

Kishorilal Charmakar and Another

Vs

Distt. Education Officer and Another

Civil Appeals No. 5336 of 1995 with No. 8260 of 1997

(Sujata V. Manohar, D. P. Wadhwa JJ)

19.11.1997

ORDER

1. Leave granted in Special Leave Petition (C) No. 19775 of 1995.

2. The four appellants in these two appeals had applied for appointment as sub-teachers pursuant to an advertisement which was issued in the year 1985. After written test and interview, the appellants were included in the select list of candidates selected as sub-teachers. The merit list of candidates so selected which was published had three categories, General category, Scheduled Caste category and Scheduled Tribe category. The names of the appellants were shown under Scheduled Tribe category. None of the appellants, however, belong to a Scheduled Tribe. The appellants were appointed as sub-teachers in the year 1986 because they were on the select list of Scheduled Tribe candidates. They were also regularised with effect from 8-4-1987. On 29-6-1987, a show-cause notice was issued to the appellants by the respondents stating inter alia that on account of the mistake in feeding the data to the computer, their names wrongly shown in the category of Scheduled Tribe candidates whereas they did not belong to the said category. Hence they were asked to show cause why their services should not be terminated. The appellants submitted their reply. Ultimately by an order dated 8-1-1988, the services of the appellants were terminated.

3. Being aggrieved by this order of termination, they filed writ petitions in the High Court which were transferred to the Madhya Pradesh Administrative Tribunal at Jabalpur. The Tribunal upheld the orders of termination. It further said that if there are any vacancies in the post of sub-teacher, the District Education Officer may consider the petitioners against those posts. It further observed,

"If, however, there is no vacancy in the post of sub-teacher, the petitioners shall have no right of consideration against any future vacancy that may be advertised."

With these observations, the applications were dismissed. The present appeals have been filed from this judgment and order of the Tribunal.

4. From the material on record, it is clear that the appointments which were given to the appellants were under a bona fide mistake by considering them as Scheduled Tribe candidates, though it is clear that this mistake was not occasioned on account of any mistake by the appellants. Three out of four appellants belong to the Scheduled Caste category and had given their caste certificate while the fourth appellant was in the open category and had not submitted any certificate. The mistake appears to be on the part of the respondents. On discovery of the mistake, they had immediately corrected the situation and the Tribunal has upheld their right to correct this mistake.

5. The appellants, however, are aggrieved by the observations of the Tribunal to the effect that they will have no right of consideration against any future vacancy that may be advertised. They also submit that through no fault of theirs, they have worked for ten years as sub-teachers under interim orders granted in their favour and, therefore, since the mistake is not occasioned by them, they should be allowed to continue. The Tribunal has, in our view, rightly found them not eligible for the posts which were meant for Scheduled Tribe candidates. The appellants are, however, correct in submitting that they were not responsible for the mistake. This, however, does not entitle them to retain the undeserved benefit which has accrued to them on account of the respondents' mistake. The Tribunal, however, was not justified in stating that they have no right of consideration against any future vacancy. We, therefore, make it clear that if they are eligible, they will be entitled to apply and be considered for any future vacancy of sub-teachers. In case they are age-barred, the period during which they have worked as sub-teachers will be considered for relaxing the age bar, looking to the unusual circumstances of the present case and without this being considered as a precedent. The appeals are, accordingly, dismissed.