

(2013) 09 CAL CK 0081

In the Calcutta High Court

Case No : Writ Petition No's. 30155 (W) of 2008, 16647 (W) of 2007, 19729 (W) and 19731 (W) of 2008

Pradip Kumar Das and Others

APPELLANT

Vs

Union of India and Other

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 4 CALLT 310 : (2013) 4 LLN 144

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Kishore Dutta, Pratik Dhar, Ritwik Pattanayak and Sulagna Mukherjee, in W.P. No. 30155W of 2008 and W.P. No. 16647W of 2007, Farhan Gaffar in W.P. No. 19731W of 2008, for the Appellant; Jayanta Kumar Das, Anwari Quraishi and Anup Kumar Biswas, for the Respondent

Judgement

Dipankar Datta, J.—Grievances of the Petitioners in this batch of Writ Petitions are more or less common and hence the same were heard together. They shall stand disposed of by this common Judgment and Order. An Advertisement was published on May 18, 2007 in a local daily "Karmasangsthan". It sought to convey that the office of the Additional D.I.G. of Police, Durgapur centre of the Central Reserve Police Force (hereafter the Force) intended to recruit 84 (eighty-four) "enrolled followers" in the trades of cook, barber, water carrier, safai karmachari and washer man through an open test. Eligibility criteria were mentioned therein, which the aspirants had to possess in order to compete for appointment.

2. It is not in dispute that apart from the Petitioner in W.P. 19729(W) of 2008, the other Petitioners offered their candidature in response to the aforesaid Notice. The common claim of those Petitioners is that they acquitted themselves creditably in the physical Standards Test, Trade Test and Medical Standards Test resulting in their selection for consequent appointment. While anxiously waiting for the Appointment Letters to arrive, they noticed a further Advertisement

published in the Bengali daily "Bartaman" in its issue dated July 30, 2007 for recruitment to those 84 (eighty-four) posts of "enrolled followers" for which they had applied earlier and were selected for appointment. Claiming that the Respondents do not have any right to deprive the selectees of the right of employment based on the selection that was conducted not too long ago, W.P. 16647(W) of 2007, W.P. 19731(W) of 2008 & W.P. 30155(W) of 2008 were presented before this Court on August 2, 2007, August 11, 2008 & December 2, 2008 respectively. The Petitioners, inter alia, prayed that the Notice dated July 30, 2007 be cancelled and the Respondents be directed to offer appointment to them.

3. W.P. 19729(W) of 2008 has been presented before the Court also on August 11, 2008 by a sole Petitioner, in a slightly different factual context. He claims to have participated in a selection process for appointment as an "enrolled follower" pursuant to an Advertisement dated November 24, 2006 published in the "Karmasangsthan". The number of vacancy was then shown as 29 (twenty-nine). It is also his claim that he was duly selected upon satisfactorily completing the various tests which he had been called upon to undertake. However, without offering him appointment, the Respondents issued the Notice dated July 30, 2007 referred to above. This Writ Petition contains similar prayers as made in the other Writ Petitions.

4. While entertaining W.P. 16647(W) of 2007, Hon'ble Tapen Sen, J. by Order dated August 3, 2007 directed the Respondents to maintain status quo regarding recruitment and called upon them to file an Affidavit stating the reason for issuance of a fresh Advertisement.

5. The Affidavits-in-opposition filed by the Respondents while dealing with the other Writ Petitions reflected gross irregularities and serious malpractices in the process of selection as the grounds based whereon it was considered necessary to cancel the process. However, particulars of gross irregularities and serious malpractices were wanting for which I granted liberty to the Respondents by an Order dated July 3, 2013 to file a composite supplementary Affidavit-in-opposition to all the Writ Petitions. Such Affidavit has since been filed.

6. The version of the Respondents for cancellation of the Selection process, as is evident from the composite supplementary Affidavit-in-opposition, is that two written Complaints were received by the office of the Inspector General of the Force, Eastern Sector (hereafter the Inspector General) immediately after the Trade Test was conducted. The Complainants Soumitra Sarkar and Hemnath Das (aspirants, who competed for appointment) alleged that the selection process was wholly tainted. They referred to involvement of one Kajal Das, a member of the Force and posted at Durgapur centre. According to them, said Kajal Das was the mastermind behind the fiasco of selection. He had taken 71 lakh each from the selectees. Out of the selectees, residences of at least 15 (fifteen) were in the vicinity of Benani village within Hanskhali Police Station, where said Kajal Das resides. An Enquiry Officer holding the rank of Additional Deputy Inspector

