

Union of India Vs. E. Girija

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Court : Kerala

Decided On : Feb-03-2014

Judge : Honourable Mr.Justice Thottathil B.Radhakrishnan

Appellant : Union of India

Respondent : E. Girija

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE MONDAY,THE3D DAY OF FEBRUARY201414TH MAGHA, 1935 OP (CAT).No. 16 of 2014 (Z) ----- O.A NO.534/2012 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM, DATED2608-2013. -----

PETITIONERS/RESPONDENTS1TO3 -----

1. UNION OF INDIA, REPRESENTED BY THE CHIEF POSTMASTER GENERAL, KERALA CIRCLE, THIRUVANANTHAPURAM-695 233.

2. THE SENIOR SUPERINTENDENT OF POST OFFICES, MANJERI DIVISION, MANJERI-676 121.

3. THE ASSISTANT SUPERINTENDENT OF POST OFFICES, PERINTHALMANNA SUB DIVISION, PERINTHALMANNA-679 322. BY ADV. SRI.S.KRISHNAMOORTHY, CGC RESPONDENTS/APPLICANT/4TH

RESPONDENT: ----- 1. SMT.E. GIRIJA, W/O. P. PONNU GRAMIN DAK SEVAK MAIL DELIVERER KADANNAMANNA BRANCH POST OFFICE, PERINTHALMANNA SUB DIVISION, MANJERI DIVISION, RESIDING AT PARASSERI HOUSE, KADANNAMANNA.P.O. MANKADA, MALAPPURAM DISTRICT-676 121.

2. SMT. INDIRA, W/O. KRISHNAN, NJAREKKATTIL HOUSE, MANKADA.P.O., MALAPPURAM DISTRICT-679 322. BY SRI. SHAFIK M.A THIS OP (CAT) HAVING COME UP FOR ADMISSION ON0302-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Msd. OP (CAT).No. 16 of 2014 (Z)

----- APPENDIX ----- PETITIONER(S)' EXHIBITS:

----- EXHIBIT P1: TRUE COPY OF THE O.A. NO. 534/2012 FILED BY THE RESPONDENT. EXHIBIT P2: TRUE COPY OF THE REPLY STATEMENT O.A. NO. 534/2012 FILED BY THE PETITIONER. EXHIBIT P3: TRUE COPY OF THE REJOINDER IN OA53412 THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH. EXHIBIT P4: TRUE COPY OF THE ADDITIONAL REPLY STATEMENT O.A. NO. 534/2012 FILED BY THE PETITIONER. EXHIBIT P5: TRUE COPY OF THE

ORDER

DATED2608-2013 IN OA5342012 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH. EXHIBIT P6: TRUE COPY OF THE LETTER NO. 43-4/77 PEN DATED2302-1979. EXHIBIT P7: TRUE COPY OF THE LETTER NO. 43-4/77 PEN DATED1805-1979. RESPONDENT(S)' EXHIBITS: ----- NIL //TRUE COPY// P.A.TO JUDGE. Msd. THOTTATHIL B.RADHAKRISHNAN & A.MUHAMED MUSTAQUE, JJ.

..... OP(CAT) No.16 of 2014
..... Dated this the 3rd day of February, 2014.

JUDGMENT

'C.R.' Thottathil B.Radhakrishnan, J.

1. Heard the learned Central Government Counsel and the learned counsel for the contesting respondents, the applicants before the Central Administrative Tribunal.

2. This is a petition by the Postal establishment invoking Article 227 of the Constitution of India.

3. First respondent, who was 32 years of age when she went to the Central Administrative Tribunal in 2012, was initially appointed on stop gap arrangement as a Gramin Dak Sevak Mail Deliverer in a branch Post Office for different spells between 01.03.2010 and 28.06.2012. In the interregnum, a regular recruitment process was undertaken. She had the highest marks among the candidates for the 10th standard (SSLC or equivalent). We would immediately recall that she already had to her credit the ability OP(CAT)16/14 -2- achieved by discharging duties and responsibilities in the post to which she was temporarily engaged. In terms of the Rules, candidates should, among other things, know cycling. On the day fixed for cycling test, it appears that she tripped and fell from the cycle. She came out successful in cycling as well, on a second opportunity on the basis of an interlocutory order by the Tribunal. We put to ourselves the query as to how she would have discharged her duties and responsibilities from 01.03.2010 to 28.06.2012, if she had not known cycling. If cycling is such an infeasible requirement to be a Mail Deliverer, it is more of a matter attendant to the function and efficiency sought to be achieved by the appointment of a Mail Deliverer.

4. The learned Tribunal, at the end of the adjudication, did not find that the selection of the selected candidate who had lesser marks had to be struck down, particularly when, the fact of the matter remained that the first respondent herein was found unsuccessful in cycling, in the first instance. The first respondent and the selected person are women. We see that the learned Tribunal, ultimately, took a comprehensive look at the entire facts scenario and passed an order, which could be treated as one where the OP(CAT)16/14 -3- Tribunal noted that the given situation did not merit disturbance of the appointment of the selected candidate, but has paved way to sustain the first respondent herein in service, by saying that in terms of the letters of the Director General of Posts referred to in paragraph No.11 of the impugned order of the Tribunal, the first respondent herein could be considered for appointment. For that she ought to have had three years of service to be treated as a discharged Gramin Dak Sevak. The learned Tribunal said that if she is falling short of the required length of three years of service, that short fall

could be made good, if she is engaged as GDS in any available vacancy. This means that only after undergoing the period as GDS in any available vacancy, would she be treated as a discharged GDS with three years credit for consideration in terms of the letters of the DG of Posts referred to in paragraph No.11 of the impugned order of the Tribunal. 5.Though the learned Central Government Counsel argued that the Tribunal has over stepped its jurisdiction, while all that could have been done was only to set aside the appointment of the selected candidate, we see that on a given fact situation, the learned Tribunal was only balancing the available remedies within the OP(CAT)16/14 -4- constitutional frame work without over stepping the jurisdictional parameters in terms of the Administrative Tribunals Act, 1985. 6.Justice had been done. The question is whether we should interfere with it in exercise of authority under Article 227 of the Constitution of India, that too, at the instance of the establishment. We see that there is no jurisdictional error or illegality, which results in injustice to the establishment qua the two women, who would be working as GDS Mail Deliverers, if the order of the learned Tribunal stands. We, therefore, decline to exercise the visitatorial jurisdiction under Article 227 of the Constitution. This original petition, hence, fails. In the result, this original petition is dismissed. (THOTTATHIL B.RADHAKRISHNAN, JUDGE) (A.MUHAMED MUSTAQUE, JUDGE) jg

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