

(2011) 02 CAL CK 0023
In the Calcutta High Court
Case No : WPCT No. 1419 of 2010

Abdul Sameer

APPELLANT

Vs

Binu Nair

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2011) 2 CHN 196

Hon'ble Judges : Soumitra Pal, J; Sanjib Banerjee, J

Bench : Division Bench

Advocate : Haradhan Banerjee for the Petitioners, for the Appellant; Santosh Kumar Mandal for the Administration Anjili Nag for the Pvt. Respondent, for the Respondent

Judgement

1. These two writ Petitioners were given provisional appointment as drivers in the fire services department following a selection process conducted under the draft recruitment rules that have been prepared by the Administration.

2. The draft recruitment rules apparently override the standing order governing the recruitment process and provide for general category candidates in the age group of 18-32 years to be eligible and OBC candidates in the age group of 18-35 years to be entitled to apply. Only these two categories are involved in the present proceedings. The standing order of 2007 provided the age group in the general category to be 18-25 years and that in the - OBC category to be 18-32 years.

3. The first Respondent herein, who applied as a general category candidate, was born in May of 1983. The advertisement published for recruitment to the relevant posts provided the cut-off date to be some time in October or November, 2008. It appears that as on the cut-off date the first Respondent herein, who was the applicant before the Central Administrative Tribunal, may have been more than 25 years old.

4. The difficulty arose as the two best-placed OBC candidates fared better than the two best-placed general category candidates, whereupon the two best-placed OBC candidates were selected as the two best-placed general category candidates. Consequently, the two next best-placed OBC candidates rose in ranks to be eligible to be appointed to the two seats reserved from the OBC category. The present writ Petitioners are such third and fourth best OBC candidates who became the first and second best OBC candidates upon the original first and second being taken over and considered as general category candidates.

5. By the order dated April 16, 2010 which has been impugned in the present proceedings, the Tribunal held that the draft recruitment rules which stipulate different age groups than what had been specified in the standing order of 2007 could not have been made the basis for the recruitment process. The Tribunal order referred to a judgment reported at 1998 (3) SCC 435, A.B. Krishna v. State of Karnataka and two unnamed judgments rendered by the Tribunal itself in OA No. 112 of 2009 and OA No. 115 of 2009. The view taken by the Tribunal was that once there was a set of rules in place, a fresh set of rules by a subordinate authority could not replace the original set of rules. It is made clear that no opinion is expressed here as to whether the reliance on the decision rendered in the context under Article 309 of the Constitution was apposite in the case before the Tribunal. It is also the agreed position at the bar that the judgments rendered by the Tribunal in OA No. 112 of 2009 and OA No. 115 of 2009 were not cited by the parties before the Tribunal and were not referred to by the Tribunal in course of the hearing but only found mention in the judgment.

6. Before the primary point canvassed by the writ Petitioners can be taken up, it is necessary to notice an important facet of the matter. Under Rule 11 of the Rules applicable to the Tribunal, the service of notice or the service of cause papers on a party may be made by several means. The first sub-rule refers to a party, being entitled to effect service on another. The writ Petitioners herein have asserted at paragraph 8 of the petition that the writ Petitioners were not served the cause papers through the machinery of the Tribunal. At paragraphs 11 and 12 of the petition, there are statements to the effect that the Petitioners collected the cause papers only after the judgment was delivered and that the Petitioners were not apparently aware of the proceedings prior thereto. The insinuation contained in the paragraphs 11 and 12 of the petition does not appear to be borne by facts. It is recorded in the Tribunal order that an affidavit of service had been filed by the first Respondent herein (the applicant before the Tribunal). The affidavit of service asserted that the cause papers had been despatched to the present writ Petitioners by the first Respondent herein under cover of a letter dated December 04, 2008. The notice, however, provided that the matter would be moved before the Tribunal between December 5, 2008 and December 11, 2008. Though there was proof of despatch of the notice, there was no evidence of service thereof. The Tribunal decided to proceed ex parte against the private Respondents therein (the present writ Petitioners), albeit it being evident that the fate of the private Respondents could be adversely affected in

course of the adjudication of the matter before the Tribunal. Even if it is accepted that the petition may have been received by the Tribunal despite the service not having been completed on some parties, but the Tribunal ought not have taken up the final hearing without being satisfied as to service particularly since the private Respondents have been ousted from their posts by the order.

7. It is an entirely different matter that it now appears that the present writ Petitioners were aware of the proceedings prior to the final order being made therein. But the Tribunal was not aware of that; at least its order does not reflect the same.

8. On merits, the writ say that in the event the draft recruitment rules had not been made applicable to the relevant recruitment process, the applicant before the Tribunal would have been ineligible to apply. The point made is that if the first Respondent herein was more than 25 years old as at the cut-off date specified in the advertisement, there was no question of the first Respondent herein carrying the question as to the discrepancy between the draft rules and the standing order relating to age, since the applicant before the Tribunal had taken advantage of the relaxation provided by the draft rules. In the absence of the private Respondents to that action being represented before the Tribunal, such minor, matter appears to have escaped the attention of the Tribunal.

9. The second aspect of the matter is that since the applicant before the Tribunal had participated in the process without any demur or protest, ordinarily such an applicant could not be heard to later complain of the process. It does not appear from the order assailed that such feature was considered by the Tribunal.

10. On behalf of the writ Petitioners several judgments have been placed, including one reported at 2003 (4) SCC 712, High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat) which refers to a previous judgment reported at Vimal Kumari Vs. The State of Haryana and Others, . On a reading of such authorities, it seems that all relevant questions on the aspect may not have been considered by the Tribunal in making the order which has been impugned herein.

11. There is a further element to the order that needs to be mentioned. Surely, the Tribunal did not take up the matter by way of a public interest litigation, if any public interest litigation can at all be received by the Tribunal. In such circumstances, the Tribunal ought first to have investigated into the entitlement of the applicant before it prior to embarking on an adjudication on any other question.

12. It has been submitted on behalf of the Administration that the writ Petitioners were given conditional orders of appointment and that even in such orders there was a reference to the proceedings then pending before the Tribunal, The Administration says that after the order dated April 16, 2010 was made, the Administration issued a memorandum, on September 30, 2010 by which the entire recruitment process has been cancelled and the Administration began the process of undertaking a fresh exercise for such purpose. Upon the

present writ petition having been entertained by this Court, an interim order was made that restrained the Administration from completing the fresh recruitment process.

13. In view of the discussion above, and since several aspects of the matter need to be revisited by the Tribunal, WPCT No. 1419 of 2010 is allowed by setting aside the order dated April 16, 2010 passed by the Port Blair Bench of the Central Administrative Tribunal and by directing the Tribunal to hear the matter afresh upon notice to all concerned. The Tribunal is requested to ensure that the exercise is completed within a period of three months from the date of communication of a copy of this order. Since the Administration has annulled the recruitment following the order dated April 16, 2010 passed by the Tribunal, the cancellation need not be undone unless the Tribunal dismisses the petition now sent on remand;

There will be no order as to costs. Urgent certified photocopies of this order, if applied for, be furnished to the parties upon compliance with the requisite formalities.