

(2023) 07 CAL CK 0101

In the Calcutta High Court

Case No : W.P.S.T. No. 10, 11, 12, 13, 14 Of 2021

Ashis Kumar Bose And Anr.

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 25-07-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(15), 2(21), 2(41), 2(48), 10, 10(2), 10(2)(d), 10(2)(e), 10(2)(f), 10(2)(g), 10(2)(h), 47

Citation : (2023) 07 CAL CK 0101

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharyya, Koushik Banerjee, Pratik Dhar, Tanmay Chowdhury, Ritoprita Ghosh, Anirban Ray, Biswabrata Basu Mallick, Sayan Ganguly

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. Five writ petitions have been taken up for analogous hearing as they emanate out of the same impugned order dated March 4, 2020 passed by the State Administrative Tribunal.

2. The writ petitioners before us had filed five several original applications challenging the panel prepared for the post of Police Driver in Kolkata Police Department, Government of West Bengal. They had prayed for an order granting their appointment after reassessing their candidature.

3. Learned Senior Advocate appearing for the writ petitioners has submitted that, Kolkata Police Recruitment Board issued a notice dated March 20, 2006 whereby applications were invited from eligible candidates for the post of Police Driver in Kolkata Police. The petitioners had applied therein. He has referred to the advertisement issued by the Kolkata Police Recruitment Board. He has referred to technical qualification prescribed in the recruitment process. He has submitted

that, an applicant in the recruitment process must possess a valid licence to drive heavy vehicles.

4. Learned Senior Advocate appearing for the writ petitioners has submitted that, the definition of heavy vehicles had been omitted in the Motor Vehicles Act, 1988. Such omission in the statute was made prior to the issuance of the advertisement dated March 20, 2006. Therefore the entire selection process was vitiated as the prescription of technical qualification appearing in the advertisement was no longer available in the statute. Moreover, the concept of heavy vehicles underwent a change in the Motor Vehicles Act, 1988 and therefore, the word "heavy vehicles" used in the advertisement cannot be interpreted by taking recourse to a judgement of the Supreme Court.

5. Learned Senior Advocate appearing for the writ petitioners has contended that, the authorities are required to adhere to the technical qualifications prescribed in the advertisement dated March 20, 2006. He has pointed out that, the State respondents acknowledged that, candidates without possessing the heavy vehicle licence were also included in the list of successful candidates as recorded in the order dated July 19, 2013 passed in the original application. He has contended that, the tribunal did not enter into the issue of candidates not possessing heavy driving licence being included in the list of successful candidates at the time of final hearing of the original application.

6. Learned Senior Advocate appearing for the writ petitioners has contended that, the change of stand of the State from the order dated July 19, 2013 passed in OA 1535 of 2012 to that subsequently taken, does not alter the position in law. In any event, it does not change the category of drivers that had been advertised for.

7. Referring to 2013 Volume 14 Supreme Court Cases 663 (Mukund Dewangan vs. Oriental Insurance Company) on which reliance was placed by the tribunal, learned Senior Advocate appearing for the writ petitioners has contended that the same does not help the State. In the facts and circumstances of the present case, violation of the eligibility criterion prescribed in the advertisement initiating the selection process has been admitted. Justification of the selection made despite violations of the eligibility criterion, on the basis of interpretation of the provisions of the Motor Vehicles Act, 1988 should not be accepted. He has relied upon 2023 Volume 4 Supreme Court Cases 723 (Bajaj Alliance General Insurance Company Limited vs. Rambha Devi and others) in this regard.

8. Learned Senior Advocate appearing for the respondent nos. 5 to 301 opposing the writ petitioners has contended that, the tribunal relied upon the interpretation of the Larger Bench of the Supreme Court rendered in Mukund Dewangan (supra). He has relied upon 2019 Volume 12 Supreme Court Cases 248 (M. S. Bhati vs. National Insurance Company Limited) and contended that, Mukund Dewangan (supra) was considered therein. He has referred to Sections 2 (21) and 47 as well as Section 10 of the Motor Vehicles Act, 1988 as amended in

support of his contention with regard to the classification of the vehicles. He has contended that, prior to 1994 there were 10 different kinds of driving license which were compressed to 7 by virtue of the definition of "light motor vehicle" as obtaining in Section 2 (21) of the Motor Vehicles Act, 1988.

9. Learned Senior Advocate appearing for the respondent nos. 5 to 301 has contended that, the writ petitioners did not secure pass marks and therefore, were not in the zone of consideration. Moreover, the private respondents had been appointed in the month of February 2013 and are driving the vehicles of the Kolkata Police for the last ten years.

10. Learned Government Pleader appearing for the State has contended that, the recruitment procedure prescribed by the advertisement of January 2012 was not challenged by any of the writ petitioners. The recruitment qualification that had been prescribed, inter alia required an applicant to possess a valid driving licence to drive heavy vehicles and to obtain pass mark of 50 per cent of the total mark at the interview. On the date when the advertisement of January 2012 had been published, there was no specified licence under the Motor Vehicles Act, 1988 for heavy motor vehicles. Light motor vehicles included most vehicles including transport vehicles which have replaced all other regular licences including heavy goods licence and heavy passengers licence. He has pointed out that there are 1893 number of vehicles having unladen weight of and below 7500 Kgs and 7 number of vehicles having unladen weight over and above 7500Kgs. The vehicles having unladen weight in excess of 7800 Kgs are being driven by persons holding appropriate driving licences.

