

Goutam Das Vs. Garden Reach Shipbuilders Engineers Ltd. and ors.

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Court : Kolkata

Decided On : Nov-17-2006

Reported in : 2007(1)CHN178

Judge : Ashim Kumar Banerjee and ;Tapan Mukherjee, JJ.

Acts : [Constitution of India](#) - Article 311

Appeal No. : FMA No. 349 of 2003 and C.O. No. 10215 (W) of 1996

Appellant : Goutam Das

Respondent : Garden Reach Shipbuilders Engineers Ltd. and ors.

Advocate for Def. : Dipak Kumar Ghosh and ;Ranojoy De, Adv.

Advocate for Pet/Ap. : Ramesh Chandra Ghosh, Adv.

Disposition : Appeal dismissed

Judgement :

Ashim Kumar Banerjee, J.

1. Respondent No. 1 published the advertisement on August 2, 1980 for the post of Assistant Store Officer. In the advertisement five years experience in store department of any reputed engineering concern was required for being eligible to apply for the same post. The appellant had three years experience and as such he

was not eligible for the said post. He applied for the said post claiming to be a Scheduled Caste candidate. The post was a single one and as such there was no reservation prescribed therefor. In support of his claim as a Scheduled Caste candidate, he submitted a certificate from the then Metropolitan Magistrate, Calcutta. Pertinent to mention, Scheduled Caste Certificate could only be issued by the prescribed authority being the concerned Block Development Officer. The judicial officer was not empowered to issue such certificate. However, the respondent No. 1 considered the said certificate as a valid one and considered the appellant for the said post. Although, he did not have requisite experience as he was claiming to be a Scheduled Caste candidate such experience was relaxed. Selection Committee selected him for the said post. The observation of the Selection Committee was as follows:

The Secretary stated that there has been acute shortage of candidates belonging to Scheduled Castes and Scheduled Tribes with the requisite qualifications and experience. Shri Das, although quite young and not very experienced, should be given an opportunity since candidates belonging to SC/ST are entitled to relaxation in age, qualification and experience in accordance with the Government policy.

2. He was given appropriate appointment in 1980. Since then he was working in the said post. In 1985, he was promoted to the post of Assistant Engineer with effect from November 28, 1985. In 1991, he was promoted to the post of Divisional Engineer with effect from December 1, 1991. In all the promotional process he was considered as a Scheduled Caste candidate. In 1994, probably on a complain made by someone the company wrote to the Deputy Commissioner for Scheduled Caste/Scheduled Tribe to enquire whether the appellant actually belonged to Scheduled Caste or not. On March 1, 1994 the Assistant Director, Ministry of Social Welfare informed the respondent No. 1 that the appellant belonged to Mahishya Community which was not included in Scheduled Caste category. The appellant was informed accordingly. He was asked to produce appropriate certificate from the competent authority in proof of his claim as a Scheduled Caste candidate. The appellant could not produce such certificate. He was chargesheeted on May 11, 1994 and after a regular disciplinary proceeding, he

was dismissed from service by an order dated September 27, 1995.

3. It is however, pertinent to note that when the appellant was confronted with the report of the Deputy Director, Ministry of Social Welfare, he immediately submitted his resignation on April 30, 1994. However, such resignation was not accepted. He was proceeded with departmentally and was ultimately dismissed from service.

4. On July 1996, the appellant filed the instant writ petition which was heard and disposed of by the learned Single Judge on September 10, 1999 wherein the learned Single Judge dismissed his writ petition by holding that there was no reason to interfere with the action of the respondent No. 1 while conducting the disciplinary proceeding which culminated in the order of dismissal. The Judgment of His Lordship is appearing at pages 158 and 182 of the paper book. Hence, this appeal by the appellant.

5. Mr. Ramesh Chandra Ghosh, learned Counsel appearing in support of the appeal contended that the appellant was under a wrong impression that he being a member of Mahishya Community belonged to Scheduled Caste category. Such impression was had from the certificate issued by the judicial officer. Hence, on bona fide belief that he was a Scheduled Caste candidate he applied for the post describing him as a Scheduled Caste candidate. The post was not reserved for the Scheduled Caste candidate and it was a general post. Hence, the appellant had no intention to get any undue benefit. It was also contended that once the appropriate authority observed that Mahishya Community did not belong to Scheduled Caste category he resigned from the post and the respondent authority should have accepted such resignation with immediate effect. It was further contended that once he resigned from the said post there was no scope for proceeding against him departmentally. Lastly, it was contended that whatever was done on the part of the appellant, was a mistake based upon a certificate issued by a judicial officer. Hence, appellant should be pardoned and the order of dismissal should be quashed and set aside coupled with a direction upon the respondent authority to accept his resignation with retrospective effect.

