

**(1988) 10 CAL CK 0021**  
**In the Calcutta High Court**  
**Case No : Matter No. 1424 of 1986**

Mrs. Dolly Mukherjee

APPELLANT

Vs

The Trustees of The Indian Museum and Another

RESPONDENT

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**Date of Decision :** 07-10-1988

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16  
Museum Act, 1910 — Section 15A(2)(A)

**Citation :** (1989) 1 CALLT 170

**Hon'ble Judges :** Monoranjan Mallick, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Monoranjan Mallick, J.—The petitioner Mrs. Dolly Mukherjee who is Deputy Keeper (Numismatic and Epigraphy) in the Archaeology Section of the Indian Museum since 1979 claims that she has been officiating as Keeper of (Archaeology) since 18th April 1985.

2. Being aggrieved by the advertisement for the filling up of the post of Keeper (Archaeology) in the Indian Museum by direct recruitment, the petitioner has moved this writ petition challenging the authority and/or power and/or jurisdiction of the Respondents being The Trustees of the Indian Museum and the Director, Indian Museum to issue such advertisement in as much as the statutory rules relating to the appointment of the post of Keeper (Archaeology) -provides for recruitment by promotion failing which by direct recruitment. The petitioner submits that the post of Keeper -(Archaeology) should be filled up by promoting her as she is the Senior most Deputy Keeper in the Archaeology Section and is also officiating as Keeper (Archaeology) since October 1985.

3. She claims to fulfil all the qualifications required .under the Recruitment Rules being the senior most Deputy Keeper in the Archaeology Section.

4. According to her the Respondents have arbitrarily decided to fill up the post of

Keeper (Archaeology) by direct recruitment in the breach of the rules and ignoring the legitimate claims of the petitioner. She submits that on or about 12th February 1986 the petitioner made representations to the Director of Indian Museum for the promotion to the post of Keeper (Archaeology) as she qualifies all the requirements for appointment to the said post. The petitioner has not received any reply to that representation, that on or about 23rd May 1986 an advertisement appeared in the statement for recruitment to the post of Keeper (Archaeology) of the said Museum and similar advertisement also appeared in Ananda Bazar Patrika, dated 21st May, 1986, that thereafter on or about 16th June 1986 the petitioner without prejudice to her rights and contentions made an application for the post of Keeper Archaeology and in fact the petitioner was constrained to make the application out of fear of not being considered at all in the event of the present petitioner's contention failing, that by making the said application the petitioner has never intended to waive her statutory right under the said recruitment rules and that the respondents have acted contrary to the recruitment rules by purporting to fill up the post of Keeper (Archaeology) by ignoring to consider the case of the petitioner by promotion.

5. The petitioner further states that if it is contended by the Respondents that as the nomenclature of the post from which promotion is to be made to the post of Keeper (Archaeology) does not tally with that the petitioner is holding and for that reason only the right of the petitioner for being considered for promotion to the post of Keeper (Archaeology) is taken away in that case the said rule is wholly contrary to and/or inconsistent with the provisions contained under Articles 14 and 16 of the Constitution of India. The petitioner submits that in the Archaeology Section of the Indian Museum there are three posts of Deputy Keeper, namely, one for Archaeology, one for Numismatics and Epigraphy and one for pre-history and for administrative reasons the three posts of Deputy Keeper have been differently named and in fact all these three posts are the posts of Deputy Keeper in the Archaeology Section of the said Museum. It is also contended that the recruitment rules also refer to the deputy Keeper (Archaeology) on the feeder post in a broad sense in as much as while referring to the post from which promotion is to be given to the post of Keeper (Archaeology) that has been stated that Deputy Keeper (Archaeology) should have at least five years of experience in the grade and by use of the word Grade in the said Rules the three posts of Deputy Keeper in the Archaeology Division have been included and it cannot mean the post of Deputy Keeper (Archaeology) only.

6. The petitioner, therefore, prays for a writ of Mandamus commanding the Respondents to act and proceed in accordance with law, to cancel, rescind and/or withdraw the impugned advertisement published in the Statesman, dated 23-5-1986 Annexure "C" and forbear the Respondents from filling up the post of Keeper -(Archeology) by way of direct recruitment and for commending the respondents to fill up the post of Keeper (Archaeology) Indian Museum by way of promotion and by considering the case of the petitioner for such promotion.

