
(1980) 12 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Original Order No. 177 of 1980

Anil Kumar Biswas and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-12-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 235

Citation : (1980) 12 CAL CK 0008

Hon'ble Judges : Murari Mohan Dutt, J;Ajit Kumar Sarkar, J

Bench : Division Bench

Advocate : Sudhangshu Nath Ganguli, Kumud Ranjan Purkait and Parimal De, for the Appellant;S.C. Das Gupta and Partha Sarathi Sen Gupta for the Respondent Nos. 7 to 16, Mr. Tapas Chandra Roy and Sumit Kumar Panja for the State, for the Respondent

Final Decision : Dismissed

Judgement

1. In this appeal, the appellants have challenged the judgment of Sabyasachi Mukherji, J. : whereby the learned Judge discharged the Rule Nisi issued on the application of the appellants under Article 226 of the Constitution.

2. The appellants and three others were recruited from the Bar and were appointed to the posts of Munsifs on the recommendation of the High Court. The respondent Nos.7 to 16 were also appointed Munsifs on the recommendation of the West Bengal Public Service Commission on the result of their examinations. All these appointments were made during 1971. The names of the appellants in the Civil List corrected as on January 1, 1975 and published in 1978 were shown against Serial Nos. 194, 196, 197, 199, 200 and 201 respectively, except that the appellant No.3 whose seniority position had been as No.1 in the list of Probationary Munsif at Page 362 of the Civil List by reason of his not passing the departmental test. The names of the respondent Nos.7 to 16 who were not recruited from the Bar, but were appointed through Public Commission by passing the relevant examinations were shown against Serial Nos.207 to 211 in

the said Civil List. In other words, the appellants were shown as seniors to the respondent Nos.7 to 16 in the Civil List. In this connection, we may refer to Rule 2 of the West Bengal Service (Judicial Determination of Seniority) Rules, 1961, which is as follows: -

"2. the relative seniority inter se of persons appointed as Munsifs in the West Bengal Civil Service (Judicial) against the vacancies occurring in any Particular year shall be determined in the following manner:

(a) These appointed by selection should be senior to those appointed on the results of examination.

(b) Subject to (a) above, (i) the relative seniority of the Munsifs appointed by selection shall be according to age provided that in case of equality of age seniority shall be according to length of practice at the Bar (ii) the relative seniority of Munsifs appointed on the results of examination shall be according to the order of merit in the examination".

3. As the appellants were bar recruits, their names were placed in the Civil List above the respondent Nos.7 to 16 on the basis that both the appellants and the respondent Nos.7 to 16 were appointed against 1969 vacancies. In his letter dated December 21, 1978, the Secretary to the Government of West Bengal, inter alia, stated to the Additional Registrar, High Court, Appellate Side, Calcutta that on the basis of the revised order issued by the Government, the position of the appellants would be below the respondent Nos. 7 to 16. The appellants felt aggrieved Secretary to the Government of West Bengal dated December 21, 1978 and challenged the same by filing a writ petition in this Court, on which a Rule Nisi was issued.

4. Respondent Nos.1 to 4 being State of West Bengal and its officers have opposed the Rule Nisi by an affidavit-in-opposition by Sri Ajit Kumar Ghosal, the Deputy Secretary, Judicial Department, the respondent No.4. The sum and substance of the case of the respondents, as made out in the affidavit-in-opposition is that the appellants were appointed to the posts of Munsifs against the 1970 vacancies, but through mistake, it was stated by the Secretary to the Government of West Bengal while communicating to them the respective orders of appointment that they were appointed against vacancies occurring in 1969. In the circumstances, when the mistake was detected, it was rectified by the impugned order.

5. At the hearing of the Rule Nisi, it was contended on behalf of the appellants that there was no mistake inasmuch as they were appointed against 1969 vacancies, and not 1970 vacancies. Further, it was submitted on their behalf that as no opportunity of hearing was given to the appellants before the impugned order was passed, it was illegal and should be quashed. The third contention of the appellants was that it was only the High Court that could determine the question of seniority, and not the State Government, in view of Article 235 of the Constitution of India. It was submitted that the impugned order was made by the

Government in violation of the provision of Article 235 of the Constitution.

6. The learned Judge after considering the facts and circumstances of the case and also the submissions made on behalf of either party, overruled all the contentions of the appellants holding, inter alia, that a mistake was committed in stating that the appellants were appointed in respect of the vacancies occurring in 1969 while the appellants were, as a matter of fact, appointed against vacancies of 1970. In that view of the matter, the learned Judge discharged the Rule Nisi. Hence this appeal.

7. The same contentions have been repeated before us by the learned Advocate appearing on behalf of the appellants. So far as the question whether really any mistake was committed or not, it is submitted on behalf of the appellants that the records would show that no such mistake was committed. The contention of the learned Advocate is that the vacancies in which the appellants were appointed occurred in 1969 and not in 1970. In our opinion, this contention does not find support from the materials on record.

8. In this connection, we may refer to the letter of the Registrar of the High Court, Appellate Side written to the Secretary to the Government of West Bengal dated January 24, 1970. The relevant portion of the said letter is as follows: -

"... The Court is strongly of opinion that some Munsifs should be recruited immediately so that the vacant courts of Munsif as well as the vacant posts of Registrars may be filled up at the earliest opportunity.

"I am to point out that in October, 1969 the Court recommended to Government the names of 10 candidates selected by it from amongst the members of the Bar for appointment as Munsifs against 1969 vacancies. Five more candidates named in the margin were at the same time selected by the Court and kept in reserve for consideration for appointment as Munsifs in case of necessity.

