

(2023) 01 CAL CK 0077
In the Calcutta High Court
Case No : W.P.A No. 3566 Of 2022

Dolan Mukherjee & Ors.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 31-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2023) 01 CAL CK 0077

Hon'ble Judges : Lapita Banerji, J

Bench : Single Bench

Advocate : Rabi Shankar Chatterjee, Sayan Chatterjee, Subhadip Paramanik, Deblina Chattaraj, S.N. Mookherji, Chaitali Bhattachary, Sanjukta Samanta

Final Decision : Disposed Of

Judgement

Lapita Banerji, J

1. The petitioners applied for engagement as Anganwadi Workers and Helpers in an Integrated Child Development Services (ICDS) Scheme in the Government quota/Home quota. Initially, 28 candidates applied for the said posts. The initial list of 28 candidates was sent by the Director to District Programme Officer (ICDS), Purulia on February 25, 2020. Subsequently, a second list containing names of candidates was forwarded by the Director on January 19, 2021. 15 candidates were appointed pursuant to the second list of eligible candidates dated January 19, 2021. The said 15 candidates were given appointment in home quota pursuant to an office memo dated February 15, 2022, published by the Child Development Project Officer (CDPO), ICDS Project-Kasipur, District-Purulia. The said information was received pursuant to an application made under the Right to Information Act, 2005 by some of the petitioners on January 27, 2022.

2. The petitioners made representations on January 22, 2021 inquiring about the fate of their appointments, pursuant to the first list sent by the Director of ICDS

on February 25, 2020. Thereafter, the petitioners again reiterated their prayers on January 13, 2022 for their engagement as Anganwadi workers/helpers. Upon learning that candidates from a latter list/panel of candidates dated January 19, 2021 were given letters of appointment/engagement, they agitated their grievances before the Director in January 2022. No reply to the said representations of the petitioners was received by them. Since the petitioners were neither engaged nor informed the reason why candidates from a latter list of candidates were engaged, the petitioners filed the present writ petition.

3. Mr. Chatterjee, learned Counsel appearing on behalf of the petitioners submitted that the engagement of all the 15 candidates from the second list of candidates dated January 19, 2021 is arbitrary and illegal. What necessitated the preparation of a second list of candidates has not been explained by the respondent authorities, pending the engagement of the Candidates from the first list. The Director of ICDS by an office memo dated August 19, 2021 recommended the appointment of 15 candidates from the second list without giving any explanation as to why the eligible candidates from the first list were not recommended for appointment. Pursuant to the recommendation of the respondent no. 4/Director of ICDS, the aforesaid 15 candidates were given appointment on February 15, 2022 by the CDPO/the respondent no. 6.

4. Mr. S.N Mookherji, learned Advocate General of the State submitted that out of the list forwarded on February 25, 2020, 8 candidates were found to be eligible by the District Programme Officer on February 8, 2021 and out of the list dated January 19, 2021 forwarded by the Director, 15 candidates were found eligible for appointment on February 8, 2021 by the District Programme Officer. The District Programme Officer found 15 candidates to be eligible from the second list. It was within the power of the Director ICDS to recommend the name of a candidate, as long as she met the eligibility criteria. It is nobody's case that the candidates who were engaged by the CDPO from the second list were not eligible. He submitted that once candidates are chosen from a list of eligible candidates, the Court in Judicial Review should not exercise its power for setting aside of an administrative decision.

5. He referred to a decision reported in (1991) 3 SCC 47 (Shankarsan Dash Vs. Union of India), for the proposition that the successful candidates do not acquire an indefeasible right to be appointed. On selection the candidates do not acquire any right to the post. The State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules so indicate.

6. He next referred to a decision reported in (2001) 6 SCC 380 (All India SC & ST Employees Association and Another Vs. A. Arthur Jeen and Others), for the proposition that merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right of appointment against the existing vacancies and the State was under no legal duty to fill up all or any of the vacancies.

7. He next relied upon the Judgment reported in (2006) 1 SCC 779 (Union of India and Others Vs. Kali Dass Batish and Another), for the proposition that Judicial Review of a decision is not to be done in a matter where the candidates' names are merely included in a selection list since inclusion of a candidate's name in a selection list gave him no right to be appointed. Since, there was no right there could be no occasion to maintain a writ petition for enforcement of a non-existent legal right.

8. The next decision relied upon by the Learned Advocate General is reported in (2006) 11 SCC 731 (II) (B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees Association and Others), for the proposition that the Court cannot sit in Judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment.

9. The next decision cited by him is reported in (2019) 12 SCC 798 (Dinesh Kumar Kashyap and Others Vs. South East Central Railway and Others), for the proposition that in exercise of power of Judicial Review the Court should not substitute the decision of the authority and direct the candidates in the waiting list to be appointed. However, wide the power of Judicial Review may be the courts should exercise self-recognised limits of that power.

