
(2008) 11 CAL CK 0014
In the Calcutta High Court
Case No : W.P.C.T. No. 236 of 2008

Lieutenant Governor and Others

APPELLANT

Vs

Kaushik Ganguly and Others

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Citation : (2009) 121 FLR 458

Hon'ble Judges : Dipankar Datta, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Hemraj Bahadur, for the Appellant; Anjili Nag, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—All the three writ petitions pertain to identical controversy. Hence these are disposed of by this common judgment.

In or about April, 2007 different departments of A & N Administration issued advertisements for the post of Work-charged Beldar and Khalasi. The respondents/applicants applied for the said posts and they were ultimately selected as per the select list published on August 30, 2007. Immediately on the next day i.e. on August 30, 2007 the authority issued a notice of suspension of the result. Later on it transpired that complaints were made alleging malpractice and/or illegality committed in the selection process. Pending decision the result was suspended by the Administration. The candidates approached the Tribunal by filing O.A. No. 151/AN/2007 (Anamullah Khan & Ors. vs. A & N Administration) and O.A. No. 150/AN/2007 (H. Mohd. Safique vs. A & N Administration). The Tribunal disposed of both the matters on October 11, 2007 inter alia directing the Administration to consider their representations by a speaking order. The Administration thereafter passed an order on November 16, 2007 inter alia canceling the entire selection process inducting the select list for the post of Work-charged Beldar and Khalasi and directed the concerned departments to issue necessary advertisement for fresh selection. The said notice inter alia

provided that suitable age relaxation for the post of OBC as well as ST candidates must be made by relaxing the upper age limit for OBC candidates by three years and for ST candidates by five year's respectively. Thereafter, an association of disabled persons filed a Public Interest Litigation inter alia alleging that no reservation was made for disabled candidates. The Division Bench by judgment and order dated February 26, 2008 disposed of the Public Interest Litigation by directing the Administration to reserve 3% posts of Work-charged Beldar and Work-charged Khalasi for physically handicapped candidates. Their Lordships also directed publication of corrigendum declaring reservation of such posts for the physically handicapped candidates.

2. Challenging the order of the Administration passed on November 16, 2007 the respondents approached the Tribunal inter alia on the ground that once the select list was prepared there was no occasion for its cancellation. Moreover the Recruitment Rules did not provide for relaxation of upper age limit for Scheduled Caste, Scheduled Tribe or OBC candidates. The Tribunal after considering the rival contentions issued the following directions:-

(i) The impugned cancellation order dt. 16.11.2007 and the order dt. 31.8.07 be hereby quashed.

(ii) The respondents are directed to act upon the select lists already published or to be published on the basis of old selection and appointments be made accordingly after observing necessary formalities.

(iii) So far as OBC ST candidates are concerned, those who have been or may be selected in the fresh selection, if already held, may be considered for appointment only against vacancies available to these categories as per their respective quota, which occurred after the issue of the employment notification of April, 2007 based on which the earlier selection was held.

Being aggrieved by the said order and/or direction of the Tribunal the Administration filed the above writ petitions which were heard by us on the abovementioned date.

3. Mr. Hemraj Bahadur, learned Counsel appearing for the Administration contended that mere inclusion in the select list did not confer any right on the respondents above named. Series of complaints were received by the Administration from the unsuccessful candidates. Pending enquiry the Administration suspended the said list and ultimately decided to go for fresh selection after making necessary reservation for the Scheduled Caste, Scheduled Tribe, OBC as well as physically handicapped candidates by giving suitable age relaxation. Mr. Bahadur further contended that after the said select list was published there had been subsequent developments. Total number of posts for which the selection process was had, was reduced as part of the Administration and/or responsibility was transferred to Zila Parishad. As a result, substantial number of posts were to be filled up through Zila Parishad and not by the Administration. He further contended that to obey the direction of the Division

Bench appropriate reservation would be made for physically handicapped candidates which was not there earlier. Moreover, appropriate age relaxation was not given. The Administration intended to amend the Recruitment Rules by making provisions for reservations and/or age relaxation, as the case may be, before proceeding for fresh selection process. Mr. Bahadur lastly contended that it was the policy of the Government to go for a fresh selection to maintain transparency as well as to honour the mandate of the Constitution by giving suitable benefit to the oppressed class. The respondents were not entitled to question such process.

4. As and by way of alternative submission Mr. Bahadur contended that in case the select list was directed to be implemented in terms of the order of the Tribunal it would create an anomalous situation as the OBC and Scheduled Tribe candidates did not get proper opportunity to compete for the said post having suitable age relaxation. Similarly physically handicapped candidates could not get suitable opportunity to be considered separately. To avoid all complications the authority decided to go for a fresh selection process after amending the Recruitment Rules. The Tribunal erred in upsetting the same.