General of the Force was appointed to look into the Complaint. The Complainants were summoned and their statements were recorded. The statement of said Kajal Das was also recorded. Further trade tests of Soumitra Sarkar and Hemnath Das were taken. The results were found to be significantly better in comparison with the results of their earlier Trade Tests. The Enquiry Officer prepared a detailed Report dated July 6, 2007 and submitted the same to the Inspector General. For the reasons mentioned therein (to which I shall refer at a later part of this judgment), he did not rule out mal-practice in the recruitment process. On perusal of the report, the Inspector General by his Order dated July 6, 2007 held that the Complaints were substantiated to a large extent and cancelled the proceedings of recruitment with further direction to call for explanations from the Board members. This Order was followed by Notices seeking explanations from the Board Members for their negligence and irregularities noticed in the Recruitment process, and direction for initiation of fresh process of Recruitment.

7. Mr. Dhar, learned Advocate appearing for the Petitioners in W.P. 30155(W) of 2008 and W.P. 16647(W) of 2008 attacked the action of the Respondents in cancelling the selection process by contending that the same was grossly illegal and arbitrary. In support thereof, he raised the following points:

1. Two Complaints received from Soumitra Sarkar and Hemnath Das were not written by them but by a common individual whose identity remained undisclosed and, therefore, there is reason to suspect that the Complainants were used as pawns to scuttle the Selection process.

2. Both Soumitra Sarkar and Hemnath Das aspired for appointment as "Cook" and not in the other trades and since there is only one Petitioner in the batch of two Writ Petitions argued by him who also aspired for appointment as Cook, the Respondents ought not to have cancelled the entire process; if at all, only the process in respect of selection of Cook ought to have been cancelled.

3. Allegations had been levelled by the Complainants after they failed to succeed to have their names included in the Merit List based on their performance in the respective trade tests and, therefore, their Complaints should not have been given any credence.

4. Constable Kajal Das in course of enquiry had disclosed that he was absent during the material point of time when the process was on and, therefore, the very foundation of the Complaints stood shaken.

5. The Selection process was conducted by 5 (five) officers of the Force whereas the enquiry on the basis of the Complaints was conducted by only 1 (one) officer. The report of the Inquiry Officer was given unnecessary weight and the Inspector General, who cancelled the process did not give any independent reason, and mechanically relied on the same.

6. The Inspector General and the other officers of the Force have failed to notice

that in previous recruitment drives candidates from the district of Nadia and more particularly from the area under Hanskhali Police Station have done well and have secured appointments and non-consideration of the previous records is a serious flaw in process of cancellation of the Merit List.

7. Even assuming that there was room for suspicion, the fresh Trade Tests ought not to have been confined only to the Complainants but fresh Trade Tests ought to have been taken in respect of the other participants too to unearth the truth.

8. No Complaints had been received in respect of the Trade Tests conducted for appointment as barber, washer man, safai karmachari and water carrier and in the absence thereof, attempts ought to have been made by the Respondents to weed out the tainted and to retain those whose selection did not suffer from any vice or infirmity.

9. There was undue haste in regard to the follow up action taken upon receipt of the Complaints and in the process vital factors were not considered rendering the actions completely vitiated.

8. In support of his submissions, Mr. Dhar relied on the following decisions:

(i) Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, , for the proposition that out of the selectees if it was possible to weed out the beneficiaries of irregularities or illegalities, there was no justification to deny appointment to those selected candidates whose selection was not vitiated in any manner.

(ii) East Coast Railway and Another Vs. Mahadev Appa Rao and Others, for the proposition that a decision for cancellation of Recruitment process must be an informed decision and if it is not so, the decision would be vulnerable and branded arbitrary.

(iii) Union of India and Others Vs. O. Chakradhar, for the proposition that the nature and extent of illegalities and irregularities committed in conducting a selection will have to be scrutinised in each case to come to a conclusion about the future course of action and only if the mischief played is so widespread and all-pervasive affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongly deprived of their selection, it is in such cases that natural justice need not be complied with.

(iv) P. Mahendran and others Vs. State of Karnataka and others, , for the proposition that amendment of eligibility criteria subsequently cannot impair the right of the Petitioners and that the process must be taken to its logical conclusion on the basis of the Rules that were in force when the vacancies arose.

