
(1991) 07 CAL CK 0034
In the Calcutta High Court
Case No : C.R. No. 7716 (W) 1989

Ram Prasad Roy and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-07-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311, 39

Citation : (1991) 2 CALLT 323 : (1992) 2 ILR (Cal) 240

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—This matter is taken up along with CO. No. 11750(W) of 1989 and CO. No. 10012 (W) of 1989 and In re: Ratan Pal & Anr., upon perusal of the materials on record it appears that the petitioners are diploma holders in Engineering. They are allegedly doing job as Sub-Assistant Engineers under the Murshidabad Zilla Parishad and during the period of their long work they have gained sufficient experience as alleged. It is claimed that the services of some of these Sub-Assistant Engineers have been placed under different development blocks of the District, and they have had been working under the control of the Zilla Parishad. It is placed on record that the petitioners came to know about appointment of 26 Sub-Assistant Engineers for Murshidabad and they expect that because of their long practical experience they will be taken as regular Sub-Assistant Engineers. A written with oral test was held. There was a State Selection Committee by notification and there was a District Level Committee. The grievance of the writ petitioners is that Sub-Assistant Engineers who are working as casual employees under the Murshidabad Zilla Parishad for 4 or 5 years being qualified and experienced ought to have been appointed directly as they were selected originally while being appointed as casual Sub-Assistant Engineers and their academic qualifications, Employment Exchange Registration etc., were considered, and there was no necessity for further test after working

for so many years with satisfactory service. Their further grievance is that non-publication of the results of the written test before calling only qualified candidates for oral test makes room for genuine doubt about the bona fides of the selection, and if the petitioners are excluded inspite of positive assurances being given to them by the appropriate authorities to appear in the test only to make their appointments regular, and to avoid the claim for the petitioner for regularisation is an arbitrary action necessitating interference by the Writ Court. Their further claim is that the whole procedure for selection being adopted as motivated and against all principles of natural justice. There is a prayer for issuance of a Writ of Mandamus commanding the respondents to refrain from making any appointment of Sub-Assistant Engineers excluding the petitioners who are all qualified and experienced candidates and to restrain the respondents from interfering with the work and employment of the petitioners as Sub-Assistant Engineers working as Sub-Assistant Engineers in the District of Murshidabad Zilla Parishad.

2. The writ petition is contested by the State respondents by filing affidavit-in-opposition. It is placed on record that the 341 posts of Sub-Assistant Engineers were created by the Government in Development and Planning Department vide Notification No. 1315/DP dated 25.2.87 including 26 posts at the District of Murshidabad and as per the Government Rules framed thereunder sponsored names of the Diploma holders Civil Engineers were collected from the Local Employment Exchange by the District Magistrate, Murshidabad for selection and for filling 26 posts of the district. Recommendations of 238 candidates including the names of the petitioners of the case were received from the Local Employment Exchange and they are called for written and oral tests on different dates for screening by the District Level Committee formed by the Government for the purpose vide Notification dated 24.11.88. 41 candidates out of 238 sponsored candidates were initially selected and empanelled in order of merit by the District Level Committee and the names of such candidates were forwarded to the State Level Interview Board for final selection and preparation of a panel of the successful candidates. The petitioners were, however, not found suitable within the purview of the primary selection by the District Level Screening Committee. The appointments are being made as per Recruitment Rules framed vide Notification No. 10644/DP dated 22.12.88 and there is no question of participation as stated in the writ petition. Other allegations of the writ petitioners have been controverted. There is affidavit-in-reply on behalf of the petitioners reiterating the stand taken earlier and it is further disclosed that out of 323 Sub-Assistant Engineers sought to be appointed in West Bengal while a large number of appointees have not joined their respective posts of Sub-Assistant Engineers and consequently those posts in addition to the 15 (fifteen) posts are still lying vacant even now and new candidates are required to be selected in those posts. It is highlighted that in view of the position of the vacancies, it will not be difficult for the State respondents to appoint the petitioners in the said existing vacancies of Sub-Assistant Engineers.

3. Mr. Biswanath Bajpayee, learned Advocate appearing for the petitioner has taken this Court to go through the writ petition in the affidavit in-opposition and the affidavit-in-reply. He has also taken this Court to the principles as covered by the decisions reported in AIR 1989 SC 2049 (Bharwan Dass and Ors. v. State of Haryana and Ors.), Mohinder Singh Vs. State of Haryana and Others, of the same volume (In re : Arabinda Ghosh).

4. It is contended on behalf of the contesting respondents that the petitioners cannot have any special claim. They were appointed as casual appointees and their cases were duly considered by the District Level Committee and they were not found suitable." Their cases were not considered at the District Level and the writ petition is thoroughly misconceived and liable to be dismissed.

5. Upon perusal of the materials on record and considering submissions of all the parties, this Court finds that the petitioners with required qualifications were allowed to work as Sub-Assistant Engineers in the District at Murshidabad for the last 4 and 5 years. It is not appreciated by this Court . as to how a District Level Committee can be formed to screen their cases and to negative their claim at the time of permanent appointment of the posts concerned. The formation of the District Level Committee appears to be contrary to the Recruitment Rules and the same is bad in law. The petitioners admittedly are found working as Sub-Assistant Engineers and their cases ought to have been considered by the State Level Committee by permitting them to appear before the interview, and if they are not found to be otherwise disqualified and if they are found to be eligible, they should be appointed and the entire functioning for the last 4/5 years as casual workers ought to have been considered in the proper perspective. The steps taken by the State respondents in overlooking the cases of the petitioners appeared to be unjust, unwarranted and uncalled for. This Court finds sufficient merits in the contention of the writ petitioners.

6. For the foregoing reasons, the writ petitions are allowed. There will be a Writ of Mandamus commanding the State respondents to allow the writ petitioners to appear before appropriate Interview Board and if they are to be found properly, qualified as per notification and in view of their experiences for working as 4/5 years, and if they are not found otherwise disqualified or anything against eligibility, they should be appointed in accordance with law with the right to receive all benefits as admissible in law. Such steps should be taken within a period of 8 (eight) weeks from the date of communication of the order. No order as to costs.