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**(2011) 03 CAL CK 0001**

**In the Calcutta High Court**

**Case No : F.M.A. No. 1043 of 1998 with C.O. No. 14404 of 1995**

Ramanth Biswas

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision : 18-03-2011**

**Acts Referred:**

Police Regulations of Bengal, 1943 — Regulation 746

**Citation : (2011) 4 CHN 446**

**Hon'ble Judges : Pratap Kumar Ray, J; Mrinal Kanti Chaudhuri, J**

**Bench : Division Bench**

**Advocate : Partha Dutta, Priyabrata Ghosh, Madhusudan Roy, for the Appellant;**

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**Judgement**

Pratap Kumar Ray, J.—Heard the learned Advocate appearing for the appellants.

2. Assailing the judgment and order dated 25th August, 1995 passed in C.O. No. 14404 (W) of 1995, this appeal has been preferred.

3. The impugned reads such:-

25.8.95 - Having heard the learned Counsels for the parties, it appears that although the petitioners' names had been considered in the year 1989, they were not considered for appointment. Mr. Dutta, learned Counsel on behalf of the petitioners, submits that the respondents have the authority to condone the deficiency.

Keeping in view the fact that the petitioners' names were sponsored as far back in 1989, no relief can be granted in this writ application. However, in the event there arises any future vacancies and the petitioners apply pursuant thereto and they are found suitable in terms of the Police Regulations of Bengal and if in case the respondents consider it desirable, fit and proper to condone the deficiency, the case may be considered in accordance with law. Moreover, if the petitioners are selected the respondents may also consider the desirability of condoning the age bar. This order may not be treated to be a direction upon the respondents. It

is made clear that such condonation of deficiency as also relaxing the age bar, if any, would depend upon the discretion of the respondents.

This writ application is disposed of with the above observation. Liberty is given to the petitioners to communicate the order to the respondents concerned.

4. It is a case of appointment in the post of Constable.

5. In the pleading it is contended by the writ petitioner No. 2 that his father, the writ petitioner No. 1, one year before his retirement from police service filed a representation to the Deputy Inspector General of Police, Burdwan Range on 29th July, 1987 praying for condonation of physical deficiency of his son and thereby to give appointment in the post of Constable. Deputy Inspector General of Police considered this issue by observing that proposal could not be forwarded to Assistant Inspector General of Police for approval since the candidate's name was not sponsored by the Employment Exchange. The letter of 18th August, 1987 of Deputy Inspector General of Police, Burdwan Range annexed at page 26 reads such:-

Government of West Bengal

Office of the Dy. Inspector of Police

Burdwan Range.

Memorandum No. 7071/M. 14-37

Dt. 18.8.87

To

The Supdt. of Police

Birbhum.

Sub: Approval for condonation of physical measurement of Biswanath

Biswas. Ref: Your Memo No. 1006 RO dt. 7.8.87.

Please inform whether the name of the above candidate has been sponsored by the Employment Exchange. According to the present Govt. Order the above proposal cannot be forwarded to AIG, W.B. for approval if the name of the above candidate is sponsored by the Employment Exchange.

6. The Assistant Inspector General of Police by his letter dated 25th September, 1987 had informed that when the candidate, petitioner No. 2's name would be sponsored from Employment Exchange, his case to be considered. This letter reads such :-

Memo No. 4047-Org/Org. 135-87

West Bengal Police Directorate

Writers" Buildings".

The 25.9.87

To

The Superintendent of Police

Birbhum,

Sub : Recruitment of Consts. In West Bengal Police.

Ref: Your Memo No. 1006 R.O. dt. 7.8.87

The case of Shri Biswanath Biswas S/o. Const/76 Ramanath Biswas may be considered when his candidature is sponsored through Employment Exchange.

Hem Chand

25.9.87

Asstt. Inspr-Genl. of Police

West Bengal.

Memo No. 4047/1-Org./Org. 135-87

Copy forwarded to the Dy. Inspr.Genl. of Police, Burdwan Range for information with reference to his memo No. 7342 dt. 24.8.87.

Hem Chand

Asstt. Inspr. Genl. of Police

West Bengal.

7. It appears from the record further that Employment Exchange referred the name of petitioner No. 2 being appellant No. 2 herein on 27th December, 1989. Thereafter nothing was done by the authorities concerned despite filing several representations. The writ application was moved.

8. The writ petitioner/appellant No. 1 is the father of the candidate retired completing full tenure of service. The appointment in the service of a Constable is controlled by Recruitment Rules, read with Regulations, made in Police Regulations of Bengal. The rule provides that after the vacancy declaration intimating the Employment Exchange to sponsor the names of candidates, candidates would be interviewed for physical measurement test and others. Thereafter, enlisted candidates after such test of physical measurement and other particulars as stipulated in the rule would be given appointment on completion of police verification report. The Police Regulations of Bengal Volume-1 of 1943, under Regulation 746, deals with appointment of Constable. The Regulation 746 reads such:-

Constables

746. (a) Appointing authority.-Superintendent of Police.