11. Learned Government Pleader has submitted that, the interpretation to the words "heavy vehicles" as given by the authorities and by the tribunal increased the scope of competition and was in the interest of public at large. The interpretation had been uniformly applied across every person participating in the selection process. He has relied upon Mukund Dewangan (supra) as well as M. S. Bhati (supra) in support of his contentions.

12. An employment notice bearing No. 02/2012/KPRB had been issued by the Kolkata Recruitment Board in response to the G.O No. 4529-PL dated October 31, 2011 and G.O No. 1083-PL dated March 20, 2006 for recruitment to the post of Police Driver. The writ petitioners had appeared in the selection process. An original application had been filed being OA 1535 of 2012 before the West Bengal Administrative Tribunal complaining against arbitrariness in the selection process. By an order dated July 10, 2013, the Tribunal had allowed the original application by quashing the panel of selected candidates, setting aside the appointment and passing a direction to the recruitment authority to hold fresh selection in terms of the Recruitment Rules. A writ petition being WPST 3 of 2013 had been filed before the Hon'ble Court challenging the order dated July 19, 2013 passed in OA 1535 of 2012. By an order dated September 18, 2017 the High Court had remanded the matter to the Tribunal for rehearing after providing opportunity to all successful candidates an opportunity of hearing. A special leave petition had

been filed challenging the order dated September 18, 2017 of the High Court. Such special leave petition had been dismissed on May 14, 2018. On rehearing, the tribunal had passed the impugned order which upheld the selection process.

13. The bone of contention has centred around the technical qualification prescribed in the employment notice. The relevant technical qualification which has given rise to the litigation is as follows :-

“ Technical qualification :- the applicant must possess a valid Driving Licence to drive heavy vehicles”

14. The Motor Vehicles Act, 1988 had been amended by the Motor Vehicles (Amendment) Act, 1994 with effect from November 14, 1994 and the then existing clauses (e) to (h) of Section 10 (2) of the Act of 1988 had been amended. Concept of driving licences for motor vehicles had underwent a change consequent to the amendment introduced with effect from November 14, 1994 to Section 10 (2) of the Act of 1988 which had transformed the criterion of driving licences.

15. The effect of the amendment made by the Amendment Act of 1994 with effect from November 14, 1994 in Section 10 (2) of the Act of 1988 has been considered in Mukund Dewangan (supra). It has held as follows :-

“59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-3-2001. Any other interpretation would be repugnant to the definition of “light motor vehicle” in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the 1989 Rules, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of “light motor vehicles” and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act “Transport Vehicle” would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Sections 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus, we answer the questions which are referred to us thus:

60.1. “Light motor vehicle” as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.

60.3. The effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle" in Section 10(2)(e), "medium passenger motor vehicle" in Section 10(2)(f), "heavy goods vehicle" in Section 10(2)(g) and "heavy passenger motor vehicle" in Section 10(2)(h) with expression "transport vehicle" as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e. light motor vehicle.

60.4. The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

16. Mukund Dewangan (supra) has been considered in M. S. Bhati (supra) where it has been noted that, the decision of Mukund Dewangan (supra) has been referred for reconsideration by a Larger Bench in Bajaj Alliance (sic Allianz) General Insurance Company Limited (supra). Further to noting of such reference, it has held that, the law laid down by Mukund Dewangan (supra) was binding and that as a matter of judicial discipline Mukund Dewangan (supra) continues to hold the field.

17. The tribunal has applied the ratio of Mukund Dewangan (supra) in construing the technical qualification prescribed in the notification initiating the selection process. The authorities have applied an understanding of the technical qualification, which is in consonance with the ratio of Mukund Dewangan (supra) in the selection process and applied such understanding of the technical qualification uniformly amongst all aspirants in the selection process. Nothing has been placed on record to suggest, let alone establish that, there was any discrimination on the application of the understanding of the technical qualification during the selection process.

18. Till such time, Mukund Dewangan (supra) is altered in the pending reference, the same has binding effect. As noted above, the actions taken by the authorities is in consonance with the ratio of Mukund Dewangan (supra) and the learned tribunal has noted the same while passing the impugned order.

19. In view of the action of the authorities being in conformity with Mukund Dewangan (supra) it cannot be said that, the selection process stood vitiated by reason of prescription of a technical qualification which did not exist in the Motor Vehicles Act, 1988. The technical specification in the advertisement of the selection process has been understood in a particular way by the authorities which such understanding is in conformity with the ratio of Mukund Dewangan (supra).

20. In such circumstances, we find no merit in the present writ petitions. W.P.S.T. No. 10 of 2021, W.P.S.T. No. 11 of 2021, W.P.S.T. No. 12 of 2021, W.P.S.T. No. 13 of 2021, W.P.S.T. No. 14 of 2021 along with all other connected applications are dismissed without any order as to cost.

21. I agree.