

(2015) 06 CAL CK 0064
In the Calcutta High Court
Case No : Writ Petition C.T. No. 71 of 2012

Buddhadeb Pal and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Citation : (2015) LabIC 3164

Hon'ble Judges : Nishita Mhatre, J;Asha Arora, J

Bench : Division Bench

Advocate : Falguni Bandyopadhyay, for the Appellant; Ujjal Kumar Roy, Advocates for the Respondent

Judgement

Asha Arora, J—Pursuant to an advertisement dated 30/08/2008 for the posts of "Mazdoor" in the Ministry of Defence issued by the Government of India, Ministry of Defence, the petitioners Buddha Deb Pal and Sandeep Kumar applied for the aforesaid post. They appeared for the required test and were selected. Aggrieved by the fact that no appointment letter was issued in their favour the petitioners approached the Central Administrative Tribunal, Calcutta Bench for redressal by filing Original application No. 1261 of 2011. The main contention of the petitioners before the Tribunal was that the advertisement for recruitment to Group - "D" posts (Mazdoor vacancies) issued on 30/08/2008 did not mention that the required qualification for the said post is matriculation. Therefore the petitioners cannot be denied appointment due to amendment of recruitment rules after their selection. The petitioners further asserted that they are similarly situated as Himangshu Sekhar Mondal, one of the selected candidates for the post of "Mazdoor" whose appointment letter was cancelled vide letter dated 31/07/2009 but by the order of the Central Administrative Tribunal in Original application No. 2281 of 2010 a fresh appointment letter was issued in his favour. The petitioners therefore prayed that the benefit of the order passed by the Tribunal in O.A. No. 2281 of 2010 be extended to them by issuing necessary direction upon the respondents to allow them to join the post of "Mazdoor".

2. After hearing the learned Counsel for the applicants/petitioners and on perusal of the pleadings with reference to the materials produced, the Tribunal dismissed the Original application No. 1261 of 2011 vide order dated 20/02/2012 with the following observation:--

"It is not in dispute that applicants were selected but were not issued any appointment letter. Justification assigned by the respondents in their communication placed on record is that recommendations made by 6th Central Pay Commission for stoppage of recruitment to Group - "D" posts where essential qualification is lower than matriculation, has been accepted and therefore selection process underway should be kept in abeyance till further instructions. No further instructions have been issued till date. The reasons assigned by the respondents are justified and satisfy the requirement of law laid in Shankarsan Dash Vs. Union of India, AIR 1991 SC 1612 : (1991) 62 FLR 981 : (1991) 2 JT 380 : (1991) LabIC 1460 : (1992) 2 LLJ 18 : (1991) 1 SCALE 848 : (1991) 3 SCC 47 : (1991) 2 SCR 567 : (1991) 2 UJ 212 . As far as reliance placed on this Bench's judgment in Himangshu Sekhar Mondal is concerned, we may note that applicant therein was appointed and later terminated vide order dated 31/07/2009. Such is not the fact in the case in hand. At the cost of repetition we may note that no specific appointment order was issued in favour of applicants herein and therefore said judgment and order is totally distinguishable."

3. Assailing the impugned order dated 20/02/2012 of the Tribunal as erroneous and violative of the principles of natural justice the petitioners filed the instant petition.

4. Mr. Falguni Bandyopadhyay, learned Counsel for the petitioners contended that the norms or rules in existence on the date when the process of recruitment begins will control the selection and any change in such norms would not affect those who have already been selected for appointment. Learned Counsel further submitted that the Tribunal went wrong in dismissing the claim of the petitioners without appreciating the well settled principle that any change in the norms or rules would not affect the continuing process of recruitment unless it is expressly or by necessary implication made to have retrospective effect. To buttress his argument Mr. Bandyopadhyay placed reliance on the decision of the Apex Court in P. Mahendran and others Vs. State of Karnataka and others, AIR 1990 SC 405 : (1990) 60 FLR 103 : (1990) 1 SCC 411 : (1989) 2 SCR 385 Supp . Reference has also been made to the decision of the Supreme Court in the case of State of Bihar and Others Vs. Mithilesh Kumar, (2010) 9 JT 11 : (2010) 13 SCC 467 : (2011) 1 SCC(L&S) 403 : (2010) 10 SCR 161 : (2011) 1 SLJ 180 : (2010) 8 UJ 3947 .

