
(2009) 07 CAL CK 0024
In the Calcutta High Court
Case No : W.P.S.T. No. 1904 of 2008

Dilip Kumar Mondal

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 07 CAL CK 0024

Hon'ble Judges : Pratap Kumar Ray, J; Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Balai Lal Sahoo, Abdulla Rahamani and G. Patra, for the Appellant;
Partha Sarathi Chatterjee, for the state, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray , J.—Heard the learned Advocates appearing for the parties.

2. Assailing the judgment and order dated 7th July, 2008 passed in O.A. No. 4542 of 2008 by the West Bengal Administrative Tribunals this writ application has been filed. The impugned order reads thus.

Petitioner has filed affidavit-of-service. Let it be kept with the record. Pursuant to the service Mr. Neogi appeared on behalf of the State-respondents.

The petitioner's case in brief is that, D.L.R. & S & Jt. L.R.C., West Bengal without verification of the necessary documents which could have established petitioner's claim for permanent absorption under the relevant circular recorded the order impugned in this application and as such the said order should be set aside and on the basis of available materials the petitioner should be absorbed in the Government service and necessary direction should be issued on the appropriate authorities.

The Id. Advocate for the petitioner submits that the recording authority held that petitioner served only for the period from 1978 to 1980 and, therefore, failed to

qualify for consideration of absorption, but the documents submitted by the petitioner would show that he rendered service continuously from 1978 to 1984 and, therefore, he is eligible for absorption.

Mr. Neogi appearing for the State-respondents, on the other hand, has drawn our attention to page 38 wherefrom it would be evident that one Binode Behari Mondal claiming himself to be the father of the present petitioner granted all the certificates in favour of his son and Mr. Neogi submits with sufficient force under his command that all the certificates produced by the petitioner are fake, fabricated and forged document and hence the recording officer rightly declined to take note of these documents.

We have examined the averments of the petition, the impugned order and also the documents relied on by the petitioner and on plain examination of the documents available as page 38, we have no reason to differ from the view of Mr. Neogi appearing for the State-respondents and, accordingly, we are of clear opinion that the recording officer on the basis of authentic document rightly rejected the prayer of the petitioner.

Thus, on hearing both the sides and having regard to the relevant materials, we do not find any merit in the present application and the same is dismissed at the admission stage.

3. It is the submission of the writ petitioner by referring the documents annexed at pages 77, 78 and 79 of the writ petition, that the certified copy of the order regarding approval of the appointment of the writ petitioner along with other persons in the post of Tahasil Mohorrars though were produced as a proof of work of the writ petitioner in the said post since 1978 to 1984 to attract the Government Policy Decision for regularising the service of those type of candidates in terms of the order of Land and Land Reforms Department, Government of West Bengal being Order No. 5670-GB-III dated 15th October, 1998 and Order No. 7517-ISU dated 30th November, 1999 read with the Labour Department Circular No. 1700-EMP dated 3rd August, 1979, but same was not dealt with by the learned Tribunal below. It is further contended that one certificate issued by the existing Tahsildar under whom the writ petitioner worked, was wrongly considered as a forged document only relying upon the submission of Mr. Neogi, the departmental representative.

4. His case has a chequered history. It appears from the order impugned in the said original application passed by the D.L.R. & S & JT. L.R.C., West Bengal that initially a direction was passed by Gitesh Ranjan Bhattacharya, J. (as His Lordship then was) in a writ application registered as Civil Rule No. 7592(W) of 1991 directing the State Government to formulate the scheme for absorption of eligible Tahasil Mohorrars, who were working in the regular establishment of the Land and Land Reforms Department in the suitable vacancies in Group-D post phase-wise. The department issued the orders, as quoted above. The condition precedent of consideration of such type of candidates for permanent absorption

