

State of Karnataka

Vs

G.M. Hayath

Civil Appeal No. 11342 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

16.08.1996

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. The impugned order of the Tribunal made in OA No. 5675 of 1989 on 23-3-1992 is founded upon the disciplinary proceedings taken by the appellant for the alleged misconduct of the respondent by producing a certificate at the time of his recruitment to the effect that the income of his father was not more than Rs 1000 per annum. On that premise, they conducted an enquiry under the conduct rules; found him guilty under Rule 6(1) of the Karnataka State Police Disciplinary Proceedings Rules, 1965 and imposed a penalty of stoppage of one increment without cumulative effect. The respondent challenged the same. The Tribunal found that he was selected in his own merit as a general candidate and, therefore, the income has no reference. It was also found that the income of his grandfather from the land properties cannot be clubbed as the concept of joint family is inapplicable to the respondent who is a member hailing from the minority community (Muslim). The father of the respondent was a petty trader. The Sales Tax Officer who is only an assessing authority, cannot add 10% of his assessable income to show that his income is more than Rs 750 per annum. On either of these grounds, the order imposing penalty of stoppage of one increment was held illegal. Thus, this appeal by special leave.

4. Shri Veerappa, learned counsel for the State, contended that the view of the Tribunal is not correct in law. We find no force in the contention. As seen, the very preamble of the order of the Tribunal does indicate that the respondent had in fact contended that he was selected as a general candidate on his own merit and not as a Backward Class. If that be the position, obviously the income criteria is clearly inapplicable. Since the respondent does not have any record in that behalf, it is the duty of the State to produce the selection list prepared by the Public service Commission to show whether he was selected and appointed as a general candidate. That record has not been placed on record. Even otherwise also, we are in agreement with the Tribunal in its findings on merits. The income of his grandfather from land and properties cannot be included in his income since the concept of the joint family is not applicable to the persons professing Islam. The respondent being a Muslim is governed by his own personal law. Accordingly, the income of the grandfather cannot be included to be the income of the respondent. As regards the income of his father, he is a petty trader. Therefore, the Sales Tax Officer is competent only to assess the annual turnover of the income and assessable income has to be assessed. But his certificate of income including 10% more on the assessable income cannot, therefore, be conclusive. In either case, we do not find any merit warranting interference.

5. The appeal is accordingly dismissed. No costs.