

A

UNION OF INDIA AND ORS.

v.

SHANTIRANJAN SARKAR
(Civil Appeal No. 103 of 2009)

B

JANUARY 13, 2009

[S.B. SINHA AND J.M. PANCHAL, JJ.]

C

Service law: Appointment – Scheduled Caste – Held: Member of Scheduled Caste, notified in any of the States within the territories of India, having regard to the provisions contained in Article 341 of Constitution, is entitled to get the benefit of the said status for the purpose of entering into Central Civil service – On facts, respondent was Scheduled Caste – He was not appointed because of a mistake committed on part of authorities – Delay in filing original application would not be bar in granting him equitable relief – Union of India as a benevolent litigant cannot be permitted to take advantage of its own wrong – Constitution of India, 1950 – Article 341 – Equity – Delay and laches.

E

Government litigation: Suppression of material facts – Union of India in its list of dates, did not state that the original order of the High Court was recalled and reviewed by Division Bench of the said Court – Held: They are guilty of suppression of material facts.

F

G

Respondent applied for the post of Postman/Mail Guard and appeared in the examination held in 1997. No one qualified in the said examination. Subsequently, some other examinations were also held in which the respondent participated. Respondent was a member of scheduled caste. He filed several representations before the various authorities contending that his candidature was not considered despite the fact that he obtained more than 30% of marks which was cut off mark for the

H

members of scheduled castes/ tribes. There was no response to the said representations. He filed original application, which was dismissed on the ground of limitation and also on merit.

A

Aggrieved respondent filed writ petition which was initially dismissed on 9.7.2004. However, a review application filed was allowed on 30.11.2004. On 11.4.2005, High Court allowed the writ petition.

B

In appeal to this Court, appellants contended that the High Court failed to take into consideration that the respondent failed to pass the tests held in 1997 and furthermore, appeared in the subsequent examinations, had no right to be appointed and no direction for his appointment in the Post of Peon or Group 'D', thus, could be issued; and that respondent having applied against the vacancy in the 'OC' category and not in the category of 'Scheduled Caste', it was obligatory on him to obtain the qualifying marks of 45% which he failed to obtain.

C

D

Dismissing the appeal, the Court

E

HELD: 1. The fact that the respondent is a member of Scheduled Caste is not in dispute. His name figured at S.No. 124 of the seniority list of Dak Sevakas in A & N Islands Divisions, Port Blair. It has not been denied that in Central Administrative Services, a person belonging to Scheduled Caste in any State would be deemed to be a member of the Scheduled Caste. Respondent, therefore, should have been treated to be a member of 'Schedule Caste' for the purpose of consideration of his candidature. [Para 10] [247-F-G]

F

G

2. The High Court in its impugned order categorically held that the appellants at no point of time denied that the respondent had obtained marks more than 30% but less than 45%. The High Court furthermore noticed that the

H

- A notification dated 9.06.1989 issued by the Director of Postal Services in categorical terms stated that his status of the Scheduled Castes should be accepted and recognized in the department examination. A member of Scheduled Caste, thus, notified in any of the States within the territories of India, having regard to the provisions contained in Article 341 of the Constitution, was entitled to get the benefit of the said status for the purpose of entering into Central Civil service. The High Court furthermore rightly held that as a member of the Scheduled Caste, the respondent was entitled to the benefit of the lower percentage of marks, viz., 30% in the departmental examination for promotion from the post of Extra-Departmental Mail Guard to the Post of Peon or Group 'D'. If thus, for the reasons known to the respondent that he was entitled to the benefit of the status of the Scheduled Caste in the Andaman and Nicobar Islands, irrespective of the fact that the advertisement issued recognized only two categories of reserve categories, viz., Scheduled Tribes and 'OC', there was no reason to deprive the respondent from the said benefit. Respondent, therefore, was not appointed because of a mistake committed on the part of the authorities. They, thus, cannot be permitted to take advantage of the same. In that view of the matter, the delay in filing the original application should not be held to be a bar in granting him an equitable relief. Union of India as a benevolent litigant cannot be permitted to take advantage of its own wrong. Furthermore, the appellants are guilty of suppression of materials facts before this Court. It, in its list of dates, did not state that the original order of the High Court dated 9.07.2004 had been recalled and reviewed by the Division Bench of the said Court by an order dated 30.10.2004. [Paras 11 and 14] [248-A-H; 248-A]

From the Judgment and final Order dated 11/4/2005 of the High Court of Calcutta in Review Petition No. 009 of 2004 in WPCT No. 194 of 2003.

B. Datta, ASG, Rajni Ohri, B.K. Prasad and V.K. Verma for the Appellants.

Sarada Devi for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellants are before us aggrieved by and dissatisfied with the judgment and order dated 11.04.2005 passed by a Division Bench of the High Court of Calcutta, Circuit Bench at Port Blair whereby and whereunder the writ petition filed by the respondent herein was allowed.

3. The basic fact of the matter is not in dispute.

An advertisement was issued for filling up the post of Postman/ Mail Guard under the quota of Extra-departmental candidate at Andaman and Nicobar Island, Port Blair. Respondent herein pursuant thereto or in furtherance thereof applied for the said post. He appeared at an examination held for the said purpose. On or about 18.11.1997, the purported results of the said examination were published with the remarks "none qualified".