10. Having considered the rival submissions of the parties and the materials placed on record this Court finds:-

a. As per the list of vacancies prepared by the District Programme Officer, there were 21 vacancies for the post of Anganwadi Workers (AWW) and 38 vacancies to the post of Anganwadi Helpers (AWH). An initial list containing names of 28 candidates was prepared by the Director of ICDS and forwarded to the CDPO as well as to the District Programme Officer ICDS, Purulia. A second list was prepared by the Director of ICDS on January 19, 2021 and forwarded to CDPO/ the District Programme Officer for appointment of AWW/AWH. Both the lists were scrutinised together and by recommendation dated February 8, 2021, the District Programme Officer found 8 candidates to be eligible for the post of AWW/AWH from the first list of candidates dated February 25, 2020. From the second list of candidates forwarded by the Director of ICDS on January 19, 2021, 15 candidates were found to be eligible by the District Programme Officer on February 8, 2021.

b. Pursuant to the list of the candidates forwarded by the District Programme Officer on February 8, 2021, Director of ICDS by an Office Order dated August 19, 2021 recommended appointment of all the 15 candidates from the second list. None of the candidates were recommended for appointment from the first list.

c. Pursuant to such recommendation the said 15 candidates were appointed on February 15, 2022 by the CDPO, Project Kasipur District-Purulia.

d. No reason was provided by the Director of ICDS for his pick and choose policy of recommending the names of 15 candidates for engagement from the second list only. Why the candidates who were found eligible from the first list that was forwarded almost one year before the second list of candidates, were not considered for appointment has not been explained either in the recommendation made on August 19, 2021 or in the Report filed by the respondent no. 4/the Director, pursuant to the directions passed by this Court on November 15, 2022. The only issue that has been urged in the said Report is with regard to the fact that the Anganwadi workers (AWW) and the Anganwadi Helpers (AWH) have different causes of action and the writ petition is not maintainable for joinder of causes of action.

e. There is no explanation on merits for the wilful failure/deliberate omission on the part of the Director of ICDS/respondent no. 4 to recommend the names of the 8 eligible candidates from the first list dated February 25, 2020.

f. The decision of ShankarsanDass(Supra) does not come to the aid of the State Respondents since the Apex Court after examining the factual aspects in detail came to the finding that the decision to adopt a different policy for filling up reserved category candidates from the policy adopted for general category candidates, was not arbitrary and was based on a reasoned consideration that unavailability of qualified reserved category candidates from year to year was adversely affecting the desired strength of the reserved category candidates in service. The decision taken by the Government could not be condemned on the grounds of arbitrariness and illegal discrimination. In that case, the reserved category candidates, who qualified in the Delhi, Andaman and Nicobar Islands Police Service (DANIP) were appointed in the Indian Police Service (IPS) since there were not enough selected reserve category candidates to fill up such positions. However, the general category candidates appointed in DANIP Service were not considered for appointment in IPS even after vacancies arose. After application of mind and based on sound reasoning, a considered decision was taken. The Apex court did not examine a case where some of the qualified DANIP reserved category candidates were given appointment in IPS to the exclusion of others in the same category.

g. In the case of A. Arthur Jeen and others (Supra) an employment notification was issued in September 1995 by the Railway Board inviting applications for 330 posts of Group – D staff. Thereafter, the vacancies arose to 917 and a panel was directed to be prepared based on such vacancies. Out of 32563 candidates called for interview, only 25271 appeared. A panel of 917 candidates was prepared. Thereafter, the vacancies were reduced to 382 upon further assessment by the Ministry of Railways. The Tribunal had quashed the entire panel of 917 candidates since 917 vacancies were not notified and originally only 330 vacancies were notified. Aggrieved by the Order of Tribunal, writ petitions were filed. The High Court upheld the contentions made in the writ petitions as the right of the selected candidates were seriously affected.

h. In the meantime, since the Tribunal quashed the selection process, the respondents cancelled the Employment Notification dated September 7, 1995 on October 3, 1999. The Supreme Court held that although the candidates included in the panel showing provisional selection do not get vested rights to appointment, they will surely be interested in protecting and defending the select list. The names of the candidates appearing in the first panel were directed to be given appointment upholding the decision of the High Court subject to the situation of reduction of vacancies from 917 to 382 candidates.

i. The Supreme Court upheld the rights of the candidates whose names appeared in the selected panel. This case in fact comes to the aid of the petitioners and not the respondents since without any reason the petitioners who belonged to the first select list of candidates, were not considered for appointment. The petitioners would surely be interested in protecting and defending the 1st Panel/ List.

