

Union of India and Others

Vs

Sanjay Pant and Others

Civil Appeals Nos. 5316 to 5338 of 1992

(S.R. Pandian, B.P. Jeevan Reddy JJ)

11.12.1992

JUDGEMENT

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B. P. JEEVAN REDDY, J.:-

1. Leave granted.
2. Heard counsel for the Union of India and the Respondents.
3. A common question arises in all these appeals which are directed against the judgment of the Central Administrative Tribunal, Calcutta Bench. It would be sufficient if we refer to the facts in Union of India v. Sanjay Pant (Appeal arising from SLP (C) 10396/ 91).
4. The respondent was granted a scholarship by the Andaman and Nicobar Administration for prosecuting his study in M.A. (Economics) at Jhansi in the State of Uttar Pradesh. He had to and he did execute a personal bond to serve Andaman and Nicobar Administration for a minimum period of three years soon after obtaining the qualification, failing which he was obliged to refund the scholarship. He was granted another scholarship for study in diploma course in the Indian Institute of Science, Ranchi, during the year 1986-87. This scholarship also carried a similar condition to serve the Andaman and Nicobar Administration for a period of three years after completing his course of study.
5. By a memorandum dated 24-12-1986, he was asked to appear before the Interview Board for selection to the post of Statistical Assistant on 23-1-1987. By a subsequent memorandum, he was asked to submit his local certificate and certificates of educational qualifications obtained by him. He was called to an interview, but was not selected on the ground that he did not have 10 years' continuous education in Andaman and Nicobar Islands. He made a representation against his non-selection whereupon he was offered an ad hoc appointment. Since the respondent was already holding the post of Statistical Assistant on ad hoc basis, he declined to accept the said ad hoc appointment and approached the Tribunal. The defence of the Administration was that inasmuch as the respondent was not a 'local candidate', he was not offered a regular appointment.
6. The Tribunal allowed the O.A. on the following reasoning: In two cases viz., M. Palaniappan (1987) 3 Serv LJ 611 (CAT-Cal) and Smt. Rita Kumari (O.A. 1221/89 dated 23-11-1990) the Tribunal has already held that termination of ad hoc appointee on the ground of not being a local candidate is illegal. These decisions were followed and applied in P. G. James (1990) 2 Cal LT 89

(Tribunal) where it was held that refusal to offer regular appointment on the said ground is illegal. These cases conclude the issue in this case. Moreover, requirement of residence in a particular territory (in this case, Union Territory of Andaman and Nicobar Islands) is opposed to Article 16(2). Under Article 16(3) only a law made by the Parliament can impose such a restriction or requirement, as the case may be. Admittedly, Parliament has not made any such law. Accordingly the O. A. was allowed and it was declared that the respondent shall be deemed to have been appointed to the post of Statistical Assistant in a regular capacity with effect from 8-4-1987 (the date on which he was offered an ad hoc appointment) and that his seniority should be determined accordingly.

7. The learned counsel for the appellants contended that the requirement of being a local candidate for the purpose of employment, in the case of Andaman and Nicobar Administration was a provision made under clause (4) of Article 16 of the Constitution and is, therefore, not hit by clause (3) or (2) of Article 16 of the Constitution. The learned counsel, however, could not place before us any order, notification or other proceeding not even the Circular dated 12-9-1980 (sic) struck down in Palaniappan providing that for employment in Andaman and Nicobar Administration, the candidate should be a 'local candidate'. Only two letters, viz., the letter from the Government of India bearing Reference No. 14011/6/ 77-A & N addressed to the Chief Commissioner, Andaman and Nicobar Administration and the letter No. U-1401 1/ 10 (S. 11) / 79 A & N dated 14-2-1984 from the Government of India, Ministry of Home Affairs addressed to the Chief Secretary, Andaman and Nicobar Administration, have been placed before us. We have carefully perused the same. Neither of them provides that only a 'local' candidate shall be entitled to be appointed in respect of any or all posts in the Andaman and Nicobar Administration or that only local candidates will be preferred in the matter of such appointment. In such a situation, the question whether they can be justified with reference to clause (4) of Article 16 does not arise. We must say that the appellants have not laid the factual foundation for the argument raised by them before us. This argument, it may be noted, was not raised before the Tribunal.

8. On the other hand, the learned counsel for the respondents have brought to our notice that SLPs filed against identical orders of the Central Administrative Tribunal, Calcutta have been dismissed by this Court. Our attention is drawn to one of them, viz., SLP (C) No. 13121/90 disposed of on 19-11-1990 (Lt. Governor of Andaman and Nicobar and Ors. v. Sri P. G. James). The respondents have also placed before us a copy of the order of the Tribunal against which the said SLP was filed. We find that the matter is identical.

9. In the above circumstances, these appeals are liable to fail. We make it clear that we express no opinion on the question whether it is permissible for the administration to make a provision under Article 16(4) of the Constitution providing that only 'local' candidates will be entitled to or preferred in the matter of appointment to the services and posts under the Administration. As stated hereinabove, the factual foundation for considering the said argument has not been laid by the appellants in this case, and hence, there is no occasion for us to express any opinion on the said issue. The Appeals accordingly fail and are dismissed. No order as to costs. Appeals dismissed.

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