

(1998) 04 CAL CK 0005
In the Calcutta High Court
Case No : Writ Petition No. 9387 (W) of 1997

Biswa Ranjan Parua

APPELLANT

Vs

Calcutta Port Trust

RESPONDENT

Date of Decision : 17-04-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1998) 1 ILR (Cal) 390

Hon'ble Judges : Satyabrata Sinha, J;D.B. Dutta, J

Bench : Division Bench

Advocate : P.K. Roy, Janardan Panigrahi, Tapan Kumar Roy, Nikhil Kr. Roy and Nirbaresh Chatterjee, for Added Party, for the Appellant;Alok Banerjee, Kamal Kr. Chattopadhyay, Kalyan Kr. Bandopadhyay, Murari Das Roy, A.N. Shaw, Himangsu Basu, Subimal Mukherjee, Ashoke Kr. Jana, Prasanta Naskar, P. Sinha, S. Gupta, Utpal Bhattacharjee and Sudhansu Sil, for the Respondent

Final Decision : Allowed

Judgement

Satyabrata Sinha, J.—These applications had been referred to a Division Bench in view of the two sets of contradictory orders passed by different benches of this Court has led two by a learned single Judge of this in terms of order dated December 10, 1997 stating:

It appears that at different points of time, different orders had been passed as to the manner in which employment is to be provided under the said scheme. In one set of cases, the Court has directed the Port Trust authorities to consider the cases of the Petitioners in keeping with their respective ages. Since, those who were senior inspite of being lower down in the panel, had little or no chance of being appointed once they crossed the age-barrier.

In another set of cases, this Court directed that consideration should be strictly in accordance with the order of merit in the panel prepared for giving employment under the scheme.

In view of the two contradictory sets of orders, it has been urged on behalf of the Calcutta Port Trust authorities that it has become necessary to obtain a clarification as to the manner in which such appointments are to be given.

Accordingly, let all these matters be referred to the learned Chief Justice for the purpose of constituting a Bench to consider these matters and to pass one uniform direction, which can be followed by the Calcutta Port Trust authorities.

2. The writ Petitioners are land-losers. Their lands were acquired for the benefit of the Calcutta Port Trust for construction of the Haldia Dock Complex. The State Government took a policy decision on October 17, 1977, inter alia, for providing employment to the family of land-losers. The said policy decision was adopted by the first Respondent. Various writ applications were filed relating to implementation of the said policy decision and the matter ultimately was resolved by the Apex Court in Calcutta Port Trust Vs. Deba Prosad Bag, Satya Ranjan Kutty, Maradhan Jana, Sachindra Nath Maity, Akshoy Kumar Giri and Asmoke Kumar Naity, . The Apex Court later on also clarified its order.

3. Pursuant to the said policy decision the screening committee was to screen the applications filed by the land-losers. When vacancies arise the names of the land-losers are sponsored by the Employment Exchange. Admittedly a suitability test is taken. It is further admitted that a panel is prepared.

4. A learned Judge of this Court directed that keeping in view the fact that an upper age limit has been prescribed for by the first Respondent in the matter of recruitment, those who were aged should be appointed as they would have little or no chance of being appointed once they crossed the age bar. However, other learned Judges of this Court directed that recruitment should be made strictly in terms of the said panel.

5. Mr. Roy and other learned Counsels appearing on behalf of the Appellants submitted that the latter view is correct.

6. Mr. Aloke Banerjee the learned Counsel, however, produced before this Court a division bench judgment comprising of Hon'ble the Chief Justice and Justice Barin Ghosh wherein it has been laid down that those who were not born in the year 1963 i.e. at the year in which lands were acquired, were not entitled to get the benefit of the scheme.

7. Mr. Kalyan Kumar Bandopadhyay, the learned Counsel appearing on behalf of the Respondent No. 1 in some of the matters, however, submitted that this Court should evolve a scheme in terms whereof the aged persons should get a preference.

8. It is admitted that for the purpose of grant of recruitment some sort of tests are held. A panel is prepared in terms of the result of such tests. The State has formulated a scheme for grant of appointment to the families of the land-losers. It is, only the State Government or the Calcutta Port Trust can frame a scheme as to how and in what manner the object can be based subserved while this

Court is not empowered in exercise of its jurisdiction under Article 226 of the Constitution of India. This Court while in terms of Article 226 of the Constitution of India must exercise its power of judicial review within the parameters as laid down in the decisions of the Apex Court. As noticed hereinbefore a decision of the Supreme Court is also operative in the field. This Court, therefore, cannot go beyond the same.

9. In these writ applications validity of the panel is not in question. No grievance has also been made by any of the learned Counsels that any illegality or irregularity has been committed by the Calcutta Port Trust in the matter of preparation of such panel.

10. It is well settled principles of service jurisprudence that the best person available should be employed. It is only with that view in mind tests are taken and a merit list is prepared. When a panel is prepared on the basis of the merit of the candidates, the employer has no other alternative but to appoint strictly in terms thereof failing which the action of the employer would attract the wrath of Articles 14 and 16 of the Constitution of India. The age bar provided in service rules provides for a maximum age upto which a person can be recruited. In suitable cases and if there exists any provision therefor, the age bar may be relaxed by the management. But as a proposition of law, this Court cannot direct that the persons having higher age should be recruited despite the fact that a merit list has been prepared where to before the candidates had undergone suitability tests, as the same would be violative of the provision of Articles 14 and 16 of the Constitution of India.

11. For the reasons aforementioned we are of the view that so long the policy decision is not changed or a proper scheme is not framed keeping in view the number of posts vacant and other relevant factors, recruitment has to be made strictly in accordance with the merit list.

12. These writ applications are disposed of with the aforementioned directions but in the facts and circumstances of this case there will be no order as to costs.

D.B. Dutta, J.

13. I agree.

14. Xerox certified copy of this order, if applied for be supplied on priority basis.

15. It is stated by Mr. Panigrahi, appearing on behalf of the applicants that one application for addition of parties has been filed on behalf of Swapan Ari and 9 Ors. It is stated that the said application has been allowed. In that view of the matter this judgment shall govern their cases also.