6. Mr. Dipak Ghosh, learned Counsel appearing for the respondents while opposing the appeal contended that since it was a single post there was no

reservation. However, the eligible experience required for the said post was relaxed in the case of the appellant on the basis of his Scheduled Caste Certificate. The post required five years experience whereas the appellant did have three years experience. Even then, the Selection Committee considered him for the said post by relaxing the experience eligibility based upon his claim for being a Scheduled Caste candidate. Mr. Ghosh relied on xerox copies of the service records produced in Court to show that in next two promotional process he was given benefit of his claim as a Scheduled Caste candidate. He contended that Mahishya Community was not included in Scheduled Caste category. Hence, the appellant could not have made such claim for making unlawful gain. Hence, the respondent authority was right in not accepting his resignation and then proceeding against him departmentally, which culminated in an order of dismissal. Mr. Ghosh supported the order under appeal.

7. In support of his contention Mr. Ghosh relied on as many as fourteen decisions of the Apex Court which are as follows:

1. All India Reporter, 1995, Supreme Court, Page 277 Ravinder Sharma and Anr. v. State of Punjab and Ors.
2. All India Reporter, 1997, Supreme Court Weekly, Page 4065 Union of India v. A Nagamalleswar Rao
3. 1995, Supplementary (4), Supreme Court Cases, Page 100 Union of India and Ors. v. M. Bhaskaran
4. : [1995]3SCR430 Director of Tribal Welfare, Govt. of Andhra Pradesh v. Laveti Giri and Anr.
5. Judgment Today, 2002 (2), Supreme Court, Page 256 Kendriya Vidyalaya Sangathan and Ors. v. Ram Ratan Yadav
6. : AIR 2003 SC240 Central Airmen Selection Board and Anr. v. Surender Kumar Das
7. : AIR 2004 SC1469 R. Vishwanatha Pillai v. State of Kerala and Ors.

8. 2004 (6) SCALE 224 Vice-Chairman, Kendiya Vidyalaya Sangathan and Anr. v. Girdharilal Yadav

9. : AIR 2005 SC4292 A.P. Public Service Commission v. Koneti Venkateswarulu and Ors.

10. : AIR 1995 SC94 Madhuri Patil and Anr. v. Addl. Commissioner, Tribal Development and Ors.

11. : AIR 1986 SC872 Express Newspaper (P) Ltd. and Ors. v. Union of India and Ors.

12. : AIR 2006 SC2103 Navdeep v. State of Punjab and Ors.

13. : [1997]1SCR220 S. Nagarajan v. District Collector, Salem and Ors.

14. : [1997]2SCR1180 Ganesh S/o Gulabrao Suroshe v. State of Maharashtra and Ors.

8. We, however, find that the decision in the case of R. Vishwanatha Pillai (supra) is appropriate in the instant case. Paragraph 15 of the said decision being relevant in his quoted below:

This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the Constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the [Constitution of India](#). Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis a false caste certificate has become final. The position, therefore, is that the

appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the [Constitution of India](#). As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt within terms of Article 311 of the [Constitution of India](#) or the rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

9. Considering the observation of the Apex Court, we are of the view that despite the fact that the post was not reserved for Scheduled Caste candidate the very basis of his appointment claiming to be a Scheduled Caste candidate by which he got relaxation of experience was based upon a certificate which was not a valid one. As such his appointment was liable to be terminated as there was no appointment in the eyes of law. In any event, the authority gave him opportunity by proceeding against him departmentally giving him opportunity to defend himself in the proceeding. The authority acted fairly and ultimately dismissed him from service after following the regular procedure for a departmental proceeding. The learned Single Judge observed that it was not a mistake on the part of the appellant to claim that he was a Scheduled Caste candidate. The learned Judge considered the issue in great detail after considering the precedents cited before His Lordship. We do not find any scope of interference therein.

10. The appeal fails and is hereby dismissed without, however, any order as to costs.

11. Before parting with, we intend to observe that a judicial officer while discharging his public duty dispensing justice should know his authority and limitation. We are unable to convince ourselves as to how a judicial officer could issue such certificate which was not within his domain. It might be true that the

officer under bona fide impression that Mahishya Community belonged to Scheduled Caste category issued the certificate. That would not absolve him from his responsibility. The very fact that he was not entitled to issue such certificate could not have been overlooked by him. The learned Judge made remarks about the conduct of the judicial officer. We are in full agreement with him.

12. Urgent xerox certified copy would be given to the parties, if applied for.

Tapan Mukherjee, J.

13. I agree.

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