j. In *Kali Dass Batish (Supra)* vacancies arose for appointment of Members of Central Administrative Tribunal (CAT). After the candidates were selected, their antecedents were verified on the basis of reports/inputs from the Intelligence Bureau (IB). The IB report was sent to the Chief Justice of India for his concurrence. After IB report was received, 2 candidates were not recommended for appointment. In such a situation it was held that the case was not of malafide and there was no scope of Judicial Review as Members of CAT must have a character to exercise absolute judicial independence and be free from any kind of influences that are likely to interfere with Judicial functioning or Independence.

k. The position of Anganwadi workers and Anganwadi helpers are far remote from that of the Members of CAT. No reason at all has been given as to why the decision was taken not to engage any of the candidates from the first select list. The discrimination by the authorities by engaging the candidates from the second list by completely bypassing the first list is writ large on the face of the records.

l. In *B. Srinivasa Reddy (Supra)* the Government of Karnataka appointed a candidate as the Managing Director due to an exigency that arose since the then Managing Director of the board took voluntary retirement. The appellant/said candidate was superannuated on January 31, 2004. The appellant was appointed again until further orders on February 1, 2004. In such a case it was held that the Learned Judges (Single Bench and Division Bench) were not right in quashing the appointment of the appellant/candidate on the misconception that he was re-appointed to the office of the Managing Director, whereas, it was a case of fresh appointment under the provisions of the Act, in accordance with prescribed qualification and eligibility. It was held that the Government had the power to make a contractual appointment until further orders. The power of the Government to make appointments included appointments on substantive basis, temporary basis, officiating basis, adhoc basis, daily wage or contractual basis. Mr. Mookherji relied on paragraph 51 of the said Judgment.

Paragraph 51 is set out hereunder:

"51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possessed the prescribed qualification and is otherwise eligible for appointment. This Court in *R.K. Jatin v. Union of India* was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of quo warranto so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post."

m. In the said paragraph, it has been unequivocally stated that in service jurisprudence it is well settled that an aggrieved person/non-appointee can assail the legality or correctness of an action and a third party has no locus standi to assail the legality/correctness of an action. The petitioners in the present case are admittedly eligible candidates whose names appeared in the first select list of AWW/AWH. They are the persons who are clearly aggrieved by the deliberate and wilful failure on the part of the respondent authorities in not appointing them. The respondents in *B. Srinivasa Reddy (supra)* who challenged the appointment, were neither eligible nor could have been eligible for the post of the Managing Director of the board. There was no question of pick and choose policy in that case.

n. In *Dinesh Kumar Kashyap & Others (Supra)* the Learned Advocate General relied on paragraph 34 in support of the contention that the court is not to substitute the decisions of the Railways and/or respondent authorities and direct the candidates in waiting to be appointed.

o. This Court places reliance on paragraphs 5 and 6 of the Judgment in *Dinesh Kumar (Supra)* for coming to the finding that no doubt the successful candidate has no vested right but the State must give some justifiable non-arbitrary reason for not filling up the posts. Paragraphs 5 and 6 of the said decision are set out hereinbelow:

"5. The main issue which arises before us is whether SECR could have ignored the 20 per cent extra panel despite the letter dated 2-7-2008 without giving any cogent reason for the same. No doubt, it is true, that mere selection does not

give any vested right to the selected candidate to be appointed. At the same time when a large number of posts are lying vacant and selection process has been followed then the employer must satisfy the court as to why it did not resort to and appoint the selected candidates, even if they are from the replacement panel. Just because discretion is vested in the authority, it does not mean that this discretion can be exercised arbitrarily. No doubt, it is not incumbent upon the employer to fill all the posts but it must give reasons and satisfy the court that it had some grounds for not appointing the candidates who found place in the replacement panel. In this behalf we may make reference to the judgment of this Court in *R.S. Mittal v. Union of India*, wherein it was held as follows:

“10.... It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

6. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination, etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State. It is in the light of these principles that we need to examine the contentions of SECR.”

p. In the present case, the State/respondents have spectacularly failed to give any reason for appointing the candidates from the second list and not from the first list who had a reasonable expectation to be appointed. Furthermore, the state also failed to provide any reason, leave aside a justifiable reason for not filling up of all the vacancies.

11. In the light of discussions above, this Court directs that the petitioners, whose names appeared in the first list dated February 25, 2020 and subsequently recommended as eligible candidates on February 8, 2021, to be appointed immediately and not later than 3 weeks from date to the posts of Anganwadi Workers and Anganwadi Helpers in Integrated Child Development Services, Purulia in the Home Quota. However, this Court is not inclined to disturb the appointments/engagements of the Candidates from the second list as there is no allegation in the Writ Petition as to their ineligibility.

12. With the directions aforesaid, WPA 3566 of 2022 is disposed of.

13. All parties to act on the downloaded server copy of this order from the website.

14. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.