5. In the first mentioned case law (P. Mahendran and others Vs. State of Karnataka and others, AIR 1990 SC 405 : (1990) 60 FLR 103 : (1990) 1 SCC 411 : (1989) 2 SCR 385 Supp it has been held by the Supreme Court that if a candidate applies for a post in response to an advertisement in accordance with

the recruitment rules he acquires the right to be considered for selection in accordance with the then existing rules. This right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. The same principle has been reiterated by the Supreme Court in *State of Bihar and Others Vs. Mithilesh Kumar*, (2010) 9 JT 11 : (2010) 13 SCC 467 : (2011) 1 SCC(L&S) 403 : (2010) 10 SCR 161 : (2011) 1 SLJ 180 : (2010) 8 UJ 3947 . In the aforesaid case the respondent had been selected for recommendation to be appointed as Assistant Inspector in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms of recruitment were altered to the prejudice of the respondent. The question was whether those altered norms would apply to the respondent. The Supreme Court held that the norms or rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect. The Court further observed that while a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case the fact situation is different since the claim of the respondent to be appointed had been negated by a change in policy after the selection process had begun.

6. We find that the citations referred on behalf of the petitioners are clearly applicable to our case in hand wherein the petitioners, admittedly in the select list were denied appointment by a subsequent change in the norm prescribing the required qualification for the post of "Mazdoor" which was introduced after the selection process.

7. The contention of the petitioners that they are similarly situated as Himangshu Sekhar Mondal is, however, not acceptable as is evident from the order of the Central Administrative Tribunal in Original Application No. 2281 of 2010 which reveals that he (Himangshu Sekhar Mondal) had been "appointed" to the post of "Mazdoor" and he had joined his post on 08/07/2009 on the basis of his appointment letter but was subsequently terminated by order dated 31/07/2009. In our instant case no appointment letter was issued in favour of the petitioners. Therefore there is clear dissimilarity between the two cases.

8. For the purpose of the present case the short point for determination is whether a change in the norms of recruitment after the selection process would apply to the petitioners.

9. In their Affidavit in Opposition the respondents have not disputed the fact that the petitioners were selected for appointment to the post of "Mazdoor" based on the tests held on 11/10/2008 and subsequent days. It is the contention of the respondents that the recruitment process had to be stopped pursuant to receipt of Signal No. Q 7176 dated 10/06/2009 from HQ 33 Corps (Ord) quoted as follows:

"recommendations of VI CPC for stoppage of recruitment in Group-"D" posts

where essential qualification is lower than matriculation have been accepted by the Government." The respondents averred that in view of the aforesaid altered norm appointment letters were not issued to the petitioners as their educational qualification was below matriculation.

10. It is evident from the Affidavit in Opposition filed by the respondents as well as from the selection letters dated 12/11/2008 issued to the petitioners that they had satisfied the eligibility criteria required for appointment to the post of "Mazdoor" as per the advertisement dated 30/08/2008. There is no dispute that the petitioners were selected for appointment. It is also on record that after the selection process the recruitment rule has been altered with regard to the educational qualification to the prejudice of the petitioners pursuant to which they were denied appointment.

11. Considering the fact situation of the present case with reference to the decisions cited on behalf of petitioners and for the reasons discussed we are of the opinion that the altered norms with regard to educational qualification will not apply to the petitioners. The Tribunal evidently erred in dismissing the claim of the petitioners.

12. We therefore set aside the impugned order dated 20/02/2012 passed by the Central Administrative Tribunal in Original Application No. 1261 of 2011 and allow the Writ Petition being W.P.C.T. No. 71 of 2012 with no order as to costs.

13. We direct the respondents to issue appointment letters for the post of "Mazdoor" in favour of the petitioners on the basis of their selection letters within four weeks from this day. Urgent photostat certified copy of judgment if applied for, shall be made available to the parties upon compliance of requisite formalities.