9. It was accordingly prayed that the decision to cancel the Recruitment process be declared arbitrary and direction may be given to the Respondents to take steps for appointment on the basis of the Merit Lists annexed to the composite supplementary Affidavit-in-opposition.

10. Mr. Ghaffar, learned Advocate for the Petitioners in W.P. 19731(W) of 2008 adopted the submissions advanced by Mr. Dhar.

11. The case of the Respondents was argued by Mr. Das, who submitted that no case has been set up for interference. According to him, the Petitioners participated in a Selection process, which has been cancelled having regard to the finding of the Respondents that the process was vitiated by gross irregularities and mal-practices, having the effect of victimization of a number of aspirants. The Respondents have a duty to extend equality of opportunity to every citizen, and there being material before them suggesting that the process was not objection free led to the decision to cancel it. In order to ensure fairness and transparency, a new process had been started but it could not be concluded because of the order of injunction passed by this Court. He contended that the Petitioners by reason of their participation in the process and inclusion of their names in the Merit Lists, which were not even finally approved by the Competent Authority, did not acquire any right to have a Mandamus issued by the Court on the Respondents to appoint them. It was finally contended that the actions of the Respondents are free from arbitrariness and unreasonableness, rather the decision to cancel the earlier process and to initiate a fresh process was a step in the right direction to do justice amongst all the aspirants for the posts which should not have been interfered with. Referring to a subsequent development, which also I shall refer to at a later part of this Judgment, he submitted that should the Writ Petitions fail, the Respondents would not be in a position to continue with the impugned Advertisement dated July 30, 2007 and would have to start a fresh process. It was, accordingly, urged that the Writ Petitions be dismissed.

12. Before I proceed to consider the rival contentions noticed above, W.P. 19729(W) of 2008 may be dealt with first. None appeared for the Petitioner in course of hearing. From the Affidavit-in-opposition filed by the Respondents (paragraph 4 and its several sub-paragraphs), it appears to be their version that the process stood cancelled for serious irregularities and mal-practices and it was decided to initiate a fresh recruitment drive. Such cancellation was made the subject matter of challenge by other similarly circumstanced aspirants in W.P. 6457(W) of 2007 (Sudhir Roy & ors. v. Union of India & ors.). This Writ Petition was also considered by Hon'ble Tapen Sen, J. and disposed of on July 18, 2007. His Lordship did not find any irregularity if the Respondents wanted to take recourse to a transparent procedure. It was further observed that the action cannot be branded arbitrary, if the cancellation is because of serious mal-practices and irregularities. However, the Petitioners were granted liberty to apply if any fresh Selection process is initiated and the Respondents directed to consider their candidature waiving the age-bar. The Petitioner in his reply Affidavit has come up with evasive denials. I share the view expressed by His Lordship and hold that the Petitioner cannot claim mandamus on the basis of his participation in the process of Selection unless such process is taken to its logical conclusion and a right can be discerned to have crystallised in his favour. There is

no merit in W.P. 19731(W) of 2008 and the same stands dismissed, without costs.

13. The focus would now shift on the other Writ Petitions. The question that arises for an answer is, whether the Respondents by their impugned actions of cancelling the process of Selection that commenced consequent to publication of the Advertisement dated May 18, 2007 and publishing fresh Advertisement dated July 30, 2007 infringed the Petitioners' legal rights or not.

14. The Recruitment Policy for "enrolled followers" is contained in Standing Order No. 4/2000 dated May 4, 2000, issued by the Director General of the Force. The procedure for Recruitment, inter alia, requires preparation of a Merit List "on the basis of the marks obtained in the VIII Class from a recognized Central/State School and the marks obtained in the Trade Test of particular job".

15. It appears that the Inspector General of the Force, Eastern Sector (Respondent No. 3) had, by his signals dated February 2, 2007 and March 22, declared vacancies of 84 (eighty-four) enrolled followers. Out of these, 21 (twenty-one) and 63 (sixty-three) vacancies were to be filled up by recruitment from ex-servicemen and non-ex-servicemen, respectively. A board of 5 (five) officers was constituted by the Inspector General to hold the selection and to prepare Merit List of candidates for each of the trades. The Board prepared combined Merit Lists for each of the trades and vide proceedings dated June 11, 2007 submitted the same before the Inspector General for necessary action through the Deputy Inspector General of the Force at Durgapur.