7. The Respondents have contested the writ petition even though no affidavit-in-opposition has been filed.

8. The relevant record has been produced. The copy of the relevant recruitment rules of the employees of the Indian Museum has been placed before me.

9. It is contended by the Respondents that in the matter of appointment to the post of Keeper (Archaeology) Serial No. 11 of the posts of the Indian Museum at page 34 of the Recruitment Rules shows that the recruitment to that post is "by promotion failing which by direct recruitment" and in item No. 12 of the said serial the feeder post is prescribed as "Deputy Keeper -(Archaeology) with at least 5 years experience in the grade". It is also contended that the recruitment rules show in Serial No. 12 the post of Deputy Keeper (Archaeology), in Serial No. 16. Deputy Keeper (Numismatic and Epigraphy), the post which is being held by the petitioner and in Serial No. 5 Deputy Keeper (pre-history), that all these posts are separate posts having separate recruitment rules for the appointment to that post, that the petitioner not being the Deputy Keeper (Archaeology) cannot claim as of right to be considered for the post of Keeper (Archaeology-) as the post held by her being that of Deputy Keeper (Numismatic and Epigraphy) is not the feeder post for the appointment of keeper (Archaeology) that the - petitioner's representation was considered by the Trustees prescribed over by the Governor of West Bengal and his representation was rejected as she was not qualified to be considered to the post of Keeper (Archaeology) by promotion, that the Trustees have, therefore, decided to fill up the post by direct recruitment and has published an advertisement, that the petitioner has also applied for that "post in response to that advertisement and that the writ petition is, therefore, liable to be dismissed.

10. It is further contended that the Recruitment Rules being statutory rules has to be followed by the Respondents and the petitioner has not in this writ petition challenged the vires of the recruitment rules and that as the Recruitment Rules as it now stands does not give the petitioner the legal right to be considered for promotion to the post of the Keeper (Archaeology) the act of the Respondents cannot be held to be arbitrary or violative of Article 14 and 16 of the Constitution.

11. The petitioner is admittedly Deputy Keeper (Numismatics and Epigraphy) having been appointed to that post in January 1979. It is also the admitted position that she has been asked by the respondents to look after the work of the Archaeology Section until further Orders vide Annexure "A" because of sudden demise of Sri Arobindu Ghosh, Keeper (Archaeology). That appointment vide Annexure "A" is not to act as a Keeper, Archaeology but to look after the works of the Archaeology Section being the next senior most officer of the Archaeology Section. Therefore, the contention of the petitioner in the writ petition that she has been officiating of Keeper (Archaeology) since 18th April 1985 is not a correct statement of fact. It is an admitted position that the petitioner has made representation by the letter, dated 12th February 1986 (vide Annexure "B" to the writ petition) praying for considering her case for appointment as Keeper

(Archaeology) on the ground that she having been working as Deputy Keeper in the Archaeology Section of the Indian Museum since January 1979 has become eligible for regular promotion to the post of Keeper (Archaeology). The Respondents have produced before me the relevant file and from the same it is gathered that the said representation was considered by the Board of Trustees, Indian Museum held at Raj Bhawan, Calcutta on 21st April 1986. The resolution of the meeting shows that the Trustees have considered her representation and has not accepted her representation on the ground that the incumbent in the post of Deputy Keeper (Archaeology) is only eligible for promotion with qualifying service for five years as prescribed in the Rules.

12. Mr. Mitra, learned Advocate appearing for the Respondents has submitted that the Recruitment Rules of the Indian Museum is a statutory Rule made by the Central Government u/s 15A(2) (A) of the Indian Museum Act 1910. He has submitted that the Indian Museum Recruitment Rule being thus a statutory rule has the force of law and when such statutory rules have made, Deputy Keeper (Archaeology) alone as the feeder post for promotion the petitioner cannot as of right claim to be considered for the post of Keeper (Archaeology) by promotion.. He has drawn my attention to the Recruitment Rules and has urged that the Deputy -Keeper, Archaeology, Deputy Keeper, Pre-history and Deputy Keeper, Numismatic and Epigraphy are all separate posts under the Indian Museum Recruitment Rules having separate qualifications prescribed in the said Rules for their respective appointments and when the Deputy Keeper (Archaeology) is the only feeder post under the said Rules for the appointment of Keeper (Archaeology) the petitioner cannot be considered to the post of Keeper, Archaeology by way of promotion. It is also submitted that the petitioner in this writ petition has not challenged the Recruitment Rules as violative: of Article 14 or 16 of the Constitution. It is only contended that the feeder post of Keeper, Archaeology has been specified as Deputy Keeper, Archaeology in a broad manner and it would include any Deputy Keeper of the Archaeology Section. It is urged by Mr. Mitra that the Recruitment Rules as it is found today, does not have any such scope for such liberal interpretation when admittedly the posts of Deputy Keeper (Archaeology), Deputy Keeper (Numismatic and Epigraphy) and Deputy Keeper, (Pre-history) even though in the Archaeology section of the Indian Museum are separate posts and unless and until the Recruitment Rules are amended including the above two posts of Deputy Keeper along with the Deputy Keeper (Archaeology) as the feeder posts of Keeper (Archaeology) the present petition is bound to fail. He has also drawn my attention to the fact that the writ petitioner has already applied for the said post in response to the advertisement issued in the "Statesman" and only because of this pending writ petition, the appointment of the Keeper (Archaeology) could not be made by the Respondent Authorities.

