

T. JAYAKUMAR

v.

A. GOPU & ANR.

(Civil Appeal No. 5766 of 2008)

SEPTEMBER 22, 2008

[TARUN CHATTERJEE AND AFTAB ALAM, JJ.]

Service Law – Selection/Appointment – Application of candidate not in order and another application not submitted within time – Candidate permitted to participate in selection process – Not selected – Challenging selection/appointment of the successful candidate – Authority taking the plea that his applications were not acceptable being not in order/within time – Held: Permission to participate in selection process cannot be a bar for holding the candidate ineligible for selection at a later stage – Principle of estoppel is not applicable to such cases – In the facts, decision of Authority for not accepting the applications of the candidate, was not unreasonable or arbitrary – High Court acted beyond the scope of judicial review in holding that the authority should have treated the second application as part and parcel of first application – However, in the peculiar facts of the case, direction issued to Authority concerned, to find suitable post for respondent No. 1 and if such post not available, to accommodate him in the next vacancy for the post – Estoppel – Judicial Review.

Respondent No. 2-Authority, issued notice for filling up the post of Extra Departmental Branch Post Master (EDBPM). Respondent No. 1 submitted his application for the same within time. But the application was unsigned. Therefore, he submitted second application. But the same was not submitted within time. Respondent No. 1 was called for the interview. Ultimately appellant was selected and appointed for the post. Respondent No. 1 challenged his appointment. Central Administrative Tribunal allowed

A the application holding that having called respondent No. 1 for interview, it was not open to the Authority to exclude him from consideration on the plea that his application was not in order/received beyond time. High Court dismissed the writ petition holding that the Authority ought to have accepted the second application of respondent B No. 1, as deemed to have been received within time. Hence the present appeal.

Allowing the appeal, the Court

C HELD: 1.1 The concerned Authority had not exercised its discretion unreasonably and arbitrarily in rejecting both the applications submitted by respondent No.1. [Para 12] [798-E-F]

D 1.2 There is no principle of law under which once a candidate is allowed participation in the selection process, the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be E called for interview and may get a chance to take part in selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light. It F is surely open to the Tribunal to examine whether the reason assigned by the selection authority for holding a candidate ineligible for selection was valid or unreasonable and arbitrary. If the reason for excluding a candidate from the selection process is found to be unreasonable or arbitrary, the Tribunal may certainly intervene, but if the G reason itself is valid, the tribunal cannot interfere simply because the candidate was allowed participation in the selection process by being called for interview. The principle of estoppel has no application in such a case. [Para H 10] [797 F-H, 798 A-B]

1.3 In the facts of the case, it cannot be said that the decision of the concerned authority, not to accept any of the two applications of respondent No. 1, the first being invalid for want of signature and the other being beyond time, was totally unreasonable and arbitrary. As a matter of fact, the High Court has not come to any such finding, and yet the High Court observed that the second application ought to have been treated as 'part and parcel' of the first application and thus substituted its own view in the matter for the view taken by the respondent-Authority. Such an approach might have been permissible for the departmental appellate authority (provided there was one) but it was plainly beyond the scope of judicial review. [Para 11] [798 C-E]

2. Having regard to the special facts of the case viz. the Tribunal and the High Court by interfering in favour of respondent No. 1 naturally gave him hope and expectations that he would be harbouring for eight years; and that he was excluded from consideration simply because he inadvertently omitted to put his signature on his application form, the concerned postal authorities are directed to find out a suitable vacant position against which respondent No.1 may be adjusted. In case no suitable post is available at present, he should be accommodated in the next vacancy of EDBPM arising in future. [Para 14] [798 G-H] [799 A-B]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5766 of 2008

From the final Judgment and Order dated 1.2.2005 of the High Court of Judicature at Madras in W.P. No. 11229 of 2001

T. Harish Kumar for the Appellant.

Vikas Singh, A.S.G., Jayanth Mathraj, K.K. Senthilvelan, P.V. Yogeswaran, Dr. Charu Walikhanna, Anil Katiyar and V.K. Verma for the Respondents.

