
(2019) 09 CAL CK 0370

In the Calcutta High Court

Case No : Wp. Central Tribunal (WPCT) No. 41 Of 2019

Durgapur Steel Plant & Ors

APPELLANT

Vs

Bidhan Chandra Chowdhury & Ors

RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 16(1), 226

Citation : (2019) 09 CAL CK 0370

Hon'ble Judges : Dipankar Datta, J;Saugata Bhattacharyya, J

Bench : Division Bench

Advocate : L. K. Gupta, Souvik Nandy, Asit Kumar Manna, Niladri Saha

Final Decision : Dismissed

Judgement

Dipankar Datta, J

1. Durgapur Steel Plant (hereafter DSP, for short) and its Chairman, its Managing Director, Executive Director (Personnel and Administration), Senior Manager (Personnel/Recruitment) as well as Steel Authority of India Limited (hereafter SAIL, for short) and its Chairman have invoked the writ jurisdiction of this Court by presenting this writ petition, whereby they seek to assail a judgment and order dated March 27, 2018 passed by the Central Administrative Tribunal, Calcutta Bench, inter alia, allowing TA 2 of 2012, arising out of W.P. 400(W) of 2009 (Bidhan Chandra Chowdhury & Ors. v. Durgapur Steel Plant & Ors.) filed before this Court, as well as an order dated October 30, 2018 dismissing an application for condonation of delay (MA 300/768/2018) in presenting an application for review (350/00017/2018) of the said order dated March 27, 2018.

2. At the time W.P. 400(W) of 2009 was presented before a learned Judge of this Court, service matters relating to SAIL were entertainable by this Court; however, pursuant to notification dated March 31, 2010, SAIL was brought within the purview of the Administrative Tribunals Act, 1985 which resulted in transfer of W.P. 400(W) of 2009 to the tribunal.

3. The case pleaded by the petitioners in W.P. 400(W) of 2009, who are the respondents in this writ petition (hereafter the applicants), is this. An advertisement was published on October 16, 2007, followed by an addendum dated December 12, 2007, calling upon eligible candidates to offer their candidature for filling up 150 posts of Plant Attendant-cum-Junior Technician. A candidate seeking appointment, in terms of the advertisement/addendum, was required to have qualified in the secondary level examination (Class X). The procedure of selection comprised of a written test and interview of candidates who qualified in such test followed by medical examination. The applicants having applied, they were found to be eligible and called upon to take a written examination. It was held on March 23, 2008. The list of successful candidates was published on May 15, 2008; a month later, i.e., on June 17, 2008, roll numbers of the candidates (assigned prior to the written test) who had qualified for the interview was published. Neither was the marks obtained by the unsuccessful candidates published nor was any cut-off mark that would serve as the bench mark to declare candidates as successful in the written test to qualify for interview was made known. Despite submission of representations by the first applicant seeking to know the marks obtained by him in the written test, he was greeted with silence. Although initially the recruitment process had been initiated for filling up 150 posts by the addendum dated December 12, 2007, 139 candidates had been offered appointment. The applicants thereafter came to learn that another set of 56 candidates were instructed to undergo medical test despite there being no indication in the advertisement/addendum that the number of vacancies are expected to increase and that such vacancies could be filled up from amongst candidates who participated in the recruitment process initiated by the said advertisement/addendum. Before the tribunal, the authorities of DSP/SAIL did not dispute that initially 139 candidates joined whereupon 56 more candidates, allegedly according to their position in the merit list, were called for interview. It is not disputed that a total of 194 (135+59) candidates were ultimately appointed in clear vacancies and anticipated vacancies, allegedly as per their rankings in the merit list. The authorities of DSP/SAIL denied any wrong doing insofar as selecting candidates for attendance in the interview is concerned and also asserted that they were not under any obligation to publish the marks of all the candidates who had taken the written examination or even to indicate the cut-off marks for selection of successful candidates in the written examination to participate in the next stage of selection. The order of the tribunal records the admission of the respondents before it that they had not preserved the entire panel for future reference or appointment, once the offers of appointment were issued to the selected candidates.