(b) Method of recruitment-Bengalees shall be enlisted whenever possible provided they possess the necessary qualifications hereinafter specified. Recruitment shall be made in accordance with the Bengal Services Recruitment (Communal Ratio) Rules, 1940. Up-country men, Garhwalis or Gurkhas may also be enlisted according to requirements.

(i) No Gurkhas of Nepalese Nationality belonging to the Tribes mentioned below shall be recruited in the police;-

Thakurs

Rais.

Chettries

Limbus.

Magars

Duras.

Gurungs

Sun wars and Ranabhats.

(ii) Gurkhas who are not of Nepalese nationality and Gurkhas who, although of Nepalese nationality, do not belong to the tribes mentioned above, may be enlisted in the police without any restriction.

(c) Buglers and armourers belong to the rank of Constable.-Bugler boys may be recruited for training as buglers on a reduced pay against vacancies in the rank of constable and be subsequently drafted into the ranks.

(d) Durzis.-Durzis may be enlisted in the rank of constable; one durzi in the smaller and two in the larger districts should suffice.

(e) Age for recruitment.-The age of candidate shall be between 18 and 25; but for Indian ex-soldiers the age limit shall ordinarily be 35 years.

(f) Medical certificate.-Candidates shall be of good health and be pronounced fit for service by a Civil Surgeon.

(g) Qualifications.-Candidates shall be able to read and write the vernacular. The standard of the minimum height, chest measurement and weight shall be as follows :-

Class

Height

Chest Measurement.

## Weight

### 1. Bengalis

5'6"

31 "expansion 2"

120lbs

### 2. Gurkhas Rajbansis and Scheduled Tribes

5'3"

32 ? "expansion

115lbs

### 3. Others

5'7"

32" expansion 2"

120lbs

Candidates who are below the prescribed physical standards shall not ordinarily be enlisted; but in exceptional circumstances, Superintendents may refer their cases to the Deputy Inspector-General, who may, for special reasons to be recorded in writing, sanction their enlistment.

(h) Recruiting party outside the province.- No recruiting party shall be sent outside the province of Bengal without the previous sanction of the Provincial Government.

(i) Probation.-The period of probation for a constable shall two years. No extension of that period shall be allowed.

(j) Confirmation.-The Supetendent may confirm probationers in their appointment on the termination of their period of probation.

(k) Discharge.-Probationers may at any time be discharged from service by the Superintendent, without proceedings, if found unsuitable, provided that the grounds for discharge shall be stated in the order of discharge which, however, shall not be given effect to till it has been submitted to and confirmed by the Deputy Inspector-General. No appeal shall lie against such an order.

9. Under the said regulation qualification prescribed under clause (g) that the candidates shall be able to read and write vernacular and must satisfy the standard of minimum height and chest measurement and weight as stipulated thereto. There is a rider that the candidates who would be below the prescribed physical standards shall not ordinarily be enlisted; but, in exceptional circumstances, Superintendents may refer their cases to the Deputy Inspector

General, who may, for special reasons to be recorded in writing, sanction their enlistment.

10. Learned Advocate for the appellants vehemently submits that the deficiency of physical standard stood condoned as exceptional circumstances by Deputy Inspector General of Police, as such the petitioner No. 2 was eligible to be enlisted in the post of Constable but authorities arbitrarily refused to give appointment.

11. A very surprising thing which was not noticed by the learned Trial Judge with due respect that the appellant/petitioner No. 2 never was sponsored in the year 1987 when Deputy Inspector General of Police passed a decision that proposal for condoning physical deficiency should be considered if candidate was sponsored by Employment Exchange. Thereafter the Assistant Inspector General of Police also opined that his case could be considered after sponsoring his name from Employment Exchange.

12. Having regard to the Recruitment Rules of Constables, it appears that vacancy when to be notified to the Employment Exchange, then only Employment Exchange would sponsor the names.

13. In the instant case, in the year 1987 when the Deputy Inspector General of Police and Assistant Inspector General of Police intended to consider the exemption issue about physical standard by petitioner No. 2, admittedly petitioner No. 2 was not a sponsored candidate and no vacancy notification made. As per rule once the candidate is sponsored from the Employment Exchange in a vacancy, he is directed to appear in physical measurement test and thereafter he is enlisted, if standard of the height, chest and weight measurement as stipulated, are satisfied. A special provision made that in exceptional circumstances candidates who would fail to satisfy the prescribed physical standard, their cases to be referred to the Deputy Inspector General of Police, by Superintendent of Police, for necessary approval exempting standard test.

