinative factor. The High Court should have considered as noted above, the effect of the acquittal. It is also not clear from the records whether the order of the CAT directing fresh consideration has been carried out or not.

In the peculiar circumstances we remit the matter to the High Court for a fresh consideration. At the same time it is open to official respondents to consider whether the contractual appointment of appellant is to be continued or not in the background facts as highlighted above. We make it clear we have not expressed any opinion on the merits of the case.

Appeal is disposed of in the aforesaid terms with no order as to costs.

B.B.B.

Appeal disposed of.