

(2006) 02 CAL CK 0054
In the Calcutta High Court
Case No : M.A.T. No. 3942 of 2005

Rabi Prakash Chowdhury

APPELLANT

Vs

Hon"ble Chief Justice, High Court and Others

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Calcutta High Court Service (Appellate Side) Categorisation of Posts, Channel of Promotion and Principles of Seniority Rules, 1986 — Rule 5(3), 9
Constitution of India, 1950 — Article 226

Citation : (2006) 3 CHN 158

Hon'ble Judges : Pravendu Narayan Sinha, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Paritosh Kr. Mallick and Chandan Kr. Majumdar, for the Appellant; Alok Kr. Ghosh, for respondent Nos. 1, 2 and 3, Debasish Kr. Gupta and Somnath De, respondent No. 4 and Subir Kr. Sanyal and Goutam Kr. Dey for respondent Nos. 5, 6, 8 and 9, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This mandamus appeal is at the instance of the writ petitioners and is directed against the order dated 1st August, 2005 passed by a learned Single Judge in W.P. No. 2575 of 2003 thereby rejecting the said writ application.

2. The appellants, six in number, filed a writ application before a learned Judge of this Court thereby praying for revocation and/or cancellation of the panel prepared from amongst the Upper Division Assistants having L.L.B. Degree for the selection to the post of Stamp Reporter/Additional Stamp Reporter on the allegation that the decision of preparation of such panel is inconsistent with the relevant provision of the rules framed by this Court in this regard. The appellants have further prayed for passing an order of prohibition thereby restraining the respondents from giving effect to the said panel barring respondent No. 5 alone, who, according to the appellants, was rightly selected.

3. The case made out by the appellants may be summed up thus:

(a) The appellants were all working as Upper Division Assistants at the different Departments/Sections in the Appellate Side of this Court. By a notice dated 8th July, 2002 issued by the Deputy Registrar, Appellate Side (Administration), applications were invited from the employees having LL.B. Degree and working in the post of Upper Division Assistant and above, to appear at the oral test for preparation of a panel for filling up the existing as well as future vacancies in the posts of Stamp Reporter/Additional Stamp Reporter in the Appellate Side of this Court.

(b) All the writ petitioners, being Upper Division Assistants and having LL.B. Degree, applied in response to the said notice dated 8th July, 2002 and consequently, the Deputy Registrar, Appellate Side (Administration), issued notice dated July 22, 2002 requesting twelve persons altogether including the petitioners to appear in the said oral test scheduled to be held on 30th July, 2002.

(c) Pursuant to such notices dated 8th July, 2002 and 22nd July, 2002, the petitioners appeared at the said Oral Test with other candidates. According to the petitioners, although, the notice dated 22nd July, 2002 contained names of total twelve candidates, an additional candidate being one Pushpendu Chanda was invited for the oral test.

(d) The oral test was conducted by a committee consisting of the learned Registrar General and the learned Registrar (Administration), and out of the thirteen candidates, four were selected and empanelled for the posts. All the writ petitioners, however, failed to find place in the said panel.

(e) The preparation of panel for the post of existing and future vacancies of Stamp Reporter/Additional Stamp Reporter was wholly unwarranted and illegal and the same was in conflict with the Rule 9 of the Calcutta High Court Service (Appellate Side) Categorisation of Posts, Channel of Promotion and Principles of Seniority Rules, 1986 (hereinafter referred to as the "1986 rules") which provides that the requisite qualification for the post of Stamp Reporter should be LL.B. Degree and in the event of no qualified person being available in the feeder posts, the senior most person in the Upper Division Assistant category having LL.B. Degree should be considered for appointment.

(f) Although, selection of Sri Dilip Kumar Banerjee, the senior most Upper Division Assistant for the promotion to the post was in conformity with the relevant 1986 rules, the three other candidates empanelled, namely, the respondent Nos. 6, 8 and 9 could not be empanelled ignoring the 1986 rules in super session of other eligible senior candidates. According to the said rules, if no suitable candidate is available from the feeder posts, the senior most Upper Division Assistant having LL.B. Degree should be promoted to the post of Stamp Reporter/Additional Stamp Reporter and in view of such specific provision, there was no justification of preparation of any panel consisting of the persons who are not the "seniormost Upper Division Assistant having LL.B. Degree".

(g) The preparation of such panel itself would mean and result in deprivation of the scope of promotion of the petitioners, even though, they are senior in service in comparison to the last three empanelled candidates.