14. On a bare reading of the provision, it appears that the candidate is required to appear first before the Superintendent of Police for physical measurement test and in the event of failure to satisfy the physical standard and that too under exceptional circumstances only Superintendent of Police may refer the case to the Deputy Inspector General of Police seeking exemption. The two words of exceptional clause are very vital. (1) The names of candidates who are below the prescribed physical standard shall not ordinarily be enlisted. (2) In exceptional circumstances Superintendent may refer the case to Deputy Inspector General of Police, (underline is of mine.)

15. Having regard to those two words, it appears that in, normal situation, ordinarily no candidates' name should be enlisted, who are below the prescribed standard and only in exceptional situation exemption order could be passed by Deputy Inspector General of Police and that too subject to reference of the case

by Superintendent of Police.

16. In the instant case, admittedly the writ petitioner was not a sponsored candidate in the year 1987 for consideration of his candidature for the post of Constable. But his father who was in employment of police service wrote a letter to the Deputy Inspector General of Police one year before his retirement praying for exemption of physical deficiency of his son. Deputy Inspector General of Police did not approve the issue as the petitioner No. 2 was not a sponsored candidate at that time. The language used by Deputy Inspector General of Police as follows :-

According to the present Government order the above proposal cannot be forwarded to A.I.G., West Bengal for approval if the name of the above candidate not sponsored by Employment Exchange.

17. Having regard to those factual matrix, it appears that the case of petitioner No. 2 never was processed following the Recruitment Rules and Police Regulations of Bengal. It is a settled legal position of law that suo motu candidate cannot appear unless the vacancy is declared and public notice is issued inviting the names of eligible candidates and/or candidates are sponsored by Employment Exchange in such vacancy. The issue cropped up from a request letter of petitioner which under the law was required to be rejected summarily as there was no scope to consider any personal prayer even if the person was in police service relating to appointment of his son in the post of Constable.

18. Having regard to such, it appears that there was no breach of statutory rule and/or fundamental rights to approach the Writ Court assailing the inaction of the respondents to enlist the name of appellant No. 2 in the post of Constable.

19. Learned Advocate for the appellant, Mr. Ghosh has submitted that even if in the year 1987 it was not a case to be considered under the said regulations and Deputy Inspector General of Police had no scope to consider the personal request of father of petitioner No. 2. But when in the year, 1989 his name was sponsored for the post of Constable, his case ought to have been enlisted on the basis of the letter of Deputy Inspector General of Police dated 18th August, 1987. We cannot accept this argument. In the year 1989 when his name was sponsored, he was required to appear in the interview along with other candidates for physical test and thereafter had there been recommendation of Superintendent that it was a special case for consideration on exceptional circumstances, matter could have been referred to Deputy Inspector General of Police further for his decision. Admittedly in the year 1989 Superintendent of Police did not refer the matter to the Deputy Inspector General of Police for consideration of exemption issue of physical standard as an exceptional case. But the father of the writ petitioner No. 2 wrote a letter to the Deputy Inspector General of Police. Under the Police Regulations of Bengal, there is no scope to consider any letter of any individual person by Deputy Inspector General of Police to accord approval by exempting deficiency of physical standard, a statutory rule.

20. Having regard to the aforesaid findings and observations, the writ application was misconceived and there was no reason to pass even the impugned order directing the respondents to provide job as and when vacancy would arise, condoning the age bar. Exercising appellate jurisdiction, we have power to set the matter right even if no appeal has been preferred by the State assailing the order for consideration of case of writ petitioner condoning age bar and condoning physical deficiency, for appointment in the future vacancy.

21. Having regard to such, we are not disturbing the finding of the learned Trial Judge namely, "Keeping in view the fact that the petitioners' names were sponsored as far back in 1989, no relief can be granted in this writ application". So far as the rest portion of the order "However, in the event there are any future vacancies and the petitioners apply pursuant thereto and they are found suitable in terms of the Police Regulations of Bengal and if in case the respondent consider it is desirably fit and proper to condone the deficiency, the case may be considered in accordance with law. Moreover, if the petitioners are selected the respondents may also consider the desirability of condoning the age bar. This order may not be treated to be a direction upon the respondents. It is made clear that such condonation of deficiency as also relaxing the age bar if any would depend upon the discretion of the respondents. This writ application is disposed of with the above observation", is set aside and quashed as on application of statutory Recruitment Rules and the Police Regulations of Bengal relating to appointment of Constable, said direction/order per se illegal.

22. The appeal is disposed of accordingly.

23. There will be no order as to costs.

Dr. M.K. Chaudhuri, J.

24. I agree.