4. It is further noted from the order of the tribunal that an advertisement dated March 4, 2010 was the subject matter of challenge in TA 7 of 2012, which was issued subsequently for filling up vacancies in the post of Junior Technician/Operator. TA 2 of 2012 and TA 7 of 2012 were heard together. Taking into

consideration the pleadings, the tribunal framed the following issues:

(i) Whether procedural justice in the matter of selection required that results of the written test dated 23.03.2008 ought to have been disclosed to all the candidates and particularly to the petitioner/applicants, who had made enormous representations in this matter.

(ii) Whether the respondents are justified in filing up more than that of the number of posts notified in the advertisement.

(iii) Whether the advertisement dated 4.03.2010 published by the respondent authorities is violative of Article 16(1) of the Constitution of India and Article 14 of the Constitution of India.

The pertinent findings returned by the tribunal in respect of the aforesaid issues are quoted below :

"9.(a) Admittedly, the marks of the written test have never been disclosed to the petitioners/applicants. Not only so, the same was never furnished before this Court by the respondents. The respondents have admitted in their reply to M.A. No. 425 of 2017 as follows:

'.....The respondents state that after the offer of Appointments were given to all the 194 candidates and after the offer of Appointments were accepted by them, the said merit list was not preserved for any future point of time for future reference or appointment. It is to be stated once again and reiterated that no panel as wrongfully alleged in the said application under reference was prepared and therefore the question of these respondents providing any alleged non existing panel does not and cannot arise at all.'

This Court has expressed its displeasure on such non-preservation of records while deciding on M.A. No. 425 of 2012 as follows:-

'6. On consideration, we are of the view that furnishing of list to enable the TA applicants to implead affected persons and the claim against them being barred by limitation are two distinct issues. It is not appreciated that when Writ Petitions were filed in 2009 how it is being now stated that merit list is not available and no explanation has been made in this regard as to why the respondents did not deem it fit to preserve such a material document, which would be necessary particularly when the case was under challenge and pending consideration.'

In this context, we refer to the advertisement dated 16.10.2017 read with addendum dated 4.12.2007 wherein the selection procedure categorically states, 'written tests and interview of candidates qualified in the written test. Appointment will be subject to candidates found medically fit.'

Hence, it is obvious that the touchstone to qualify for the interview is the candidate's success in written test and such success in written test cannot be left open ended to be decided by parameters that go beyond laid down criteria. It is an undisputed fact that no such criteria were recorded in the advertisement

dated 16.10.2007 read with 4.12.2007.

In the context of disclosures on relation of answer papers the Hon'ble Supreme Court in *Kerala Public Service Commission & ors. v. State Information Commission & anr.* reported in (2016) 3 SCC 417 dated 4.2.2016 has directed as follows:-

'In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. The practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exam.'

In *Poonam Rani v. State of Haryana* (2012) 6 SCC 596 it has been held as under:-

'18. The affidavit filed by the Secretary of the Commission before this Court clearly shows that within a few days of declaration of the result of the selection, the officers of the Commission destroyed the answer sheets of the written examination held in June, 2008. This was done in blatant violation of the resolution dated 1.10.1994, in terms of which the answer sheets could be destroyed after three months from the date of declaration of the result of the selection. The statement contained in Para 12 of the application dated 14.3.2012 filed on behalf of the Commission is reflective of the casualness with which the officers of the Commission have treated the issue of destruction of the most important record i.e. the answer sheets of the candidates which constituted foundation of the final selection.'

Likewise, the respondent authorities were aware that a WP had been filed as early as in 2009, challenging the recruitment process of 2008 and hence the admission of the respondents that the records were not preserved after finalisation of appointment of 194 candidates is blatant disregard of the principles of transparency calling for judicial intervention in this regard. In the written notes of arguments, the respondents have furnished a list of 622 general candidates who have appeared in selection for the post of Plant Attendant-cum-Junior Technician in response to advertisement dated 4.12.2007 in the general category. Barring Srl. No. 597 to 622, who have been absent in the said examination, the name of the petitioners/applicants do not appear even in the list of failed candidates. Hence, as there is no documentary evidence to prove the incidence of failure of the petitioners/applicants, their position in the merit list is 'not beyond reasonable doubt'. Such admission also does not establish/convince us 'beyond a reasonable doubt' that the petitioners/applicants had fared below the 56 candidates who had been appointed by travelling downwards the merit list. The respondents have failed to prove by virtue of their submission that marks of the petitioners/applicants in the written exam were lower in merit than

those of the 56 candidates in the extended list of appointees.