The Judgment of the Court was delivered by

A **AFTAB ALAM, J.** 1. Leave granted

2. A little lapse by the respondent authority (Respondent no.2 before this court) coupled with a somewhat unwarranted interference by the Central Administrative Tribunal, Madras Bench, that was affirmed by the Madras High Court has led to a situation where this court is faced with the competing rights of the appellant and respondent no.1.

3. The matter in controversy is the appointment as Extra Departmental Branch Post Master of Kadambadi village. The concerned authority issued a notice for filling up the position on 22 December 1999. The last date for receipt of applications was 5 January 2000. Respondent no.1 submitted his application that was received within time on 4-1-2000. On this application, however, he omitted to put his signature. Realising his mistake he sent another application duly filled-up and signed by him on 4 January 2000 with the request that the second application may be treated as part of the first one. The second application sent by respondent no.1 was received by the authorities after 5 January 2000, the last date for submission of applications. The concerned authorities called three candidates for interview, including the first respondent, but in the end it was the appellant who was selected and appointed as EDBPM, village Kadambadi.

4. Respondent no.1 challenged the selection and appointment of the appellant before the Tribunal in O.A.no.346/2000. It was submitted on his behalf that he was better qualified than the appellant since in the SSLC examination he secured 272/500 marks compared to 269/500 by the appellant. He also owned a big house and sufficient agricultural land in the village. Hence, the action of the respondent authority in selecting the appellant for appointment in preference to him was quite bad and unreasonable. On behalf of the respondent authority it was stated that the application of respondent no.1 that was received within time was invalid as it did not bear his signature and his second application was received after the last date for submis-

sion of applications. That being the position his candidature was not acceptable. A

5. The Tribunal did not accept the plea taken by the respondent authority. It upheld the claim of Respondent no.1 and by judgment and order dated 23 April 2001 allowed the OA and directed the concerned authority to accept his application as received within time and to consider his case for appointment as EDBPM. B

6. The judgment and order passed by Tribunal was sought to be challenged by the appellant before the Madras High Court in WP no. 11229 of 2001. Apparently at the time of admission of the writ petition the High Court stayed the operation of the order of Tribunal but finally the writ petition was dismissed by judgment and order dated 1 February 2005. Against the High Court order the appellant filed the SLP giving rise to this appeal. In the SLP on 6 May 2005 this Court passed an order for maintaining status quo as obtaining on that date. As a result of the interim orders passed by the High Court and by this Court the appellant has been able to continue in service since his appointment on 9 February 2000. Another fact we are unable to ignore is that now the age of the appellant is thirty eight years; in other words he has crossed the age bar for government employment. C D E

7. Coming now to the orders passed by the Tribunal and the High Court. Both the tribunal and the High Court interfered in favour of respondent no. 1 but for slightly different reasons. The Tribunal did not take the view that the first application submitted by the first respondent was valid even though it was unsigned or that the second application cured the omission and the lacuna in the first application or even that the second application should have been accepted even though it was received beyond time. What seems to have weighed with the Tribunal is that respondent no.1 was called for interview along with the other two candidates whose applications were fully in order and were received in time. The Tribunal took the view that having called F G H

A respondent no. 1 for interview it was no longer open to the concerned authority to exclude him from consideration on the plea that his application was not in order/was received beyond time. It appears that the Tribunal summoned the relevant office record and found that on 9 February 2000 the concerned authority made the following note:

B “In response to the Local notification 7 applications received. Among them the applications received from R. Lakshmi (101c). R. Durairaj (104C). T.Selvakumar(105C) and S.Durairaj (106C) after the last date fixed on 05.01.2000 are not considered.

C Only three candidates who have applied for the post within the last date fixed are brought into the tabular statement.”

