

Syed Mohammad Vs. Union of India

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Court : Supreme Court of India

Decided On : Aug-29-2017

Judge : Hon'Ble Mr. Justice Kurian Joseph, Hon'Ble Mrs. Justice R. Banumathi

Appeal No. : 6385 / 2017

Appellant : Syed Mohammad

Respondent : Union of India

Advocate for Pet/Ap. : Satish Vig

Judgement :

1 NON-REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.11072 OF2017[@ SPECIAL LEAVE PETITION (C) No.9673 OF2017]. SYED MOHAMMAD Appellant (s) VERSUS UNION OF INDIA & ORS. Respondent(s) WITH CIVIL APPEAL No.11073 OF2017[@ SPECIAL LEAVE PETITION (C) No.12376 OF2017].

JUDGMENT

KURIAN, J.

1. Leave granted.

2. The appellants are before this Court, aggrieved by the Judgment of the High Court of Judicature at Allahabad. The issue pertains to the selection for promotion from the post of Clerk to that of Officer. The process of selection, as prescribed, reads as follows :- Selection process for promotees The selection shall be on the basis of performance in the written test, interview and five years Performance Appraisal Reports as per the division of marks given below:- (A) Written test 70 Marks (B) Interview 20 Marks (C) Performance Appraisal Report Total Marks 100 Marks

4. It is also a condition that there shall be no minimum qualifying marks in the interview.

Still further, it is stipulated that promotions shall be made on the basis of seniority-cum-merit. The appellant-candidate before this Court did not participate in the interview. However, it is his stand that even without participating in the interview, in case he had secured the sufficient marks in the other two counts i.e. written test and performance appraisal, he is entitled to be promoted.

5. The High Court took the view that the interview was one of the essential procedures for being included in the select list and, therefore, having not participated in the interview, the appellant-candidate was not liable to be selected and appointed. Thus aggrieved, the Bank and the candidate concerned are before this Court.

6. The learned counsel appearing for the respondent has submitted that any candidate who has not participated in the interview, is not eligible to be selected and appointed since the interview is the only method by which the person's capability is assessed for the purpose of suitability for promotion to the post of Officer.

7. We find it difficult to appreciate the contention in the background of the rules, which we have extracted above. The selection process is by way of a written test, interview and performance appraisal of the previous years. The total marks are 100. There is also a further significant stipulation that there are no minimum qualifying marks for the interview. Once no marks are prescribed as qualifying

marks in the interview for the purpose of selection, whether a candidate participates in the interview or not is of no relevance, since even assuming, he had been granted zero marks in case he had otherwise obtained better marks in the written examination and the performance appraisal, he is eligible to be promoted since the selection is based on seniority-cum-merit and since there is also no provision for disqualifying an incumbent in the interview and since there is performance appraisal.

8. The principle governing selection based on seniority-cum-merit is that once the candidates are found to possess the minimum required merit, the senior among them would get the promotion. The 4 learned counsel appearing for the Bank submits that the appellant-candidate and the respondent-candidate had secured equal marks in the selection, though the appellant-candidate had not participated in the interview. But since the appellant-candidate was senior to the respondent-candidate, based on the principle the appellant-candidate had to be appointed and that alone was done by the Bank. We find nothing wrong in the procedure adopted in the selection in the peculiar factual and rule position of the Bank. seniority-cum-merit, of The Judgment under appeal is, hence, set aside.

9. The appeals are allowed. No costs. New Delhi; August 29, 2017.
.....J.

[KURIAN JOSEPH].J.

[R. BANUMATHI]. 5 ITEM NO.15 COURT NO.5 SECTION XI S U P R E M E C O
U R T O F I N D I A RECORD OF PROCEEDINGS Petition(s) for Special Leave to
Appeal (C) No(s). 9673/2017 (Arising out of impugned final judgment and order
dated 28-11-2016 in SA No.826/2007 passed by the High Court Of Judicature At
Allahabad) SYED MOHAMMAD Petitioner(s) VERSUS UNION OF INDIA & ORS.
Respondent(s) WITH SLP(C) No.12376/2017 (XI) Date :

29. 08-2017 These petitions were called on for hearing today. CORAM : HON'BLE
MR. JUSTICE KURIAN JOSEPH HON'BLE MRS. JUSTICE R. BANUMATHI For
Petitioner(s) Mr. Sameer Abhyankar, Adv. Mr. Satish Vig, AOR Mr. Rajesh Kumar,
Adv. Mr. Gaurav Kumar Singh, Adv. Mr. Rakesh Chaurasiya, Adv. Mr. Bhumit

Solanki, Adv. For M/s Mitter & Mitter Co. Mr. Salar M. Khan, Adv. Mr. Sridevi Panikkar, Adv. Ms. Rita Dey, Adv. M/s. Ap & J Chambers

ORDER

For Respondent(s) UPON hearing the counsel the Court made the following Leave granted. The appeals are allowed in terms of the signed non-reportable Judgment. Pending interlocutory applications, if any, stand disposed of. 6 (JAYANT KUMAR ARORA) (RENU DIWAN) COURT MASTER ASSISTANT REGISTRAR (Signed non-reportable Judgment is placed on the file)

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