(h) Some of the petitioners, namely, the petitioner Nos. 1 and 2 were due to be promoted shortly to the feeder post of Superintendent and if the purported panel was allowed to continue and kept alive for promotion to the post of Stamp Reporter/Additional Stamp Reporter in future, not only would it tend to create an inevitable administrative complications but the same would be unfair and illegal being violative of the Rule 9 of the 1986 rules.

4. The aforesaid writ application was opposed by the High Court Administration as well as the private-respondents by filing separate affidavits-in-opposition and the objection given by the High Court Administration may be epitomized thus:

(i) In response to the notice issued by the Deputy Registrar (Administration), Appellate Side, dated 8th, July, 2002 inviting applications from the employees having LL.B. Degree and working in the post of Upper Division Assistant and above for preparation of a panel for filling up the existing as well as the future vacancy in the post of Stamp Reporter/Additional Stamp Reporter, twelve applications had been received within the notified time. One candidate namely, Sri Pushpendu Chanda, made prayer in writing on 24th July, 2002 for acceptance of his candidature after condoning the delay of one day in submitting the application.

(j) Shri Chanda being eligible for being considered to the post according to the notice, such prayer was duly considered and accepted and accordingly, thirteen candidates were called at the oral test for selection to the said post.

(k) The committee headed by the Registrar General with the Registrar (Administration) considered the case of each of the applicants after taking oral test and thereafter, a panel of four successful applicants as per merit-cum-seniority was prepared. The Deputy Registrar, (Administration), Appellate Side issued the Office Order No. 55 of 2002 declaring the names of the empanelled candidates for filling up the existing as well as future vacancies in the said post. It was stated therein that the empanelled candidates should in addition to their own duties perform the duties of the Stamp Reporter/Additional Stamp Reporter every day for an hour to get them acquainted with the practical work of such post before getting actual appointment.

(l) The writ petitioners well knew that the panel would be prepared for giving appointment to not only the existing vacancy but also for future one, and with full knowledge applied for the post and did not raise any objection at any stage in course of process of selection and preparation of the panel, but after having failed, came up with the application which was not maintainable.

(m) The post of Stamp Reporter/Additional Stamp Reporter being a post of Selection Grade can be filled up only according to merit and as such, no assistant

of the lower grade can have any claim of promotion of Higher Grade merely on the ground of his seniority. The post which requires special qualification cannot be filled up permanently by any person unless he passed the test as prescribed in the rules and the petitioners having failed in the prescribed test cannot be aggrieved by the decision of preparation of panel.

(n) For the purpose of performing the duties of a Stamp Reporter the candidate after being empanelled are required to turn up before the Stamp Reporter Section to get themselves acquainted with the practical work of such post every day for an hour and in the past, several candidates after being empanelled ultimately expressed their unwillingness to get promotion and for the above reason, the High Court Administration had taken decision to prepare a panel for filling up not only the existing but also the future vacancies.

5. The private-respondents who are empanelled filed separate affidavit-in-opposition opposing the claim of the writ petitioners and supporting the stance of the High Court Administration.

6. The learned Single Judge on consideration of the materials-on-record dismissed the writ application holding that the writ petitioners having appeared at the test cannot dispute the legality of the panel after having failed to be empanelled. His Lordship further held that there was nothing illegal in the preparation of the panel.

7. Being dissatisfied, the unsuccessful writ petitioners have come with the present appeal.

8. Mr. Mallick, the learned Counsel appearing on behalf of the appellants tried to convince us that Rule 9 of 1986 rules did not permit constitution of any panel for filling up the future vacancy. According to Mr. Mallick, a panel may be prepared only for the purpose of filling up the existing vacancy but the moment the post is filled up there cannot be any existing panel and fresh appointment is to be made in case of a future vacancy. Mr. Mallick further contends that the first two appellants in the meantime having promoted to the feeder post, by virtue of empanelment to the post of Stamp Reporter, the empanelled candidates who are junior in service will be holding higher post. Mr. Mallick, thus, submits that the panel is inconsistent with the provision of Rule 9 and is liable to be set aside.

