

(2011) 12 CAL CK 0063
In the Calcutta High Court
Case No : W.P.S.T. No. 243 of 2011

Md. Jahan Alam

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Citation : (2011) 12 CAL CK 0063

Hon'ble Judges : Shukla Kabir Sinha, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Kazi Saifuddin Ahamed, In W.P.S.T. 243 of 2011 and In W.P.S.T. 244 of 2011, for the Appellant;Debangsu Basak, In W.P.C.T. 243 of 2011, Mr. Debangsu Basak (holding the brief on behalf of Mr. Ashok Kr. Chakraborty and Mr. Manas Kr. Sadhu, In W.P.S.T. 244 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee

1. Since both the petitions involved identical question of fact and law these are disposed of by the common judgment and order.

FACTS

2. The petitioners in both the matters were unsuccessful in the selection process for the post of Constable held by West Bengal Police in 1992. The Bengal Police initiated a selection process in the year 1992 for the post of Constable. The petitioners participated in the said recruitment process and became unsuccessful. They approached this Court by filing writ petitions challenging the selection process. This Court however transferred the said application to the Tribunal after its establishment.

3. Challenging the selection process there had been protracted litigations. In T.A. No.695 of 1996, the Tribunal vide judgment and order dated February 6, 1997 considered the grievance of the unsuccessful candidates with regard to holding of

physical measurement test as well as interview and ultimately found no substance in the application and dismissed the same. By a judgment and order dated July 30, 1997 the Tribunal dismissed the review application declining to review its own judgment and order dated February 6, 1997. The Division Bench of this Court vide November 5, 1997 in W.P.S.T 290 of 1997 dismissed the petition filed by the applicants before the Tribunal.

4. Another petition being W.P.S.T. 16 of 1997 came up before another Division Bench. The Division Bench observed that the viva voce test was held as per the subsequent notification. Hence, the same was illegal as the new Regulation would not be applicable being not in existence as on the date of initiation of the recruitment process.

5. In TA No.443 and 447 of 1997 the Tribunal considered another set of litigation. The Tribunal held that the subsequent amendment for holding oral interview would not be applicable and as such the selection process was upset. The issue reached finality at the Apex Court level when the special leave petitions against the earlier judgment and orders of this Court referred to above, was dismissed.

6. In the present case the petitioners were unsuccessful in 1992 recruitment process. They participated in the interview and thereafter became unsuccessful. The petitioner accepted such decision of the authority and did not approach the Court of law. The petitioner filed a writ petition before this Court being W.P. No.12999(W) of 1992 in case of Md. Zaman Alam and C.O. No.16477(W) of 1993 in case of Noor Ahmed. Both the matters got transferred to the Tribunal and re-numbered as T.A. No.325 of 1996 and T.A. No.695 of 1996 respectively. The Tribunal heard the T.A. No.325 of 1996 along with O.A. No.1003 of 2000 and dismissed the same vide judgment and order dated June 4, 2008.

7. In the case of Noor Ahmed he approached this Tribunal separately with his co-petitioner Abul Kasam by filing O.A. No.1003 of 2000 inter alia praying for direction upon the Superintendent of Police to issue appointment letter on the basis of the result of Endurance Test. It is however not clear that how on the self-same issue the petitioner being a party to the earlier proceedings referred to above could approach the Tribunal on the identical issue particularly when the issue was then pending before the Apex Court.

8. The Tribunal decided the issue vide judgment and order dated June 4, 2008. The respondent resisted the application on the ground that the State did not commit any illegality in the selection process. When there were large number of candidates uniform procedure was followed and the petitioner being unsuccessful were not entitled to challenge the same. The principal contention of the petitioner was that the Regulation 746 was published in Police Gazette whereas the same was required to be published in Official Gazette prior to its implementation. The Tribunal observed that the applicants knew of such irregularity. They could have appeared in the selection test by lodging protest. They did not do so. They participated in the selection process without raising any

protest and after becoming unsuccessful they were not entitled to challenge the same. The Tribunal observed that the procedure was erroneous. However, that would not help the present petitioners to have any benefit as they had participated in the selection process. The Tribunal dismissed the application.

9. Being aggrieved the petitioners approached us by filing the instant applications that was opposed by the State.

10. Mr. Kazi Saifuddin Ahamed, learned counsel appearing for the petitioners contended that once the Tribunal held that the selection process was vitiated by illegality as Regulation 746 could not have been applied in absence of a notification published in Official Gazette, the Tribunal should have quashed the same. He contended, there could not be any estoppel against the statute. Once statute was breached such illegality could not stand merely on the ground of alleged acquiescence.

11. Mr. Debangsu Basak, learned Senior Government Advocate while opposing the application contended, once the petitioners had appeared in the interview without any protest keeping their eyes wide open as to the purported illegality they were precluded from challenging the same.

12. We have considered the rival contentions. In our view, the Tribunal rightly rejected the petitioners' challenge. We intend to supplement reason for the same.

13. In case of Noor Ahmed and Abas Alam we fail to appreciate as to how the said application was maintainable before the Tribunal. Both of them claimed to be party to the earlier proceeding in the case of T.A. No.695 of 1996. Hence on the selfsame issue they could not have approached the Tribunal. Whatever might be the result in the earlier proceeding that would guide their fate.

14. In both the cases the Tribunal dismissed the application on June 4, 2008 by a composite judgment. The petitioners have come up before us by filing these two applications in 2011. They do not explain the inordinate delay in approaching this Court. These belated applications, in our view, could not be entertained.

15. The applications thus fail and are hereby dismissed.

16. There would be however no order as to costs.

17. Urgent Photostat copy will be given to the parties, if applied for.

Shukla Kabir (Sinha), J.

18. I agree.