
(2008) 01 CAL CK 0082
In the Calcutta High Court
Case No : Writ Petition No. 7018 (W) of 2007

Dinabandhu Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Penal Code, 1860 (IPC) — Section 34, 406, 498A

West Bengal Gram Panchayat (Administration) Rules, 2004 — Rule 48, 50

Citation : (2008) 2 CALLT 74 : (2008) 2 CHN 713 : 113 CWN 12

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Kalyan Bandopadhyay and Mintu Kumar Goswami, S.K. Banerjee and Goutam Banerjee, for the Appellant;

Judgement

Dipankar Datta, J.

The Judgment of the Court was as follows:

1. Name of the petitioner, along with others, was sponsored by the concerned employment exchange for consideration in connection with recruitment to the post of Sahayak in Ghonga Gram Panchayat within Purullia II Development Block. It is claimed by the petitioner that on the basis of the test/examination conducted by the selectors, he secured the first position in the panel. It is further claimed by him that he had truly and correctly filled up the verification roll; yet, the respondents are sitting tight and have not offered him appointment.

2. Feeling aggrieved by the action of the respondents in withholding the offer of appointment, the petitioner has invoked the writ jurisdiction of this Court for a direction on the District Magistrate, Purulia and ex-officio Member Secretary of the concerned District Level Selection Committee, respondent No. 3 to offer appointment to him. Column 14 of the verification roll filled up by the petitioner and the declaration thereunder reads thus:

14) Have you ever been arrested detained or convicted by a court for any offence? If answer is "yes" the full particulars of the arrest or detention or conviction and the sentence should be given. No

I certify that the forgoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Ghonga Gram Panchayat (Panchayat body concerned).

I also declare that I shall be liable to be punished in any lawful manner including dismissal from the service of the Panchayat Sahayak without any further proceeding if any of the relevant information furnished in the foregoing roll is proved to be false, incorrect or incomplete impairing any eligibility for the employment offered to me.

3. It is not in dispute that the petitioner is an accused in Purulia (M) P.S. Case No. 62106 dated 6.5.06 under Sections 498A/406/34 of the Indian Penal Code, and 3/4 of the Dowry Prohibition Act. It is further not in dispute that on an application filed by the petitioner u/s 438 of the Code of Criminal Procedure (hereafter the Code), the Sessions Judge, Purulia by his order dated 20.5.06 allowed his prayer with a direction on him to surrender before the Court of the Chief Judicial Magistrate, Purulia within 21 days from date of the order. It is also indisputable that on 5.6.06 the petitioner having surrendered before the concerned Magistrate and having prayed for bail, he was taken into judicial custody and remanded in judicial custody till 19.6.06, and that on perusal of the bail application and in view of the order dated 20.5.06 passed by the Sessions Judge, he was released on regular bail. The criminal case is stated to be pending.

4. Mr. Bandopadhyay, learned senior counsel appearing for the petitioner submitted that mere pendency of a criminal case against the petitioner cannot create a bar for offering appointment to him. In this connection he relied on a circular of the Panchayats and Rural Development Department dated 29.9.97 wherein it has been provided, inter alia, as follows :

A candidate, who has been -

(a) convicted by a competent court of any criminal offence punishable with imprisonment for a period of six months or more or

(b) implicated in a proceeding concerned against him on any such criminal charges involving offence mentioned in sub-para(a) and in pursuance of such proceedings (i) either has been detained in custody for a period exceeding forty-eight hours, or (ii) a formal charge in pursuance of aforesaid proceeding mentioned in sub-para or has been framed against him in a competent course of law.

shall be considered unsuitable for appointment. He will however, be eligible to apply for appointment against any future vacancy if and as soon as he is acquitted of the charges or the charges against him are dismissed by the said

court of law.

5. He further relied on a decision of a learned single Judge of this Court dated 21.9.05 in W.P. No. 16649 (W) of 2005 whereby, in more or less similar circumstances, the Court directed completion of selection process by issuing appointment letter in favour of the selectee/petitioner.

6. Finally, he relied on the decision of the Apex Court in Shankarsan Dash Vs. Union of India, for the proposition that the State has no licence to act in an arbitrary manner. Mr. Banerjee, learned Counsel for the respondents contended on the authority on the decision of the Division Bench of this Court reported in Kakon Kumar Roy Vs. State of West Bengal and Others, that the petitioner is not entitled to any order on this writ petition.