13. Mr. A.P. Chatterjee, learned Advocate appearing for the petitioner has contended that even without challenging the vires of the Rules, the petitioner can urge that this court should interpret the Rules in such a manner that the

arbitrariness which is glaring at the face of the said Recruitment Rules is removed and the post of the petitioner be treated along with the post of Deputy Keeper (Archaeology) and Deputy Keeper (Pre-history) being the Deputy Keepers of the Archaeology Section as the feeder posts of Keeper (Archaeology). He has drawn my attention to the relevant portion of the writ petition in which the petitioner's qualifications have been enumerated and it is contended that regard being had such qualifications and regarding being had the fact that she has been treated even by the respondents as the senior most Officer in the Archaeology Section of Indian Museum the Respondents should be commanded by this Court by issuing a writ of Mandamus that the case of the petitioner be considered first for promotion to the post of Keeper (Archaeology) failing which the Respondent Authority can appoint somebody by direct recruitment. Before me, Mr. Chatterjee has referred three decisions, namely, (1) State of Mysore Vs. M.H. Krishna Murthy and Others, , (2) Brijlal Goswami Vs. State of Punjab and Others, and (3) Sri Kisan Kaparia and others v. State of Punjab and others, 1975(1) SLR 363. Mr. Chatterjee has drawn my attention to the relevant portion of the judgment of State of Mysore Vs. M.H. Krishna Murthy and Others, at page 1150 in which considering the several earlier decisions of the Supreme Court, it has been observed that equality and principle of promotion though not unconstitutional per se must be justified on the strength of rational criteria co-related to the object for which the decision made. He has submitted that the three posts of Deputy Keepers being all of the Archaeology Section, there cannot be any reasonable criterion for making only Deputy Keeper (Archaeology) as the feeder post for Keeper (Archaeology) and this Court should make reasonable interpretation of the Recruitment Rules so that the petitioner's promotional avenue cannot in any way be jeopardised.

14. He has cited the other two decisions to submit that when the promotional opportunities are denied without any reasonable basis the action of the government has been held to be arbitrary and violative of Articles 14 and 16 of the Constitution.

15. On perusing the above decisions, I am of the view that the facts of those cases do not fit in with the facts of the present case. In all those cases the Rules or the Government Notifications were challenged in the writ petitions but in this case the vires of the Recruitment Rules of the Indian Museum has not been challenged and the Recruitment Rules, as it is, does not show the Deputy Keeper (Numismatic and Epigraphy) as a feeder post to Keeper (Archaeology) and even though three posts of Deputy Keepers are in the Archaeology Section the Recruitment Rules only prescribes the Deputy Keeper, Archaeology as the feeder post and the petitioner, therefore, cannot claim the right of promotion to the post of Keeper (Archaeology) on the basis of the Recruitment Rules.

16. It is also significant to note that the petitioner has already applied for the post of Keeper, Archaeology in response to the advertisement of the "Statesman" which has been annexed with the writ petition. So the petitioner if can prove her

merits before the Selection Board she has still reasonable chance to be appointed to the post of Keeper (Archaeology). Regard being had to the previous experience and qualifications there is no reason to think that the Selection Board would not consider her case on its merits.

17. In the result, the writ petition be dismissed. All interim Orders are Vacated.

18. There will be no order as to costs. On the prayer of the petitioner that operation of this order shall remain stayed for one week till after vacation.

19. All parties shall act on the signed copy of the operative portion of the judgment.