(2000) 11 CAL CK 0050

In the Calcutta High Court

Case No : A.S.T. No. 3809 of 2000

Bhagbat Chandra Saa Amanta APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 10-11-2000

Acts Referred:

West Bengal Panchayat (Gram Panchayat Miscellaneous Accounts and Audit) Rules, 1990 — Rule 33
West Bengal Panchayat (Recruitment and conditions of service of Gram Panchayat Karmi) Rules, 1995 — Rule 7(3)

Citation : (2001) 2 ILR (Cal) 194

Hon'ble Judges : Dilip Kumar Seth, J

Bench : Single Bench

Advocate : J.C. Maity and Benoy Kumar Das, for the Appellant;B. Mitsuddi, for the Respondent

Final Decision : Dismissed

Judgement

Dilip Kumar Seth, J.—The Petitioner was appointed as Tax Collector. It is contended that the Petitioner was assured that whenever there would be a vacancy, he would be given appointment. Now by making this petition, the Petitioner states that in the ensuing selection of Gram Panchayat Karmi/Sahayak the Petitioner may be permitted to participate after relaxing his age. The Petitioner is admitted to be about 48 years old, as is admitted by the Learned Counsel for the Petitioner. He claims that in view of his engagement for this long period as Tax Collector, the Petitioner should be permitted to participate in the selection along with all other candidates.

2. It appears that the appointment of the Petitioner is governed by Rule 33 of the West Bengal Panchayat (Gram Panchayat Miscellaneous Accounts & Audit) Rules, 1990. Rule 33 of the said Rules is quoted below:

Collecting Sarkar-(1) If considered necessary and expedient, Gram Panchayats may, at its meeting resolve to engage for a specified period, not exceeding two years at a time, not mere than two persons to work on commission basis, as Collecting Sarkar for collection of rates, taxes and fees assessed by the Gram Panchayat. The Gram Panchayat shall also determine at the meeting the rate of commission payable to Collecting Sarkar subject to the maximum limit fixed by the Government from time to time, and also the amount of security deposit to be pledged by the Collecting Sarkar, subject to the minimum as may be fixed by the Government from time to time.

(2). On deposit of the security as fixed by the Gram Panchayat, the Collecting Sarkar shall be given a receipt book as prescribed in From 4. Each individual collection shall be made against each individual receipt and as soon as the Collecting Sarkar has Rs. 50 or more, in hand he shall make over the amount to the Secretary/the Pradhan for crediting to the Gram Panchayat Fund.

(3). Gram Panchayat may take disciplinary action against a Collecting Sarkar by earlier termination of contract (and forfeiting his security deposit in the case of misappropriation of money) on charges of incompetence, negligence of duty or any other irregularity committed by him. Before taking such disciplinary action, the Gram Panchayat shall frame a charge against him, give him a copy thereof requesting him to submit his explanation within a specified time and also give him an opportunity of personal hearing and shall record in writing the evidence given by him, or by his witness, if any.

3. It appears from the above Rule 33, that the appointment of Tax Collector is purely a contractual appointment on commission basis and it does not confer any right of a regular employee. In a decision in M.A.T. No. 4027 of 1999, Biplab Kumar Das Mahapatra v. State of West Bengal disposed of April 27, 2000, this Court had held that such Tax Collectors can neither be absorbed or regularised nor can be given promotion having referred to the decision in the case of State of Madhya Pradesh v. Dharambir 1998 (6) S.C.C. 195 Thus, in view of the decision of the Division Bench, the Petitioner cannot claim any right to promotion or being absorbed or regularised.

4. Be that as it may, the Petitioner has not claimed promotion, absorption or regularisation. He has claimed a chance or opportunity to participate in the ensuing selection.

5. In order to get an opportunity to participate in the selection, one has to be eligible for being so considered under the relevant Rules. Reference has been made to the West Bengal Panchayat (Recruitment and conditions of service of Gram Panchayat Karmi) Rules, 1995. But the said Rules prescribe in Sub-rule (3) of Rule 7 that in order to recruit Panchayat Karmi, the source of recruitment is Employment Exchange. Therefore, the said Rule also prescribes that unless a person is registered in Employment Exchange and his name is so sponsored on a requisition being so made, he cannot be considered nor can he participate in the selection of Panchayat Karmi Sahayak. Then again in 1999 an Act has come into force under which all appointments in the Government establishments and the

establishments of Local Bodies are to be governed by the West Bengal Act XIV of 1999. The said Act also prescribed the source of recruitment as the Employment Exchange.

6. Admittedly the Petitioners cannot be sponsored by the Employment Exchange. Neither he is being so sponsored by the Employment Exchange. Therefore the Petitioners cannot be eligible for recruitment under either the 1995 Rules or the 1999 Act. As such his claim cannot be acceded to.

7. That apart he is not eligible on account of his having crossed the age limit. He is 48 years of age. A prayer has been made for relaxation of age. Relaxation can be allowed in respect of a case, where age has exceeded marginally. There cannot be relaxation of age exceeded substantially. Here in this case the age exceeded by about 18 years. If such a step is taken by the Court, it will open a flood gate and the administration will be in a complete disarray. It will be in direct conflict with the provisions of law. The Court is not all-powerful to pass an order in contravention of law. The Court has to conform to the statute. It cannot overlook the statutory provision. Court has to do justice and justice according to law. The court cannot do something which law does not permit. Therefore, it is not possible to acceded to the contention of the Learned Counsel for the Petitioner.

8. Reference has been made in the case of Hindustan Shipyard Limited v. S. Sadashib Rao 1996 (9) S.C.C. 4999. The said decision does not apply to the facts of this case in view of the fact that in the said case, the question was altogether different. In that case some ad hoc appointments were given and as regards their appointment and regularisation, it was observed that if a scheme is framed, in that event, their cases may be considered by the Selection Committee constituted in accordance with the Rules for direct appointment. In such case, they can be considered for being directly recruited.

9. In the present case the Petitioner was not given any regular appointment as Tax Collector and then they are seeking to participate in the selection for a post different to that of the Tax Collector. In the said decision, the claim was made in respect of the selfsame post for which the appointment was being made. Thus the said decision is distinguishable.

10. Thus these two decisions does not help the Petitioner in the facts and circumstances as discussed above.

11. In the circumstance, the Petitioner cannot get any relief in the present writ petition. This writ petition, therefore, fails and is, accordingly, dismissed without any order as to costs.