7. Object of seeking information regarding antecedents is to verify the character of the prospective appointee and the nature or gravity of the offence with which he may have been involved. A person at the threshold of being appointed in public service cannot indulge in falsity. If he does so, he does so at his risk and peril, and has to bear consequence therefore and forfeit whatever semblance of a right he may claim for being appointed on the basis of his empanelment.

8. In its decision reported in (1994) 3 SCC 405 : Directorate of Enforcement v. Deepak Mahajan, the Apex Court ruled that "arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender".

9. By stating that he had not been arrested for any offence, the petitioner clearly appears to have withheld a very vital fact which may disentitle him to an offer of appointment. The view this Court has taken finds support from the decision in Kakon Kumar Roy (supra). While dealing with a similar case, the Division Bench had the occasion to consider all earlier decisions of the Apex Court on the point and ultimately held that nature of suppression of fact with which the Court was concerned, was sufficient to disentitle a prospective appointee to be considered even though he is subsequently acquitted.

10. Mr. Bandopadhyay sought to find flaw in the Division Bench's interpretation of the Apex Court judgment reported in Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, while dealing with the petition of Kakon Kumar Roy (supra). This Court is unable to agree that the Division Bench in any manner has erroneously applied the law laid down in Niranjana Singh (supra).

11. Reliance placed by Mr. Bandopadhyay on the unreported decision of the learned single Judge dated 21.9.05 referred to above is of no avail. Rules 48 and 50 of the West Bengal Gram Panchayat (Administration) Rules, 2004 on which reliance was placed by the learned Judge have since been omitted by an amendment of the rules with effect from 9.8.06 and thus cannot have application here. Contention of Mr. Bandopadhyay that the selection process having started

prior to 9.8.06 it ought to have been concluded in accordance with the rules prevalent at that time and that the amendment not having retrospective effect the petitioner's appointment should be considered on the basis of pre-amended rules, cuts no ice since even in terms of the pre-amended rules (Rule 50), an appointment letter may be issued subject to the prospective appointee having good antecedent. That stage has not reached in this case since the verification of the antecedents of the petitioner is pending.

12. In *Shankarsan Dash (supra)*, it has been held that notification of vacancies by the employer merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Emphasis laid by Mr. Bandopadhyay on the observation in the said decision that the State has no licence to act in an arbitrary manner in the process of recruitment and that the impugned State action being arbitrary is liable to be interdicted is misconceived, inasmuch as the State cannot afford to recruit in service a candidate who is not truthful at the very inception.

13. That apart, unless malafide or arbitrariness of an employer is proved, no direction for appointment in exercise of judicial review powers would be issued (see AIR 2007 SCW 7560 : *Dir. S.C.T.I. for Med. Set. & Tech v. M. Pushkaran*).

14. Having said all these, this Court cannot also refrain itself from commenting on a common trend of thought process which has made it think twice on the outcome of this petition. Once an accused obtains an order of release u/s 438 of the Code, an impression is created in his mind that the police for all times to come would have no authority to arrest him in connection with the offence with which he is charged until convicted, not perhaps comprehending that the police is not the sole repository of the power of arrest. That surrender before the Magistrate concerned and taking him into judicial custody is intervened by an arrest by the said Magistrate is often not understood by many to be an arrest in the legal sense of the term which results in misrepresentation or suppression of fact, perhaps without mens rea. On reading the averments contained in the present petition and having heard learned Senior Counsel for the petitioner, this Court is of the considered view that the petitioner has been labouring under a misconception that he has never been arrested for any offence. That is not so. Though ignorance of law is no defence, this Court is inclined to believe that the petitioner while filling up the verification roll was not properly advised resulting in a misrepresentation or suppression of fact. Whether or not it would come in the way of an offer of appointment to him is entirely for the employer to decide. No mandamus can, therefore, be issued on the respondents commanding them to offer appointment to the petitioner, as prayed for.

15. Accordingly, this petition stands disposed of granting liberty to the respondents to consider the issue of offering appointment to the petitioner by exercising discretion judiciously uninfluenced by any observation made hereinabove. There shall be no order for costs. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 3 days from

date of putting in requisites therefor.