As held by the Hon'ble Apex Court in Poonam Rani (supra), as the record of selection has been destroyed in the case of the entire panel, including that of the petitioners/applicants, it is difficult for the Court to consider and decide on the petitioners/applicants' plea that lack of such disclosure and lack of bench marking of success against disclosure was against procedural justice.

Hence, to give any relief to the petitioners/applicants, the only course would be to direct the respondents to consider their case at par with the extended list of the 56 candidates as the respondents have just nothing to prove on record that the petitioners/applicants had ranked in merit below the extended list of 56 candidates.

The respondent authorities should appoint the petitioners/applicants as in the case of 56 candidates who were appointed to fill up additional vacancies. If the post of Plant Attendant-cum-Junior Technician is no longer existing with the respondents, they may be accommodated against equivalent posts for which the recruitment criteria remains similar."

5. Although the Tribunal did not interfere with the action of the respondents before it in proceeding to appoint candidates over and above the advertised vacancies, there seems to be little doubt that such action did not receive its judicial imprimatur in view of the relief that it ultimately proceeded to grant in favour of the applicants.

6. Appearing in support of the writ petition, Mr. Gupta, learned senior advocate submitted that after the written test was over and the candidates who qualified for interview were identified, a list was published comprising such names only together with their roll numbers and the recruiting authority was not under any obligation to preserve the records relating to the written test for future reference. It was also contended that the cut-off marks which the recruiting authority had fixed was an internal matter which, neither in terms of any rule nor under any prevalent practice, was required to be brought in the public domain. The applicants before the tribunal were admittedly unsuccessful in the written test and therefore, had no legal right to maintain a writ petition, or for that matter an original application before the tribunal. Reliance was placed by him on the decision of the Supreme Court reported in (2018) 4 SCC 530, Union Public Service Commission vs. Angesh Kumar, more particularly a part of paragraph 9, to contend that details of marks obtained by unsuccessful candidates need not be disclosed and it was prayed that the impugned order of the tribunal be set aside.

7. We did not consider it necessary to call upon the learned advocate for the applicants to respond to the contentions of Mr. Gupta.

8. Having heard Mr. Gupta and on perusal of the order passed by the tribunal, which is impugned in this writ petition, we find absolutely no reason to interfere with the impugned order of the tribunal in the exercise of powers of judicial

review conferred on us by Article 226 of the Constitution.

9. From the factual narrative, it would be evident that the recruitment process commenced in the later part of 2007. In compliance with the procedure mentioned in the addendum dated December 12, 2007, a written test was conducted on March 23, 2008, which the applicants were required to pass in order to qualify for the interview. It is found from page 92 of the writ petition that by a notice dated May 15, 2008, roll numbers of candidates who qualified for interview, which was to be held between June 9, 2008 and June 18, 2008, were published. On June 17, 2008 (page 95 of the writ petition) we find that another notice was published containing the roll numbers of candidates who had qualified for interview to be conducted between June 29, 2008 and July 1, 2008. Annexure P-6 of the writ petition, at pages 97 of 124, are documents signed by an official on July 16, 2008 being a category wise merit list that was prepared for filling up the vacancies.

10. It was after the additional 56 candidates were called for medical examination that the applicants approached this Court by presenting W.P. 400(W) of 2009 on or about January 4, 2009. It is not in dispute that the applicants had challenged the recruitment process in the midst of appointment being made to fill up vacancies, which had not been advertised. Such challenge was laid within six months of appointments which had been offered in favour of the 139 candidates who were initially reported to have qualified. The respondents before the tribunal were well and truly aware that the recruitment process was under challenge and that while considering a connected writ petition [W.P. 780(W) of 2009], one of us sitting singly had made an observation that recruitment on the posts would abide by the result of the writ petition. W.P. 400(W) of 2009 was also pending where certain orders were made. It is altogether a different story that W.P. 780(W) of 2009, upon its transfer to the tribunal by the order dated February 14, 2012 and renumbered as TA 8 of 2012, was dismissed for default on March 3, 2015. The lis raised in W.P. 400(W) of 2009 was, however, never abandoned and it was alive; therefore, it was the duty of the petitioners to have preserved the records so long TA 2 of 2012 was disposed of on merits.

