
(2013) 02 CAL CK 0010

In the Calcutta High Court

Case No : APO No. 365 of 2011 and CS No. 3 of 2005

Registrar General

APPELLANT

Vs

Minakshi Chakraborty

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Constitution of India, 1950 — Article 234, 309

Citation : (2013) 2 CALLT 212 : (2013) 2 CHN 516

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Alak Kumar Ghosh, for the Appellant;Soumya Mazumdar, Dipayan Kundu for the respondent No. 1 (Minakshi-Chakraborty), Biplab Ranjan Bose for the respondent in MAT No. 253 of 2012 and Amalendu Mitra for the P.S.C. in MAT No. 253 of 2012, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—These two appeals have been preferred by the High Court at Calcutta through its Registrar General against the judgment and order passed by the Learned Single Judge on 24th August 2011. This judgment was in respect of Writ Petition No. 1730 of 2008 filed by Minakshi Chakraborty (hereinafter referred to as Minakshi) and W.P. No. 1730 of 2008 and 8192{W} of 2010 preferred by Chaitali Kundu (hereinafter referred to as Chaitali). APO No. 365 of 2011 has been preferred against the common judgment and order passed in Minakshi's petition while M.A.T. No. 253 of 2012 has been preferred against the decision in Chaitali's case. The brief facts relating to these appeals are as follows:--

Both Minakshi and Chaitali appeared for the West Bengal Judicial Service Examination held in 2007. While Minakshi was at Serial No. 76 in the merit list, Chaitali was placed at Serial No. 56. It appears that Chaitali did not furnish the required information regarding her previous employment. When she appeared for the examination, she was employed as Assistant Controller, Purulia, Women's

Correctional Home, Purulia from 11th April 2005 and was on leave from 23rd April 2008. Minakshi in her petition contended that the conduct of Chaitali amounted to suppression of material facts and, therefore, her candidature was liable to be cancelled. She further contended that in the event that Chaitali's candidature was cancelled, she, that is Minakshi, would be entitled for appointment as her rank was at Serial No. 76 in the merit list. Minakshi, therefore, sought relief from this Court to direct the Public Service Commission, West Bengal to cancel the candidature of Chaitali. She also prayed that the appointment letter if issued in favour of Chaitali should be cancelled, withdrawn and/or rescinded. A consequential prayer that the appointment order should be issued to Minakshi for the post of Civil Judge Junior Division was also sought.

2. Chaitali on the other hand in her petition prayed that she was entitled to be posted as Civil Judge Junior Division as she had already received the appointment letter in her favour from the High Court.

3. After hearing the parties the Learned Single Judge has held that the defence of Chaitali, that her application form could at best be termed as incomplete on account of a bona fide mistake and/or omission, was untenable. The Learned Single Judge concluded, therefore, that Chaitali Kundu ought not to have been appointed to the post of Civil Judge Junior Division. Minakshi's petition was, therefore, allowed by cancelling Chaitali's candidature. The Learned Single Judge further held that Minakshi should be issued an appointment letter and posted in an appropriate place as Civil Judge Junior Division instead of Chaitali as the latter had suppressed information about her being in service.

4. Aggrieved by the decision of the Learned Single Judge, the Calcutta High Court has appealed against the order. Before we proceed further it is necessary to mention that the High Court has not challenged the finding of the Learned Single Judge that Chaitali's selection was invalid.

5. Mr. Ghosh the Learned Counsel appearing for the High Court has argued before us that Minakshi had no locus standi to pray for the cancellation of the appointment of Chaitali as she had no legally enforceable right. He further submitted that no such right accrued to Minakshi to claim appointment to the post of Civil Judge Junior Division upon cancellation of the appointment of Chaitali. The next submission of Mr. Ghosh was that in view of the order of the Apex Court in LA. No. 34 of 2008 passed on 24th July 2008 in Malik Mazhar Sultan & Anr. vs. U.P. Public Service Commission and Ors. Civil Appeal No. 1867 of 2006 only 96 candidates have been recommended by the Public Service Commission, West Bengal; Minakshi was not one of the 96 candidates recommended. He further submitted that the select/merit list stood exhausted after the compliance with the direction of the Apex Court in its order dated 24th July 2008 when the notification for the appointment of the recommended candidates was issued. The validity of the select list according to Mr. Ghosh lapsed as soon as the new select list was published on 28th February 2009. He then submitted that according to the roster point Minakshi was a general

category candidate and could not have been appointed as the vacancy which arose was for a Scheduled Caste Candidate. Mr. Ghosh argued further that the cancellation of the appointment of a selected candidate cannot give rise to a vacancy and even if it be construed that a vacancy had arisen it cannot be treated as one relatable to the year 2007. As the general category candidates had been appointed in excess of the roster point, Minakshi who was admittedly from the general category could not be appointed, urged the learned counsel.

6. Mr. Soumya Mazumdar, the Learned Advocate appearing for Minakshi submitted that the examination in which both the candidates appeared was held in 2007 and a panel was prepared in the year 2008. The examination which was held in 2008 resulted in a fresh panel for the year 2009. The Learned Advocate had also brought to our notice the fact that the dispute could be resolved by the Public Service Commission by terminating the services of Chaitali in view of the fact that she had suppressed material information.

