

(2019) 08 CAL CK 0045

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 26829 (W) Of 2013

Amarendra Kumar Singh

APPELLANT

Vs

Damodar Valley Corporation And Another

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 08 CAL CK 0045

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Ganesh Shrivastava, Sukanta Das, Ranajay De, Bisbajit Banerjee

Final Decision : Dismissed

Judgement

Protik Prakash Banerjee, J

1. In this writ petition filed under Article 226 of the Constitution of India, 1950 the petitioner has challenged an Office Order passed by the respondent Corporation whereby 25 persons were selected and given appointment to the post of Senior Chemist Grade III (Trainee) at the respondent corporation. These appointments were made pursuant to an advertisement issued by the respondent Corporation which advertised, inter alia, that 25 vacancies for the post of Senior Chemist Grade III (Trainee) were vacant and invited application from interested candidates. The petitioner was one such candidate who participated in the selection process up to the stage of personal interview, however, he was not selected for the aforesaid post. He was not successful and was not empanelled. He has challenged the process as an unsuccessful candidate, with wide and unspecified allegations of corruption, without however, making any officer of the respondent no. 1 a party eo nomine.

2. The case of the writ petitioner is that the entire selection process through which the aforesaid vacancies have been filled is not merely illegal but at the same time it treats the candidature of the writ petitioner unfairly. It has been

contended by the writ petitioner that he obtained higher marks during the selection process compared to the selected candidates. On the basis of the aforesaid contentions the writ petitioner, inter alia, prayed principally for the following reliefs:

a) A writ of and/or in the nature of Mandamus do issue commanding the respondents to forthwith quash and/or the set aside the office order through which 25 persons have been selected for the post of Senior Chemist Grade III(Trainee) in DVC as per information obtained under RTI.

b) A writ of and/or in the nature of Mandamus do issue commanding the respondents to issue joining/appointment letter to the petitioner for the post of Senior Chemist Grade III(Trainee) in DVC.

c) A writ of and/or in the nature of Prohibition do issue restraining the respondents authorities from inducting any person for the post of Senior Chemist Grade III(Trainee) other than the petitioner till the disposal of the writ petition.

3. The respondent corporation has primarily impeached the maintainability of this writ petition. The first ground for challenging the maintainability of the writ petition is that the writ petitioner has failed to array as private respondents the candidates who have already been given appointment to the aforesaid posts. In support of the aforesaid contention, a judgment in Ashim Moulick-v-The State of West Bengal reported in (2015) 1 CHN 245 (DB) passed by the Hon'ble Division Bench of this Court has been relied upon before this Court. In the said judgment, their Lordships observed the following:

"The contention of the Petitioner is that since he is better qualified and more meritorious than those who have been appointed to the aforesaid post he must also be appointed to the post.

The argument advanced on behalf of the Petitioner is fallacious. The Petitioner has not made any of the persons who have been selected or appointed parties to the Original Application. Therefore, he cannot seek any relief against their appointment. Moreover, the Petitioner's case that he was better qualified than the others who have been appointed could have been examined only if he had made those persons parties to the Original Application. Having fail to do so, the Petitioner cannot now contend that he has been excluded wrongly.

When the Petitioner filed the Original Application in 2011 he was well aware that the panel of the selected candidates have been prepared as he was in possession of the recommendation of the Selection Committee for appointment to the post of Driver Grade -

II at Pool Car Office, Kolkata. Despite this the Petitioner has not challenged the selected panel in the Original Application."

4. Upon my independent assessment of the objection raised against the maintainability of the writ petition by the respondent corporation, I find that the

general rule in a situation where third-party interests are likely to be affected is that sufficient notice must be given to such third-parties whose interests will be so affected as a result of the litigation and they should be impleaded in the petition as necessary parties. This is to ensure that the interests of the third-parties must not go unrepresented and the cause of justice is not frustrated. On the other hand, where the number of third parties is numerous, it may not be necessary to implead each of them within in the writ petition subject to the condition that their interests are so identical that it has been sufficiently and well represented by those who have been impleaded in the petition. The whole exercise is to ensure that the foremost principles of natural justice being audi alteram partem which mandates that no person shall be condemned unheard is sufficiently complied with. Similar views have been endorsed by a judgment of the Hon'ble Supreme Court of India in the case of B. Prabhakar Rao and Others-v- State of Andhra Pradesh and Others reported in AIR 1986 SC 210equivalent to 1985 (Supp) SCC 432. For the sake of proper appraisal of the ratio laid down by the Hon'ble Apex Court in this matter, I respectfully quote the following paragraph:

"Paragraph 29. We may now refer to two arguments which were mentioned in passing but were not pursued. The first was that a writ petition similar to Writ Petition Nos. 3420-3426/83 etc. had been filed earlier and had been dismissed in limine by a Bench of this Court. We do not see how the dismissal in limine of such a writ petition can possibly bar the present writ petitions. Such a dismissal in limine may inhibit our discretion but not our jurisdiction. So the objection such as it was, was not pursued further. So also the second objection which related to the nonjoinder of all affected parties to the litigation. We are quite satisfied that even if some individual affected parties have not been impleaded before us, their interests are identical with those and, have been sufficiently and well represented. Further, the relief claimed in Writ Petition Nos. 3420-3426 of 1983 etc. is of a general nature and claimed against the State and no particular relief is claimed against any individual party. We do not think that the mere failure to implead all affected parties is a bar to the maintainability of the present petitions in the special circumstances of these cases where the actions are really between two 'warning groups'."

5. However, the judgment referred to above is not the only authority with respect to the proposition referred to above. In another judgment passed by the Hon'ble Supreme Court of India in State of Uttaranchal-v- Madan Mohan Joshi reported in 2008 6 SCC 797, a Division of the Apex Court remitted the matter back to the concerned High Court for a fresh consideration observing that a writ petition under Article 226 of the Constitution ought not to be decided without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large.

6. The issue was finally laid to rest by the Hon'ble Supreme Court of India in its

judgment passed in the case of Poonam-v-State of U.P. and Others reported in (2016) 2 SCC 779, a Division Bench of the Hon'ble Apex Court referred to the apparently conflicting judgments and laid down the law that when termination, removal or dismissal of an employee was challenged, the person appointed in the place of a terminated, removed or dismissed employee would not be a necessary party. This was held in response to a contention suggesting that it is a settled proposition of law that in every case when a termination is challenged, the affected person has to be made a party. The aforesaid contention was made relying upon a decision of the Hon'ble Supreme Court of India in J.S. Yadav-v-State of U.P. and Another reported in (2011) 6 SCC 570 wherein the Apex Court held that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the Petitioner-Plaintiff may not be entitled for the relief sought by him. In order to avoid any misreading of the ratio of the Apex Court, paragraphs 39 and 42 of the judgment in Poonam (Supra) has been set out and laid down below:

Paragraph 39. The aforesaid decisions do not lay down as a proposition of law that in every case when a termination is challenged, the affected person has to be made a party. What has been stated is when one challenges a provision as ultra vires the persons who are likely to be affected, some of them should be made parties in a representative capacity. That has been the consistent view of this Court in service jurisprudence. Some other decisions, which have been relied upon are directly connected with regard to the selection and selectees. On a perusal of the analysis made in J.S. Yadav (supra), we are disposed to think that the Court has applied the principle pertaining to the constitutional validity by equating it with the interpretation of a provision, whether it is retrospective or prospective. That apart, the Court, as is evident from paragraph 32 of the judgment, has noted that the prayer made by the Appellant only related to the declaratory relief. The said decision has to be understood in the context. A ratio of a decision has to be understood in its own context, regard being had to the factual exposition. If there has been advertence to precedents, the same has to be seen to understand and appreciate the true ratio. The ratiocination in the said decision is basically founded on the interpretation of the statutory provision and the relief claimed. The Court has been guided by the fact that when the interpretation as regards the provision whether it is retrospective or prospective, the selected members are necessary parties.

Paragraph 42. From the aforesaid, it is clear as day that what has been stated in paragraph 31 in the case of J.S. Yadav (supra) does not even follow from the authorities referred to therein. We have analysed the principle of when and in what circumstances, a decision becomes a binding precedent. We have also discussed the facts at length keeping in view the declaratory relief made in the writ petition preferred before the High Court. The context in which the observations have been made have to be kept in mind. Regard being had to the factual scenario in entirety and further taking note of the fact that the court was basically concerned with the retrospective and prospective applicability of the

provision, we are disposed to think that it is not a binding precedent for the proposition that in a case of termination or removal or dismissal, the person appointed in the place of a terminated, removed or dismissed employee would be a necessary party. That is how the said authority has to be understood, and we so understand.