16. The Report of the Enquiry Officer reveals that the Trade Tests were conducted only by the Presiding Officer of the Board without association of the other members. Discreet enquiry further revealed that "hardly any trade test was undertaken and it was done in a very casual manner". While scrutinizing the record of selected candidates, it revealed that 37 (thirty-seven) candidates comprising 60% were from the district of Nadia out of which 16 (sixteen) were from an area of 4/5 kms. in the vicinity of village Benani under Hanskhali Police Station, being the village from where said Kajal Das hails and 3 (three) were from the same village. The same was not regarded as a mere coincidence particularly when there were Complaints of mal-practices to a large extent. In addition, the Durgapur centre was famous for its notoriety in respect of recruitment process and large scale malpractices could not be ruled out. Such Report was accepted by the Inspector General, who ordered cancellation of the process.

17. What stands out from the Enquiry Report and is viewed by me as the clincher are the findings that the Presiding Officer of the Board only conducted the trade tests without the other members being associated therewith, and that hardly any trade test was undertaken and whatever was done was done casually. These findings are not confined in respect of Trade Test held for a particular trade but are in general terms encompassing all the trades. No attempt was made in course of hearing by Mr. Dhar to challenge such findings. The points raised by

him assailing the enquiry that was undertaken pale into insignificance once such findings remain free from challenge. That apart, consideration of the points raised by Mr. Dhar would necessitate exercise of Appellate powers by the Writ Court and it is well known that extent of judicial review/judicial scrutiny of an administrative action is not unfettered or unlimited. Choice or discretion is available to an Administrative Authority to deal with a particular situation in a particular manner and an order passed by it in exercise of such choice or discretion, unless clearly demonstrated to suffer from Wednesbury unreasonableness, would not be liable to intervention of the Writ Court.

18. Turning to the facts of the Writ Petitions under consideration, cancellation of the Selection process ordered by the Inspector General cannot be regarded as one without reasons. Sufficiency or reliability of evidence collected by the Enquiry Officer is not a matter for the Writ Court to examine. On the basis of the materials on record, the view taken by the Inspector General is plausible and the Writ Court would not venture to substitute its view for the view taken by him. Since the Selection process had commenced by an order of the Inspector General, the Merit List of candidates prepared by the Board could not have been worked out unless the same were approved by him. Instead of approval, the Inspector General cancelled the entire process meaning thereby that there were no valid Merit Lists from which appointments could be made. Since there were no valid Merit Lists having the approval of the Inspector General, none of the candidates whose names figure in the Merit Lists prepared by the Board can legitimately claim appointment. Reference in this connection may be made to the decision of the Supreme Court reported in *Vijoy Kumar Pandey Vs. Arvind Kumar Rai and Others*, wherein it was ruled that without there being a valid panel that was published in accordance with the governing Rules, the Division Bench of this Court committed an error in upsetting the order of the Trial Court and the direction to the School Service Commission to act "on the basis of the panel was wholly unjustified and unsustainable". The ratio of the said decision fits in with the facts of the present case and I hold that no relief could be claimed by the Petitioners based on the Merit Lists prepared by the Board, which were not approved by the Inspector General.

19. The decision in *Vijoy Kumar Pandey Vs. Arvind Kumar Rai and Others*, considered the Constitution Bench decision of the Supreme Court *Shankarsan Dash Vs. Union of India*, as well as a host of other decisions emphasizing that mere empanelment of a candidate does not result in such candidate acquiring any indefeasible right of appointment and that empanelment at best is a condition of eligibility for the purpose of appointment. Although the Supreme Court cautioned that while depriving the empanelled candidates of appointment the State has no licence to act in an arbitrary manner, the situation here is not such that the State action could be branded arbitrary. If the candidates figuring in a valid merit list/panel prepared for recruitment do not acquire any right and cannot lay any valid claim for appointment, a fortiori, candidates figuring in an unapproved merit list cannot claim a better right.