1. Shri Niranjana Ghosh,,
2. Shri Harasit Kumar Ghosh,
3. Shri Lila Prakash Bhattacharji,
4. Shri Ratan Lal Mukhopadhyay,
5. Shri Sakti Pada Hazra."

"The Court accordingly recommends that these five selected number of candidates selected along with any equivalent number of candidates selected by the Public Service Commission for appointment as Munsifs as against the vacancies of 1970 may be recruited immediately to replenish the shortage of officers, as aforesaid."

The last three of the names mentioned in the margin are the appellant Nos.2, 4 and 3 respectively.

9. Again, it appears that five more candidates from the panel of 1969 were recommended for appointment as Munsifs which will appear from the letter dated August 5, 1970 of the Registrar, Appellate Side, High Court, Calcutta addressed, to the Secretary to the Government of West Bengal. Judicial Department. The names of the said candidates are Sri Ganendra Nath Mallick Chowdhury, Sri Rathindranath Mitra, Sri Bibhuti Bhusan Chatterji, Sri Anil Kumar Biswas, and Sri Sarat Kumar Maity. The name of appellant No.7 was also similarly recommended for appointment. In view of the said recommendations, all the appellants were appointed. It is, therefore, clear from the said letter of the Registrar, Appellate Side, High Court that the appellants were kept in reserve for appointment in vacancies that might occur in 1970, although their names were included in the 1969 panel.

10. At this stage, we may refer to the West Bengal Civil Service (Judicial) Recruitment Rules, Rule 2 of the said Rules provides as follows: -

"2 Method of Recruitment:

Recruitment to the West Bengal Civil Service (Judicial) occurring in any one-year shall be made in the following manner, that is to say -

(i) by filling up fifty per cent of the vacancies on the results of a competitive examination to be conducted by the Public Service Commission, West Bengal and

(ii) by filling up the remaining fifty per cent of the vacancy by selection from amongst the members of the Bar by the High Court, Calcutta.

Provided that the State Government may, after a period of three years from the date of the first examination held by the Public Service Commission under this rule, by order vary the ratio between the number of vacancies to be filled by examination and the number of vacancies to be filled by selection by the High Court in such manner as it thinks fit."

11. So, according to Rule 2, 50% of the vacancies will be filled up on the results of the competitive examination to be conducted by the Public Service Commission, West Bengal and the remaining 50% by selection from amongst members of the Bar by the High Court, Calcutta. In 1969 there were altogether 21 vacancies which will appear from the letter of the Secretary to the Government of West Bengal dated January 27, 1969, Annexure A to the affidavit-in-opposition, and out of the said 21 vacancies 10 were filled up by selection from amongst the members of the Bar and the remaining 11 through the Public Service Commission, West Bengal on the result of competitive examination. It is not the case of the appellants that the said 21 vacancies were not filled up against 1969 vacancies. After the said vacancies were filled up, there cannot be any scope for appointment of the appellants to those vacancies. It is, therefore, crystal clear that the appellants were appointed against 1970 vacancies, and not against 1969 vacancies. In our opinion, there cannot be any scope for dispute about the fact that the appellants were not, as they could not be, appointed

against 1969 vacancies, for those vacancies were already filled up which will apart from the documents annexed to the affidavit-in-opposition of the No.4. Therefore, the statements of the secretary to the Government of West Bengal in his memos annexed to the letters of appointment of the appellants to the effect that "the above 10 candidates are appointed against vacancies occurring in 1969" was obviously a mistaken statement. The said memos were also forwarded to different authorities including the Accountant General, West Bengal. In view of the mistake committed in the said memos, the names of the appellants were mentioned in the Civil List above the names of the respondent Nos.7 to 16. It is not disputed that the respondent Nos.7 to 16 were appointed against 1969 vacancies. Accordingly, the appellants who were appointed against 1970 vacancies could not claim seniority over the respondent Nos. 7 to 16.

12. It is complained on behalf of the appellants that before the impugned order was made by the Government, the appellants should have been given an opportunity of being heard. We do not think that any investigation was required to be made after hearing the appellants. It is true that by virtue of the impugned order, the appellants were placed below the respondent Nos.7 to 16 in the Civil List. But as the mistake was obvious, there was no question of any opportunity being given to the appellants. It is now well-settled that no one can take advantage of any mistake. It is also a well-established principle of law that an authority committing a mistake is entitled to correct the same. The mistake was committed by the Secretary to the Government of West Bengal and by the impugned order he has corrected the mistake. In the circumstances, the question of violation of the provision of Article 235 does not arise. Moreover, as the learned Judge has pointed out, the Additional Registrar, High Court in his letter dated December 22, 1976 addressed to the Joint Secretary, Judicial Department, Government of West Bengal, stated, though wrongly, that determination of seniority of Munsifs concerns the Government and the Court might consider the matter if any specific proposal came from the Government. The said letter was written by the Additional Registrar in connection with the seniority of one Sanat Kumar Bose which was referred by the Judicial Department to the High Court by the letter dated May 28, 1976. In view of the said statement made by the Additional Registrar under the direction of this Court, there was nothing on the part of the Government to determine the seniority. By the impugned order, the Government did not decide the question of seniority, but only corrected the mistake that was committed at the time the appellants were appointed to the posts of Munsifs in that the appellants were stated to have been appointed in respect of vacancies occurring in 1969, although they were appointed against 1970 vacancies.

13. In the circumstances, we are of the view that the learned Judge was perfectly justified in discharging the Rule Nisi. No other point has been urged in this appeal.

14. In the result, the appeal is dismissed for the reasons aforesaid.

In view of the facts and circumstances of the case, there will be no order as to costs.

Sarkar, J.

15. I agree.