7. A bare analysis of the ratio laid down by the Hon'ble Supreme of India in the aforesaid judgments carves out an exception to the general rule of impleadment of necessary parties. This exception is based on a pre-condition that the relief claimed by the petitioner must be of a general nature, claimed against the State and no particular relief must be claimed against any individual party. A further note of caution has also been sounded by indicating that the circumstances of the petition must be of a special nature where actions are between two 'warning groups'. The present case does not show that there was any action between 'warning groups' so as to justify the non-joinder of the selected candidates whose interests would be prejudicially affected if the writ petition is allowed to proceed. On the other hand, the writ petitioner has sought a relief for setting aside of the office order by which 25 determinate persons were appointed as employees of the respondent no. 1, without arraying them as parties and without even explaining why he chose not to so do. In fact, no specific submission is made before this court in order to place the present matter within the exception carved out above, I find no reason to deviate from the general rule as discussed above.

8. Secondly, even if we I assume that the addition of 25 parties would be too onerous an obligation for the petitioner to discharge, it would have been incumbent the writ petitioner to add at least some or even one of the parties in a representative capacity since, based on the records presented before this court, it is clear that the cause of action of the writ petitioner against all of them are similar if not identical. However, even at the hearing stage of the matter, no leave was sought by the writ petitioner to remedy this fatal defect. In the Affidavit in Opposition filed by the respondents the question of maintainability of the petition on ground of non-joinder of necessary parties was raised. Even then, the writ petitioner in its reply chose not to challenge such objection and provided nothing but a bare denial against it and thus, it is difficult to say that the writ petitioner was not aware of the consequences that would follow.

9. Finally, I have noted in paragraph 7 above that upon termination or removal or dismissal, the person appointed in the place of a terminated, removed or dismissed employee would not be a necessary party. In the case at hand, there was no dismissal, removal from service or termination which was involved, but the writ petitioner was not even appointed, whereas the reliefs prayed for him affects directly the persons who are appointed and are already in service. Therefore, an obligation to implead the incumbent must be strictly discharged.

10. In the absence of the necessary parties, I cannot proceed to hear the matter any further on merits. Therefore, though other points were raised by the parties,

including, on behalf of the respondents, that an unsuccessful candidate was not entitled to challenge the selection procedure after having participated in the selection process and failed and that the panel expired on appointments being made from it and hence even if the petitioner succeeded in his challenge, he was not entitled to any relief of appointment, I do not decide those issues, since on the pure question of maintainability on the ground of non-joinder of necessary parties, this petition must fail. A significant point is that though the petitioner has alleged mala fides, he has not arrayed any of the respondents eo nomine to show who acted mala fide and how and he has not alleged particulars which would sustain an allegation of malice in fact. The allegation of widespread corruption appears to have been made only to try and explain why the petitioner was not given appointment, though it begs the question how a person not empanelled in the unreserved category could be appointed. No particulars of the alleged corruption have been furnished in the petition.

11. On merits, the respondent corporation has of course contended that the writ petition is devoid of merit and the challenges to the aforesaid appointments are unsustainable in law. The respondent corporation not only denied that the writ petitioner was discriminated as against the selected candidates but even submitted that the appointment was denied to the writ petitioner on the ground that the petitioner, who was an unreserved candidate, ranked 14 on the merit list whereas the number of unreserved posts out of the total number of vacancies was 11. Though, the petitioner was in a panel of reserved candidates however the validity of the said panel expired after 1 year, and the petitioner is not entitled for any appointment. Since I cannot decide the petition on merits in the absence of necessary parties, as I have held above, I do not go into these questions.

12. That leaves me with the question of what is to be done. Had the writ petitioner chosen to apply for addition of party at any time before the defence on the basis of non-joinder of necessary parties had been raised, I could have granted him liberty to join the said twenty-five persons or anyone representing them as party. However, the writ petitioner has denied that they were necessary parties which, in the facts of this case, are not sustainable in law or on facts.

13. Thus, the question of adding them as parties to this petition does not and cannot arise. For the reasons aforesaid, I am afraid the writ petition is not maintainable for non-joinder of a necessary party and I dismiss the same. This order shall, however, not preclude the writ petitioner from filing afresh in accordance with law, if so advised, on the self-same allegations.

14. The writ petition is dismissed. There shall be no order as to costs.