5. Mrs. Anjili Nag, learned Counsel appearing for the respondents on the other hand contended that once the select list was published, the Administration could act upon the same by filling up available posts by making suitable reservation for the physically handicapped candidates. Similarly the said select list could also be utilized by the Zila Parishad for filling up the rest of the vacancies. The Administration invited the respondents to participate in the selection process. With great difficulty they could attend the selection process by going from one island to the other and ultimately became successful in such selection process. Moreover, huge public exchequer was involved in the said selection process. Hence it would not be wise to upset the said selection process. She also contended that the Administration failed to demonstrate any iota of evidence to support such cancellation. The order of cancellation did not speak of any malpractice for which the select list was purportedly cancelled.

In support of the rival contentions the parties cited the following decisions.

- (i) Jatinder Kumar and Others Vs. State of Punjab and Others,
- (ii) State of A.P. and Others Vs. D. Dastagiri and Others,
- (iii) Union of India (UOI) and Others Vs. Tarun K. Singh and Others,
- (iv) N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others,
- (v) Purushottam Vs. Chairman, M.S.E.B. and Another, r.

6. We have considered the rival contentions of the parties. We fully agree with Mr. Bahadur that merely because the names of the respondents duly appeared in the select list it did not confer any right in their favour. The administration received complaints on illegality, irregularity and/or malpractices. Pending

enquiry it suspended operation of the said list. Ultimately it cancelled the said list and decided to go for a fresh selection after making due reservation for the reserved classes and by giving necessary age relaxation to those reserved classes by amending the Recruitment Rules. We do not find any infirmity on that score. On the other hand we feel that the Tribunal erred in directing appointments to be given from the said select list without appreciating the fact that there had been substantial development in between in view of bifurcation of duties and responsibilities between Administration and Zila Parishad as well as infirmity in the earlier selection process in absence of appropriate benefit being given to the reserved classes.

7. In the case of Jatinder Kumar (supra) the Apex Court rejected the plea of violation of natural justice raised by the incumbents when Government could not give appointment to the candidates despite being recommended by selection board owing to reduction in number of vacancies. In the case of Tarun K. Singh (supra) in an identical situation the Apex Court upheld the decision of the Division Bench setting aside the order of the Single Judge directing publication of result in a selection process which was vitiated by illegality. In the case of D. Dastagiri (supra) the Apex Court observed that even if the names appeared in the select list the successful candidate did not get vested right to claim appointment based on the select list. The facts involved in Purushottam (supra) are however distinguishable. There the concerned candidate was successful. He was however not given appointment on the plea of submission of a wrong caste certificate. Later on he was able to upset the decision in a writ petition before the High Court where High Court came to a finding that he did belong to the particular caste for which he submitted a certificate. The authority thereafter refused him appointment on the ground that somebody else was engaged in the post and there was no vacancy. The Apex Court directed appointment to be given. We are unable to appreciate how this decision could be applicable in the instant case. In the case of N.T. Devin Katti (supra) the Apex Court observed that the person having his name appeared in the select list did not get any vested right of selection. He however was entitled to be considered for selection once he was found eligible and otherwise qualified for the post. This decision also does not help us to resolve the controversy in hand. It is not the case that the respondents were not eligible for the post. It is true that the respondents were successful as per the select list.

8. The authority immediately suspended the said list and ultimately cancelled the same and decided to go for a fresh selection. There is no law in our view which could prevent the authority to do so as a policy decision.

9. It is true that the Administration herein being a public authority is obliged to act reasonably and not arbitrarily. The reasons disclosed by the Administration as appears from the record may not be sufficient enough to come to a definite conclusion that such cancellation was correct. We are not competent to examine such issue. We are only concerned with the decision making process. The

selection was cancelled on the grounds discussed above. We do not find any mala fide in that respect. We do not find those reasons arbitrary or capricious. There was no oblique intention of the Administration while cancelling such selection process. In absence of such definite finding to the extent of mala fide or arbitrariness the action of the executive and/or the Administrative decision of the authority in canceling the selection process is not available for judicial review.

10. The Tribunal, in our view, was not competent to direct appointment to be given based on the above facts and circumstance.

11. The applications succeed and are allowed. The order of the Tribunal impugned in the writ applications dated July 29, 2008 is set aside.

12. The Administration is however directed to see to it that all successful candidates whose names appeared in the select list are given opportunity to participate in the fresh selection process if they apply considering their age as on the date of making of the application in terms of the initial advertisement.

13. If those successful candidates participate in the selection process they must be paid appropriate traveling allowance to attend the interview and/or test to be conducted by the authority.

14. With these directions the writ petitions are disposed of without any order as to costs.

Dipankar Datta, J.

15. I agree.