
(2013) 07 CAL CK 0111
In the Calcutta High Court
Case No : A.S.T. No. 141 of 2011

Mukul Bag

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2014) 1 CHN 282

Hon'ble Judges : Tarun Kumar Das, J; Girish Chandra Gupta, J

Bench : Division Bench

Judgement

1. This appeal is directed against a judgment and order dated 5th April, 2011 passed by brother Dasadhikari, J. by which the writ petition was disposed of by the following order: It appears from the Government Order No. 924-Edn. (C.S.)/10H-10/03 dated 26th November, 2007 that for fulfilling the eligibility criteria for the post of steno-typist two avenues are open; one the candidates sponsored by the Employment Exchanges and the other persons who are in regular employment of the College and rendered five years regular service in Group "D" Category.

I find that the private respondent is not fulfilling any of those two criteria and therefore, he ought not to have been allowed to appear at the interview since he was not eligible candidate.

Accordingly, the College authorities are directed to prepare the panel afresh thereby putting the petitioner at the top and in case any appointment had already been issued, that should be cancelled and a fresh panel to be prepared and appointment should be made accordingly. The writ petition is, thus, disposed of.

Aggrieved by the aforesaid order, the present appeal has been filed by the appellant/respondent No. 6.

2. Mr. Das, learned Advocate, appearing for the appellant/respondent No. 6,

submitted that his client was permitted to appear at the interview by an order dated 12th August, 2008 passed in W.P. 19372(W) of 2008 applying a Division Bench judgment of this Court in the case of Manik Chandra Das Vs. State of West Bengal and Others, , wherein the following views were taken:

17. Principles of law laid down by the Supreme Court in the case of Excise Superintendent, Malkapatnam v. K.B.N. Visweshwara Rao (supra) are set out hereunder:

6...Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

18. The Executive order issued by the Government of West Bengal under Memo No. 830-Edn.(CS) dated 31st October, 1995 is not consistent with the law laid down by the Supreme Court in the aforesaid decision which has also been affirmed by the subsequent decisions of the Hon''ble Supreme Court where similar question was in issue. Therefore, the aforesaid executive order dated 31st October, 1995 has to be read subject to law laid down by the Supreme Court in the case of K.B.N. Visweshwara Rao (supra) which was reaffirmed by the Supreme Court in the subsequent decisions mentioned hereinbefore.

19. In the aforesaid circumstances, the executive order dated 31st October, 1995 is not required to be challenged by a separate writ petition for quashing the same since the said executive order can be followed subject to the law laid down by the Hon''ble Supreme Court as mentioned hereinabove.

20. Thus, the restriction put by the aforesaid executive order dated 31st October, 1995 to the effect that only Employment Exchange sponsored candidates are to be considered for employment cannot be sustained and the respondent authorities cannot prevent the appellant or anybody from participating in the interview for filling up the vacant posts on the basis of or pursuant to the aforesaid executive order issued by the Government of West Bengal dated 31st October, 1995.

21. Following the decisions of the Supreme Court as mentioned hereinabove and in view of the law laid down by the Supreme Court in the case of K.B.N. Visweshwara Rao (supra), we also hold that the appropriate authority of the department or undertaking or establishment shall consider the cases of all the candidates who have applied for filling up any vacant post or posts along with the

Employment Exchange sponsored candidates strictly in accordance with law in order to ensure equal opportunity in the matter of employment to all the eligible candidates and any executive order or circular issued by any authority in this regard has to be read and/or followed subject to the aforesaid law laid down by the Hon''ble Supreme Court.

3. He, therefore, contended that the learned Trial Court fell into an error in holding that the writ petitioner though empanelled as candidate No. 1 could not be appointed because he was neither sponsored by the Employment Exchange nor was he an existing employee of the College in question.

4. Mr. Behani, learned Advocate, appearing for the writ petitioner/respondent, submitted that the judgment in the case of Manik Chandra Das v. State of West Bengal did not consider the matter in full. He pointed out that following the views expressed by the Apex Court in the case of Excise Superintendent v. K.B.N. Visweshwara Rao, the Division Bench held that the executive order dated 31st October, 1995 directing that the candidates should be sponsored by the Employment Exchange was bad but the Division Bench failed to appreciate that the law laid down by the Supreme Court insisted upon wide publicity of the vacancy by publication in the newspapers having wider circulation. He contended that in the absence of publication in newspapers having wider circulation there was no compliance with the views expressed in that case and any appointment made on that basis is bound to be bad which was noticed and explained by a Division Bench of this Court in the case of Debendra Nath Mondal Vs. Ratan Kumar Das and Others, , wherein the following views were expressed:

28. Having regard to such, we are inclined to follow the judgment passed in the case of K.B.N. Visweshwara Rao & Ors. (supra) to hold that a non-sponsored candidate suo motu and/or by grace and charity and/or other consideration of the employer without any public advertisement of the vacancy, if appears in the selection process, that will cause a breach of equality doctrine of the Constitution as enshrined under Articles 14 and 16(1) of the Constitution of India and will hit fair play, justice and equality clause, the basic structures of Constitution.

5. Mr. Das, learned Advocate, appearing for the appellant, did not seriously dispute the aforesaid contention of Mr. Bihani. But he contended that going by the logic of the submissions advanced and the reliance placed upon the judgment in the case of Debendra Nath Mondal v. Ratan Kumar Das (Supra), it has to be held that the entire selection process was bad. In that case the appointment made in favour of Mr. Bihani's client after the impugned order was passed by the learned Trial Court is also bad.

6. To that Mr. Bihani, drew our attention to sub-paragraphs (c) and (d) of the affidavit-in-opposition used by the College authority before the learned Trial Court, wherein the following averments were made:

c) That two post of non-teaching staff (Steno- typist & Typist) was lying vacant in the said College and the College authority decided to fill up those posts

permanently and accordingly employment exchange sponsored the names of eligible candidates pursuant to the requisition made by the College authority.

d) That the College authority also published a notice inviting application from the eligible non-teaching staff of this particular College as per G.O. No. 924-Edn.(CS)/IOH-10/03 dated 26.11.2007 and pursuant to this notification the writ petitioner applied for the said post of Steno-Typist and College authority also issued Interview Letter to the writ petitioner.

7. He submitted that the College authorities had published a notice inviting applications. There was, however, no publication of notice in the newspapers having wide circulation.

8. Considering that it is a fact that no wide publicity was given to the vacancy as required by the judgment in the case of Excise Superintendent v. K.B.N. Visweshwara Rao (*supra*) it has to be held that the entire selection process was vitiated. In that case Mr. Bihani's client, who was serial No. 2 in the panel, could also not have been appointed. Therefore, the appointment made in his favour is equally bad and is set aside. This will not however, affect the right of Mr. Bihani's client to continue to discharge his duties as Group-D staff, which post he has been holding for more than five years prior to the appointment in question. It will be open to the College authorities to advertise the vacancy in accordance with the views expressed by the judgment in the case of Excise Superintendent v. K.B.N. Visweshwara Rao and the Division Bench judgments indicated above.

9. Needless to mention that once such vacancy is advertised it will be open to everyone, interested, to apply including the parties to this appeal and appointment shall be made thereafter in accordance with law.

10. This appeal is, thus, disposed of. Let urgent Xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties upon compliance of all usual formalities.