was scrutiny of available papers, namely, acquaintance rolls, cash books and other corroborative records. In the instant case, it appears from the aforesaid order of Director of Land Reforms and Survey and Joint Land Reforms Commissioner, West Bengal, dated 19th December, 2007 passed in Misc. Case No. 42 of 2007 that the District Land and Land Reforms Officer, Purba Medinipur on verification of the office records submitted before him to the effect that the petitioner rendered qualifying service in the said post for the years 1978-80 that means three years. in terms of the Government order and circular letter. as referred to, being an outcome of the decision passed by Gitesh Ranjan Bhattacharya, J., as already referred to. Minimum eligibility criterion as per said Government order was working of consecutive five years for such regularization in service. In support of further two years service which was not certified by the District Land and Land Reforms Officer, the writ petitioner submitted the papers as available to him, namely, the certified copy of the orders appointing him in the said post for the periods from 1st February, 1984 to 31st May, 1984, for a period of four months, for four months the year 1390 B.S. with effect from 1st February, 1983 and another four months for the year 1387 B.S. with effect from 1st January, 1981 on usual terms and conditions. These certified copies of the orders were issued by the Sub-Divisional Land and Land Reforms Officer, Tamluk. From the Xerox copies of those documents annexed to this writ application, it appears that the petitioner applied for delivery of the certified copy and the concerned authority issued the certified copies by certifying the same in terms of the rule for granting of such certified copy. The Director of Land Reforms and Survey in his decision, which was impugned in the original application, did not discuss about those documents and there was no whisper whether those documents could be considered to count the working period for a further two years to satisfy the eligibility criteria as per the Government order and circular letter of regularization. Learned Tribunal below also did not consider that issue. There is no whisper about those orders of appointment, the certified copies of which were produced by the petitioner as granted by the competent authority on perusal of their office records. It appears from the impugned decision of the learned Tribunal that the certificate produced by the petitioner was not accepted on the ground that that was fake, fabricated and forged document. There is no finding to that effect how those documents became fake, fabricated and forged. There is not even any decision and no material for such finding as to why those documents were declared as fake and fabricated.

5. It is a settled legal position that when a competent Court of Law or any authority while deciding an issue declaring any document as fake, fabricated and forged, sufficient findings to that effect should be then. In the instant case which is absent. As there is no finding and the learned Tribunal below even did not consider the certified copy of the orders appointing the writ petitioner for different years, as discussed we are of the view that the learned Tribunal came to a finding wrongly without considering the authenticity and genuinity of those documents in its proper perspective. Furthermore, it appears that the writ

petitioner not only submitted those documents but submitted an application to the District Land and Land Reforms Officer, Purba Medinipur to produce the documents, namely, acquaintance rolls and other records for the year 1981 to 1984. This also was not considered. The learned Tribunal in the fairness of the thing ought to have called for the records of the department, particularly the acquaintance rolls and other relevant documents to satisfy that the petitioner did not work for a further period of years 1981 and 1982.

6. Having regard to the aforesaid findings, the impugned decision is not legally sustainable and on judicial review of the Impugned decision it appears that the relevant documents were not considered and there was no finding at all in support of rejection of those documents on the ground that those were fake and fabricated which goes to the root of the matter. Mere submission of other side that those documents were fabricated is no a proof of said fact. Hence it is fit case to exercise our power of judicial review on the basic principle of law that when there is a gross error of fact which could be the subject-matter of the judicial review. Reliance may be placed to the judgment passed in the cases *E.V. Secretary of State for Home Department*, reported in 2004(2) WLR 1351 (Court of Appeal), *Management of Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh*, , paragraphs 23 and 24 and the judgment passed in the case *S.N. Chandrashekar and Another Vs. State of Karnataka and Others*, . Besides such, the findings of the learned Tribunal we have placed in the judicial scanner in the angle of the decision as passed in the case of *Bachan Singh Vs. Union of India (UOI) and Others*, , wherein the Court held that the judicial review under Article 226 of the Constitution of India though is not directed against the decision but the decision making process and as such the Court has the power to review the manner in which the decision was made and the Court sits in judgment in correctness of the decision itself. Here the decision making process, namely, the declaration of some certificates as "fake and forged documents" since has not been proved at an and there is no positive finding, the decision making process of the learned Tribunal is wrong and as such the decision is liable to be quashed.

7. Accordingly, this writ application is allowed by quashing and setting aside the impugned order dated 7th July, 2008 passed by the learned Tribunal below in the Original Application 4542 of 2008. The learned Tribunal below is directed to decide the original application on taking note of those documents by verifying the authenticity and genuinity of those documents from the records of the department and thereby to dispose of the matter in accordance with law.

8. Let affidavit-in-reply filed in Court today be kept with the records.

9. Let urgent Xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.

Mrinal Kanti Sinha, J.

10. I agree.