D 8. In light of the note the Tribunal came to observe and hold as follows:

E “Having treated the application of the applicant as an application received within the last date, the first respondent cannot go back and say that his application cannot be considered as the same was received after the expiry of the last date. The action of the first respondent in treating the application of the applicant as one submitted within the last date in this note shows that the original application received on 04.01.2000 has been treated as an application submitted in time in view of the subsequent application duly signed by the applicant. The action of the first respondent in not selecting the applicant on the ground of delay in submitting the application is not just and proper under the given circumstances.”

G The High Court seems to have taken a slightly different view. It has proceeded on the basis that the concerned authority ought to have accepted the application of respondent no. 1 as deemed to have been received within time. The copy of the High Court order supplied to us is full of errors (presumably typographical), so much so that in parts it is almost unintelligible.

H

But the view taken by the High Court can be gathered from paragraph 7 of the judgment that reads as follows A

"No doubt, the first application of the petitioner (sic, respondent no.1) has become invalid as there is no signature, however, when the first respondent came to know of his fault, she (sic) sent another one application with signature and with a requisition on 04.01.2000, i.e., within the expiry of the last date, *it should have been treated as part and parcel of the first application or added with the first application as the first respondent send the second application a requisition to the second respondent within the time stipulated.* When that was not done by the second respondent and rejected the application of the first respondent, *we are of the view that the first respondent sent his application in time and it cannot be rejected* and therefore the conducting interview and it cannot be rejected and therefore, the conducting of interview and appointment of the petitioner as EDBPM without the first respondent, is arbitrary and against the principles of natural justice." B C D

(emphasis added) E

9. We are unable to share either the view taken by the Tribunal or agree with the approach of the High Court.

10. We are not aware any principle of law under which once a candidate is allowed participation in the selection process the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light. It is surely open to the Tribunal to examine whether the reason assigned by the selection authority for holding a candidate in- F G H

- A eligible for selection was valid or unreasonable and arbitrary. If the reason for excluding a candidate from the selection process is found to be unreasonable or arbitrary the Tribunal may certainly intervene but if the reason itself is valid the tribunal cannot interfere simply because the candidate was allowed participation in the selection process by being called for interview. The principle of estoppel has no application in such a case.
- B

11. We are equally unable to appreciate the approach of the High Court. In the facts of the case it cannot be said that the decision of the concerned authority not to accept any of the two applications of respondent no. 1, the first being invalid for want of signature and the other being beyond time, was totally unreasonable and arbitrary. As a matter of fact the High Court has not come to any such finding. And yet the High Court observed that the second application ought to have been treated as 'part and parcel' of the first application and thus substituted its own view in the matter for the view taken by the respondent authority. Such an approach might have been permissible for the departmental appellate authority (provided there was one) but it was plainly beyond the scope of judicial review.
- C
- D

12. In the facts of the case we are satisfied that the concerned authority had not exercised its discretion unreasonably and arbitrarily in rejecting both the applications submitted by respondent no.1 and any interference in the matter was hardly called for by the Tribunal or the High Court.
- E

13. On a careful consideration of the rival contentions and the materials on record we are unable to sustain the orders of the High Court and the Tribunal. The two orders are, accordingly, set aside.
- F

14. This leaves us with respondent no.1 who is hopefully pursuing the matter for over eight years. The Tribunal and the High Court by interfering in his favour naturally gave him hope and expectations that he would be harbouring for eight years. We also cannot overlook the fact he was excluded from consideration simply because he inadvertently omitted to put his sig-
- G
- H

nature on his application form. Having regard to the special facts of the case the concerned postal authorities are directed to find out a suitable vacant position against which respondent no.1 may be adjusted. In case no suitable post is available at present he should be accommodated in the next vacancy of EDBPM arising in future. A

15. This appeal is allowed subject to aforesaid observations and directions. B

K.K.T.

Appeal allowed.