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STATE OF KARNATAKA

v.

G.M. HAYATH

AUGUST 16, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Karnataka State Police Disciplinary Proceedings Rules, 1965 : Rule 6(1).*

C

*Recruitment—Prescription of ceiling on father's income—Eligibility criteria—A muslim recruited as employee as a general candidate on his own merit and not as a backward class—Allegation of producing wrong income certificate at the time of recruitment—Enquiry—Stoppage of increment without cumulative effect—Challenge—Tribunal holding that the order of stoppage of increment was illegal—Appeal preferred by State—Held the income of employee's 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—Accordingly, the income of the grandfather cannot be included to be the income of the respondent—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 of the father, a petty trader, cannot, therefore, be conclusive—Held impugned order does not warrant any interference.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11342 of 1996.

From the Judgment and Order dated 23.6.92 of the Karnataka Administrative Tribunal, Bangalore in A. No. 5675 of 1989.

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M. Veerappa for the Appellant.

Santosh Hegde, R.S. Hegde and P.P. Singh for the Respondent.

The following Order of the Court was delivered :

H

Leave grated.

We have heard learned counsel on both sides.

The impugned order of the Tribunal made in OA No. 5675/89 on March 23, 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 more than Rs. 1,000 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 this assessable income to show that his income is more than Rs. 750 p.a. On either of these grounds, the order imposing penalty of stoppage of one increment was held illegal. Thus, this appeal by special leave.

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 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 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

A 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.

B The appeal is accordingly dismissed. No costs.

T.N.A.

Appeal dismissed.