

(2013) 01 SC CK 0121

In the Supreme Court Of India

Case No : Special Leave to Appeal (Civil) No's. 9665 of 2010

Kshiti Goswami and Others

APPELLANT

Vs

Subrata Kundu and Others

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 215

Citation : (2013) 1 CALLT 36 : (2013) 11 SCC 618

Hon'ble Judges : G.S. Singhvi, J; Fakkir Mohamed Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Pijush K. Roy, for the Appellant; Kunal Chatterji and Maitrayee Banerjee, for the Respondent

Final Decision : Disposed Of

Judgement

1. This petition filed by the then Minister, Public Works Department, Government of West Bengal and three officers, i.e., the Chief Secretary of the State, the Principal Secretary and the Chief Engineer, Public Works Department questioning the direction given by the Division Bench of the High Court for implementation of order dated 12.09.1997 passed in W.P.S.T. No. 169 of 1997 is a piece of frivolous litigation which ought to have been dismissed at the threshold. However, as the Court had entertained the special leave petition, we proceed to decide the same on merits. Santanu Mitra and Ors. who had applied for the post IVth Grade Clerks, in Public Works (Roads) Department, West Bengal and whose names were recommended by the Selection Committee filed OA No. 183/1996 before the West Bengal Administrative Tribunal (for short, 'the Tribunal') with the complaint that instead of appointing them as per their placement in the merit list, the Department made appointments by adopting the pick and choose method. They also alleged that the merit list had been violated on account of undue interference by the Minister-in-charge, Public Works (Roads).

2. By an order dated 29.4.1997, the Tribunal allowed the application and directed the concerned authorities to make appointments strictly as per the merit list.

3. The State Government and its functionaries challenged the order of the Tribunal in WPST No. 169/1997. The same was dismissed by the Division Bench of the High Court vide order dated 12.9.1997, the relevant portions of which are extracted below:

Accordingly, we are clear of the view that the decision of the successor Minister in-charge of the Public Works Departments is arbitrary and illegal and that in the facts and circumstances of the case in view of the principle laid down by the privy Council in the case of H.F. Baiviachari v. Secretary of State for India in Council is binding upon the successor in office of the Minister concerned and the Minister concerned should not take a contrary view when the candidates appeared and they have acquired a right.

In this connection the Supreme Court in the case of Shankarsan Dash Vs. Union of India, held that it cannot be said that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be denied.

Of course keeping the name in the panel does not automatically offer to get employment. But in view of the principles laid down by the Supreme Court the state Government cannot make any discrimination for favouritism in the matter of giving employment that the departmental candidates should get employment and the candidates whose names were sponsored by the employment should go out of consideration and the successor in office should not take a contrary view. Accordingly there is no scope for acting in such an arbitrary manner.

Accordingly we are of the view that the view taken by the learned Tribunal was justified and we do not find any reason to interfere with the decision taken by the learned Tribunal.

In terms of the order the Tribunal the offer of appointment should be given to the candidates on the basis of the merit list within a period of two months from the date of communication of this order.

4. It is borne out from the record that the direction given by the Tribunal, which was confirmed by the High Court was not implemented on the ground that the life of the merit list had come to an end in 2002. Therefore, some of the successful candidates filed Application No. OA/TA/MA/CCP/RA 215/2005, which was dismissed by the Tribunal vide order dated 5.4.2006. The writ petition filed by them was also dismissed by the High Court.

5. Thereafter, the Respondents herein filed WPCRC No. 731 (W)/2007 under Article 215 of the Constitution read with Contempt of Courts Act, 1971 and prayed for issue of a direction to the Petitioners herein appoint them as per their placement in the merit list.