20. The decisions cited by Mr. Dhar have been considered. Having regard to the findings that there was hardly any Trade Tests and a casual approach was discernible coupled with other factors leading to cancellation of the entire Selection process, it was neither possible nor desirable to embark on a process of weeding out the beneficiaries of irregularities or illegalities. To separate the grain from the chaff would have been a cumbersome process and the Inspector General in his wisdom having decided to cancel the entire process, his decision has to be respected since he had set the ball in motion. Since the ultimate decision of the Inspector General has not been found to be arbitrary, the decision in Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, , would have no Application. The decision in East Coast Railway and Another Vs. Mahadev Appa Rao and Others, , also does not come to the assistance of the Petitioners since based on reasons an informed decision was taken to cancel the Selection process. Anyone claiming public employment is entitled to equality of opportunity. The preamble to the Constitution recognizes the promise of the people of this country to secure to all its citizens equality of status and opportunity. Having regard to the finding recorded by the enquiry officer in respect of selection of a number of candidates from a particular region and his suspicion that mal-practice may have been a factor therefor, it was obligatory for the Respondents as part of their solemn duty to secure to all the competing candidates equality of opportunity by arresting the mischief and to ensure that deserving candidates were not victimized for no fault on their part. Indeed it was difficult to pick out the persons who had been unlawfully benefited and, therefore, the Inspector General must have felt that cancellation of the process was the best option. In a situation like this, the Respondents in fact acted in conformity with the ratio of the decision in Union of India and Others Vs. O. Chakradhar, and the Petitioners cannot have any grievance on this score.

21. The decision in P. Mahendran and others Vs. State of Karnataka and others,), is required to be dealt with separately in view of a development subsequent to the presentation of these Writ Petitions. By an Order dated October 29, 2009 issued by the Director (Police Finance), Government of India, Ministry of Home Affairs, the decision taken by the Government in respect of continuation of the cadre of followers in the Central Paramilitary Forces was sought to be conveyed. The decision was to the effect that all posts of followers/ other Group D posts in the Central Paramilitary Forces would be converted into Group C posts and placed in PB-I with grade pay of Rs. 2,000/- and after conversion the posts would be redesignated as Constable (Carpenter), Constable (Cook), etc. Implementation of the decision would be dependent on fulfillment of certain conditions of which the most important was the change in educational qualification. Anyone seeking entry into Government service, in terms of the report of the Sixth Pay Commission, was required to be matriculate and therefore it was made obligatory for a candidate to be a matriculate if he aspired for public employment in the Central Paramilitary Forces. Such decision had been taken upon consideration of the Report of the Sixth Pay Commission.

22. The Respondents had contended that in view of such order, future Recruitment process had to be conducted in accordance therewith and that as and when Recruitment process would be initiated, those: of the Petitioners, who are matriculates would be eligible to offer their candidature. The decision in P. Mahendran and others Vs. State of Karnataka and others, was relied on by the Petitioners for a direction upon the Respondents to fill up the vacancies in accordance with the Recruitment Rules that were in vogue when the vacancies occurred.

23. I am afraid, I cannot agree with Mr. Dhar. In P. Mahendran and others Vs. State of Karnataka and others, a qualification for appointment on the post of Motor Vehicle Inspector was changed during the pendency of litigation before the Court. There was no conversion of posts from Group D to Group C, as in the present case. The effect of conversion of posts has to be considered, which did not arise for consideration in P. Mahendran (supra) at all.

24. The office order dated October 29, 2009 embodies a Policy decision of the Government in the light of the report of the Sixth Pay Commission. The recommendation of the Sixth Pay Commission that the cadre of followers should be abolished was accepted by the Government consequent where to the cadre of followers does not exist with effect from October 29, 2009. There can thus be no recruitment in the cadre of followers. It is not merely a case of change of educational qualifications but a case of conversion whereby posts of followers and Group D posts were elevated to Group C posts, necessarily requiring in the process higher qualifications to be possessed by the aspirants.

25. It is settled law that a decision is an authority for what it actually decides and not what can logically be deduced therefrom. The Supreme Court itself has cautioned that its decisions are not to be blindly relied on without a general discussion as to how the factual situation at hand fits in with the factual situation of the decision relied on. I am of the view that in a case of the present nature, the ratio of P. Mahendran and others Vs. State of Karnataka and others, would not apply.

26. For the reasons aforesaid, I hold that the Petitioners in W.P. 30155(W) of W.P. 16647(W) of 2008 & W.P. 19731(W) of 2008 are not entitled to any relief. The said Writ Petitions stand dismissed without costs.

27. Needless to observe, it shall be open to the Respondents to proceed in accordance with law for filling up the vacancies and if any of the Petitioners is eligible, he shall be at liberty to offer his candidature. Copy of this Judgment and Order, duly counter-signed by the Assistant Court Officer, shall be retained with the records of the other Writ Petitions except W.P. 30155(W) of 2008.

Urgent photostat certified copy of this Judgment and Order, if applied for, may be furnished to the Applicant at an early date.

Prayer for stay of operation of the order made by Mr. Dhar, learned Advocate for

the Petitioner is considered and refused.