9. Mr. Ghosh, the learned Advocate appearing on behalf of the High Court Administration opposed the aforesaid contention of Mr. Mallick and submits that the administration has taken such decision for preparation of a panel in view of the fact that the post of Stamp Reporter including the Additional Stamp Reporter is only two in number and the function of the High Court will be seriously jeopardised in the absence of the Stamp Reporter even for a single day. Mr. Ghosh submits that the duty of the Stamp Reporter is such that it requires a technical knowledge of law in a specified branch which can be acquired only after functioning in that post for few months. For the above reason, whenever persons are empanelled as Stamp Reporter, Mr. Ghosh continues, they are asked to

acquire the knowledge of the duties to be performed by helping the Stamp Reporter and Additional Stamp Reporter everyday for one hour so that in their absence on a particular day they can perform the duties temporarily saving the administration of justice from being imperilled and when they will be formally appointed after occurrence of the next vacancy, they will be a matured Stamp Reporter from the very day of appointment. He, therefore, submits that there was no illegality in the decision of the High Court Administration for formation of a panel for filling up even the future vacancy. Mr. Ghosh further submits that the promotion to the post of Stamp Reporter can be made strictly on the basis of merit not according to seniority-cum-merit and even according to 1986 rules the Hon"ble the Chief Justice has the discretion to pass necessary order of "jump promotion" on the basis of merit. Mr. Ghosh submits that the writ petitioners having been given opportunity to appear at the test but having failed cannot be prejudiced in any way.

10. After hearing the learned Counsel for the parties and after going through the materials-on-record we find that the post of Stamp Reporter is one of Selection Grade category and thus, according to Rule 5 Sub-rule (3), the decisive factor for promotion to such post shall be merit only.

11. It is true that according to the Rule 9, the required qualification for the post of Stamp Reporter is LL.B. Degree and when no qualified person is available in feeder posts, namely, from the post of Superintendent up to the post of Additional Court Keeper, as mentioned in Schedule "A" of the 1986 rules, the seniormost person among the Upper Division Assistants having LL.B. Degree may also be considered for the appointment of such Stamp Reporter.

12. In the case before us, the Deputy Registrar (Administration) invited application not only from the seniormost person having LL.B Degree in Upper Division Assistant category apart from the persons holding feeder posts but also from all the persons having LL.B, Degree in Upper Division Assistant category and such step was not in accordance with the 1986 rules. The appellants before us were not "the seniormost Upper Division Assistants having LL.B. Degree" and as such, strictly speaking, had no requisite qualification at the relevant time in accordance with Rule 9 of the 1986 rules but they availed of the opportunity of being considered for the post. They appeared and failed in the long run and some other Upper Division Assistants, junior to the petitioners, were empanelled since they were found to be suitable on merit.

13. Having regard to the fact that in the past several a (pointed persons ultimately declined to act as Stamp Reporter in our view, the High Court Administration did not commit any illegality in preparing a panel for the purpose of giving training to the suitable candidates in advance as in the absence of the two Stamp Reporters on a particular day, the regular functioning of the High Court would have been seriously affected in the absence of any suitable person who could perform such duty.

14. In view of the past experience, the Rule 9 should be suitably amended for the purpose of giving effect to the present practice of preparation of a panel of future vacancy for the sake of proper administration of justice.

15. Although, Mr. Mallick seriously contended before us that as the preparation of panel is in violation of rules the same should be struck down, we are not at all impressed by such submission. It is now settled law that even if an appointment is not strictly in accordance with existing rules, a person who participated in the test conducted violating the rules cannot allege such illegality as he was not prejudiced in any way for such violation and the departure from the rules which was minor in nature was made for the interest of proper administration. The High Court Administration having permitted all the persons in the Upper Division Assistant category having LL.B. Degree to offer themselves for the test and on the basis of such test, the appellants having failed on merit, by formation of a panel for filling up the future vacancy, none of their legal rights has been affected justifying interference in exercise of power under Article 226 of the Constitution of India.

16. We, therefore, find that the learned Single Judge in the facts of the present case rightly rejected the writ application as the writ petitioners appeared before the process of selection without protest but having failed on merit is now raising the plea of seniority in the service which is even not tenable in the eye of law as pointed out earlier because the post of Stamp Reporter cannot be filled up on the basis of seniority-cum-merit but should be filled up strictly on merit.

17. Therefore, mere seniority of the writ petitioners in comparison with the three of the empanelled candidates cannot invalidate the panel which was prepared for maintaining due administration of justice.

18. Regarding the additional candidate, we find that he applied one day after the last date of submission of application and such delay was condoned. The petitioners are not prejudiced in any way for permitting a person similarly placed with them for consideration because they could not show their superiority on merit over the said additional candidate in the test.

19. We, thus, find no merit in the appeal and the same is dismissed accordingly. In the facts and circumstances, there will be, however, no order as to costs.

Pravendu Narayan Sinha, J.

20. I agree.