6. The Petitioners raised an objection of limitation which was accepted by the Division Bench of the High Court by relying upon judgment of this Court in Pallav Sheth Vs. Custodian and Others, However, the Division Bench proceeded to

considered scope of the High Court's power as a Court of Record, referred to judgments in T. Sudhakar Prasad Vs. Govt. of A.P. and Others, , Firm Ganpat Ram Rajkumar Vs. Kalu Ram and Others, Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others, ; Kapildeo Prasad Sah and Others Vs. State of Bihar and Others, and held:

In the present case the Petitioners and each of them on earlier occasion approached the learned Tribunal in 2002, thereafter this Court, consequent upon non-compliance of the order, basically for enforcing of the order. The said proceeding come to an end in 2007 with the Court's observation contempt proceedings is appropriate remedy without disposing of the same on merit. Therefore this long five years have to be excluded from delay of ten years for enforcement of the order. Had it been Civil execution period of limitation would have been twelve years. Thus there is no reason to think different period of time in this case from ordinary period of limitation for execution.

7. The Division Bench then directed the State Government to implement order dated 12.9.1997 by giving appointment to the Petitioners (respondents herein). The operative portion of the order which is subject matter of challenge in this petition, reads as under:

We now dispose of this contempt application directing the State to implement the order dated 12th September 1997 giving appointment to the Petitioners irrespective of cancellation of the panel as against the present vacancies if available, if not then at the first available opportunity Petitioners and each of them must be appointed. Accordingly the Respondents and each of them is directed to place before the Court the vacancy position in the said post in question as on today and to file a report to this Court. The said report shall be submitted within eight weeks from the date of communication of this order.

8. The only question which requires examination in this petition is whether the High Court could have, while considering the grievance made by the Respondents about non-compliance of order dated 12.9.1997, issued directions for appointment of the successful candidates despite the fact that prayer made by them for punishing the Petitioners was not entertained.

9. A reading of the order passed by the Tribunal which was confirmed by the High Court by dismissing the writ petition filed by the official Respondents shows that the Selection Committee had considered the candidature of all those who were sponsored by the employment exchanges as also those who were sponsored by the then Minister, Incharge, Public Works Department. The Tribunal found that while making appointments, the concerned authority had violated the selection list and held that this amounted to violation of Articles 14 and 16 of the Constitution. The Tribunal finally directed that appointments should be made strictly in accordance with the merit list. The High Court dismissed the writ petition filed by the State Government and directed the concerned authorities to implement the Tribunal's order within a period of two months.

10. It is not in dispute that the Selection Committee had recommended the names of 179 candidates including the Respondents. Shri Pijush Roy, learned Counsel for the Petitioners stated that out of 179 candidates recommended by the Selection Committee, 161 were appointed and the remaining 18 persons were not appointed despite the directions given by the Tribunal and the High Court because the merit list had become defunct. He made strenuous effort to persuade us to take the view that in exercise of contempt jurisdiction the High Court cannot issue direction for implementation of the order, violation of which led to the initiation of the contempt proceedings, but we have not felt persuaded to agree with him. Rather, we are in complete agreement with the High Court that one of the objects of the contempt jurisdiction which is exercised by the High Court under Article 215 of the Constitution read with the Contempt of Courts Act, 1971 is to ensure faithful implementation of the direction given by it. This is precisely what the Division Bench of the High Court has done in this case. Therefore, we do not find any valid ground or justification to entertain the Petitioners' challenge to the impugned order.

11. With the above observations, the SLP is dismissed.

12. The Chief Secretary. Government of West Bengal, the Principal Secretary. Public Works Department (Roads). West Bengal and the Chief Engineer, PWD (Roads). West Bengal are directed to implement order dated 12.09.1997 passed by the High Court in W.P.S.T. No. 169 of 1997 within a period of four weeks from today. The appointments to be made hereinafter shall be effective from the date of the order of the Tribunal. It should be specifically mentioned in the appointment letters that the appointees shall get all consequential benefits including seniority except the pay which shall be notionally fixed.

13. While disposing of the special leave petition, we make it clear that no one should make any attempt, direct or indirect, to frustrate implementation of this order on the ground that the merit list had been cancelled or that the Respondents have become overage. The Petitioners shall also pay cost of Rs. 50,000/- to each of the Respondents within the aforesaid period of four weeks.