4. Subsequently, some other examinations were also held in which the respondent participated. Indisputably, he was a member of the Scheduled Caste. He filed several representations before the concerned various authorities contending that his candidature had not been considered despite the fact that he had obtained more than 30% of marks which was the cut-off mark for the members of the Scheduled Castes and Scheduled Tribes. As the said representations were not responded to, he filed an original application before

A the Central Administrative Tribunal, Calcutta Bench, Kolkata. The said original application was dismissed on 12.9.2003 on the ground of limitation as also on merit, stating:

B "Considering the respective contentions of the Id. Counsels for both sides, we find that the applicant having not been qualified in the written test as well as in the interview does not acquire any legal or enforceable right to seek employment for the post. In the result, the application is dismissed without any order as to cost."

C 5. Respondent filed a writ petition before the High Court questioning the legality and/or validity of the said judgment and order which was marked as WP CT No. 194 of 2003. The said writ petition was initially dismissed on 9.7.2004 by a Division Bench of the Calcutta High Court, stating:

D "Therefore, although, we do not approve the reason assigned by the Tribunal, we are not inclined to entertain this application as the ultimate conclusion of the Tribunal that the petitioner was not entitled to get any relief was correct. As indicated above, the Tribunal ought to have rejected the application only on the ground of limitation."

E

F 6. However, a review application filed thereagainst was allowed. By reason of the impugned judgment dated 11.04.2005, the High Court has allowed the said writ application.

7. Mr. B. Datta, learned Additional Solicitor General appearing on behalf of the appellants, would contend:

G (i) the High Court committed a serious error insofar as it failed to take into consideration that having regard to the fact that the respondent failed to pass the tests held in the year 1997 and furthermore, having appeared in the subsequent examinations, had no right to be appointed and no direction for his appointment in the post of Peon or Group 'D',

H

thus, could be issued by the High Court.

A

- (ii) Respondent having applied against the vacancy in the 'OC' category and not in the category of 'Scheduled Caste', it was obligatory on him to obtain the qualifying marks of 45% which he having failed to obtain, the impugned judgment is wholly unsustainable.

B

8. Mrs. Sarda Devi, learned counsel appearing on behalf of the respondent, however, would support the impugned judgment.

C

9. Before advertng to the contentions raised before us by the learned counsel for the parties, we may notice that the appellants suppressed a material fact. It appears that the fact that the High Court had recalled its earlier order dated 9.07.2004 by an order dated 30.11.2004 had not been mentioned in the list of dates. This Court, therefore, must have proceeded on the basis that the impugned order was passed on a review application and not in the original writ proceedings. We do not find appropriate words to deprecate such a practice and that too by the Union of India. We should have dismissed the Special Leave Petition on this ground alone.

D

E

Let us, however, also consider the merit of the matter.

10. The fact that the respondent is a member of Scheduled Caste is not in dispute. His name figured at Sl.No. 124 of the seniority list of Dak Sevakas in A & N Islands Divisions, Port Blair. It has not been denied or disputed before us that in Central Administrative Services, a person belonging to Scheduled Caste in any State would be deemed to be a member of the Scheduled Caste.

F

G

Respondent, therefore, should have been treated to be a member of 'Schedule Caste' for the purpose of consideration of his candidature.

H

A 11. The High Court in its impugned order categorically held
that the appellants at no point of time denied or disputed that
the respondent had obtained marks more than 30% but less
than 45%. The High Court furthermore noticed that the
notification dated 9.06.1989 issued by the Director of Postal
B Services, A & N Islands in categorical terms stated that his
status of the Scheduled Castes should be accepted and
recognized in the department examination. A member of a
Scheduled Caste, thus, notified in any of the States within the
territories of India, having regard to the provisions contained
C in Article 341 of the Constitution, was entitled to get the benefit
of the said status for the purpose of entering into Central Civil
Service..

12. The High Court furthermore has rightly held that as a
member of the Scheduled Caste, the respondent was entitled
D to the benefit of the lower percentage of marks, viz., 30% in
the departmental examination for promotion from the post of
Extra-Departmental Mail Guard to the Post of Peon or Group
'D'.

E 13. If, thus, for the reasons known to the respondent that
he was entitled to the benefit of the status of the Scheduled
Caste in the Andaman and Nicobar Islands, irrespective of the
fact that the advertisement issued recognized only two
categories of reserve categories, viz., Scheduled Tribes and
F 'OC', there was no reason to deprive the respondent from the
said benefit. Respondent, therefore, was not appointed
because of a mistake committed on the part of the authorities
of the appellants. They, thus, cannot be permitted to take
advantage of the same.

G 14. In that view of the matter, the delay in filing the original
application should not be held to be a bar in granting him an
equitable relief. Union of India as a benevolent litigant cannot
be permitted to take advantage of its own wrong. Furthermore,
the appellants are guilty of suppression of material facts before
H this Court. It, in its list of dates, did not state that the original

UNION OF INDIA AND ORS. v. SHANTIRANJAN SARKAR 249
[S.B. SINHA, J.]

order of the High Court dated 9.07.2004 had been recalled and reviewed by the Division of the said Court by an order dated 30.10.2004.

15. For the reasons aforementioned, the impugned judgment should not be interfered with and is directed accordingly. The appeal is dismissed with costs. Counsel's fee assessed at Rs.1,00,000/-.

D.G.

Appeal dismissed.