11. What has surprised us is the haste with which the petitioners proceeded to destroy the records and/or not preserve it and thereby sought to abort the challenge laid by the applicants. Indeed, the petitioners may not have been under any obligation to disclose the numbers obtained by the unsuccessful candidates in the written test if the rules governing selection or the practice followed in the past did not so require as in yester-years. The law now is not what it was before. The right to have information from public authorities is well-entrenched. Being public authorities within the meaning of Article 12 of the Constitution of India, the least that could be expected from the petitioners in consonance with principles of fairness was, they ought to have responded to the first applicant when, time and again, he made applications/representations seeking disclosure of the marks he had obtained in the written test. It is

axiomatic that any process of recruitment initiated by a public authority must be free, fair, clean, transparent and above bias. The case at hand, however, presents facts, which do not persuade us to hold so. The petitioners proceeded to make appointments over and above the vacancies that were notified by the addendum dated December 12, 2007. This is in the teeth of the law laid down by the Supreme Court in several decisions that any appointment beyond the number of vacancies indicated in the advertisement is impermissible. That apart, destruction or non-preservation of the records of the written test at least till a year after the recruitment process were completed, appears to us to be a conscious act of attempting to disable the Court from giving an appropriate decision upon examining such records. If indeed the petitioners had adhered to the law governing selection and were absolutely above board in all their actions, we wonder as to why a candidate seeking to know the marks obtained by him in a recruitment process should be greeted with silence. Production of the records before the Court could have benefited the petitioners themselves. The lack of merit in the contentions urged by the applicants could have been demonstrated by reference to the marks obtained by them in the written test. Non-production of the records on the specious ground that the same have been destroyed/not been preserved attracts adverse presumption that had the records been produced, the allegations levelled by the first applicant in his applications/representations would stand proved and that precisely was the reason not to maintain the records at least for a reasonable period of time after the recruitment process was over. The tribunal, in our opinion, was quite justified in making the impugned directions taking note of the failure or neglect of the petitioners to preserve the records till such time TA 2 of 2012 was disposed of and also taking exception to the actions of the petitioners in not responding to the applications/representations of the first applicant.

12. We have perused the decision in Angesh Kumar (supra). In the course of a process for appointment in the civil services, a request was made by certain unsuccessful candidates to disclose the details of marks (raw and scaled) awarded to them in the Civil Services (Prelims) Examination, 2010. In paragraph 9, relied on by Mr. Gupta, while negating the claim of the unsuccessful candidates, it was held as follows:

"9. Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation. If rules or practice so require, certainly such rule or practice can be enforced. In the present case, direction has been issued without considering these parameters."

13. We have failed to comprehend the materiality of the ratio of such decision to support the case of the petitioners. Law is well settled that a decision is an authority for what it decides, and not what can logically be deduced therefrom. It is incredulous to equate appointments in the civil services with appointment of staff in the lowest hierarchy of posts in an organization. Whatever is laid down in the matter of appointment of civil servants would not apply in a case where recruitment is sought to be made on a post for which the qualification is a mere pass in school final examination. Even otherwise, the Court did say in Angesh Kumar (supra) that if a case were set up where larger public interest requires disclosure, in a proper case the same may be required to be disclosed.

14. We place on record that we had passed an order on July 19, 2019 upon hearing Mr. Gupta, whereby the petitioner no.2 was granted the liberty to examine and assess the applicants' candidature for appointment on the post of Plant Attendant-cum-Junior Technician, with a prior notice to be served on them, 72 hours in advance of the date on which they were required to appear for such assessment. However, instead of availing the liberty, the petitioners had reportedly carried such order to the Supreme Court. Since the said order was passed appreciating the submission of Mr. Gupta that an assessment of the applicants' candidature has to be made after lapse of so long a time (more than a decade having passed by since the process was initiated), a further order was passed while reserving judgment on this writ petition to the effect that the petitioners would be under no obligation to comply with such order.

15. Having regard to the facts and circumstances discussed above, interference is declined and the writ petition stands dismissed. There shall be no order as to costs.

16. The petitioners shall proceed to comply with the order of the tribunal within three months.

17. Urgent photostat certified copy of this judgment and order, if applied, be given to the parties as expeditiously as possible.