7. Before we embark upon the consideration of the merits of the rival contentions, it would be necessary for us to examine whether the High Court, on its administrative side, has the locus standi to approach itself on the judicial side. Mr. Mazumdar submitted before us that the High Court merely plays a consultative role considering the provisions of Article 234 of the Constitution of India. He submitted that the High Court cannot pick and choose a candidate arbitrarily when both are found eligible. The Learned Counsel further submitted that the High Court cannot be termed as a "person aggrieved" who has the locus to prefer an appeal against the judgment passed by the Learned Single Judge.

8. Mr. Ghosh the Learned Counsel for the High Court placed reliance on the judgment of this Court in the case of The Hon"ble High Court, Calcutta vs. Shankar Kumar Das, MAT 815 of 2008 along with MAT 816 of 2009 decided on 9th April 2009. The Division Bench of this Court has held that the High Court does have locus to prefer an appeal. The Learned Counsel has also submitted that although the High Court does not desire to pick and choose the candidate who should be appointed to the post of Civil Judge Junior Division, the cancellation of the appointment of Chaitali cannot automatically lead to the appointment of Minakshi as the roster would have to be followed, strictly. He submitted that the High Court is duty bound to follow the roster and the direction of the Learned Single Judge to appoint Minakshi in the place of Chaitali is unsustainable.

9. Mr. Mazumdar has tried to distinguish this judgment of this Court by submitting that the question of eligibility of a candidate for the post which arose in the judgment of Shankar Kumar Das (supra) was within the domain of the High Court while in the present case the issue was not of the eligibility of a candidate but regarding the appointment of one after the cancellation of the appointment of another candidate.

10. We do not have any doubt about the locus of the High Court to maintain

these appeals. Whether or not an order of appointment should be given to Minakshi after the cancellation of the appointment order issued to Chaitali is an issue which has to be decided by the High Court after considering all aspects of the matter. Although Article 234 of the Constitution of India prescribes that the High Court is a part of consultative process for the appointment of a Civil Judge Junior Division, it cannot be said that it does not have a right to prefer an appeal only because it cannot select the candidates on its own.

11. We have no manner of doubt that the High Court is an aggrieved party in the present situation. In the case Shankar Kumar Das, MAT 815/2008 the Division Bench of this Court has held as follows:--

Article 234 of the Constitution of India reads such:

"Recruitment of persons other than District Judges to the judicial service--

Appointments of persons other than district judges to the judicial service of a state shall be made by the Governor of the State in accordance with rules made in that behalf after conclusion with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."

Though the word "appointment" has been mentioned under Article 234 which to be made by Hon'ble Governor of the State, but it requires a prior consultation with the High Court and while framing recruitment rule such consultation is also must. Article 234, under the heading stipulates the word "Recruitment". Under service jurisprudence, the word appointment has a different connotation and meaning and there is no doubt and we are not unmindful of the legal proposition that the word "appointment" and "recruitment" are not synonymous. The recruitment means under the service jurisprudence selection, empanelment, whereas appointment means the actual posting. Reliance is placed to the judgment passed in the case Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others, a judgment of three Judges Bench. But as already discussed above that the judicial service is not an employment in the sense under the anvil of Article 309 but it vests sovereign power of adjudication to one wing of the State as is administered by the judicial officers. Status of judicial service has been defined and settled by the judgment All India Judges Association (Supra). Hence the general connotation and meaning of appointment under the service jurisprudence cannot be injected to identify the appointment word appearing under Article 234 of the Constitution of India having regard to the determinative opinion in the matter of recruitment of a candidate in the judicial service under the Recruitment Rules aforesaid vesting a superior power to the nominee of Chief Justice, a sitting Judge, one of the members of the selection committee, constituted by the Public Service Commission. Further Article 234 also deals with recruitment. So High Court has a say on such issue also. There is no doubt that the High Court administration itself is involved in the selection process through its nominee whose views is the determinative factor having regard to the recruitment rule providing exercise of determinative role. So the High Court

administration cannot be said as a stranger and/or person not interested or affected by any judgment wherein such selection process became the subject matter and a judgment delivered contrary to the views raised by the High Court itself through its nominee as a member of that committee, which unanimously was accepted by the committee. As already discussed that appointment in a judicial service is not an employment in the sense of service jurisprudence and under Article 234 of Constitution of India read with said Rule from the stage of recruitment process till the appointment and thereafter, full control vests to the High Court, as a determinative body. Hence, we are of the reasoned view that appeals are maintainable by the High Court administration assailing the respective judgments delivered by the Learned Trial Judge. In the angle of *Adi Pheroze Shah Gandhi* (supra), the High Court is party affected by the judgments under appeal. The point as raised by Mr. Ghosh, Learned Advocate appearing for the respondent writ petitioner Subhasish Muhari and Mr. Dutta Learned Advocate appearing in another appeal on behalf of the writ petitioner respondent Shankar Kumar Das (MAT 815 of 2008) stand rejected. The appeals are thus maintainable and point is answered in favour of the appellant High Court administration in both appeals which were heard analogously.

We respectfully agree with the view taken by the Division Bench in the aforesaid judgment regarding the locus of the High Court to file an appeal. It must be mentioned here that no appeal has been preferred by Chaitali.

12. The main grievance of the appellant is that the Learned Single Judge, after cancelling the appointment of Chaitali, could not have directed the absorption of Minakshi in service. Mr. Ghosh on behalf of the High Court submitted that the Select List which bore the names of both Chaitali and Minakshi was dated 19th March, 2008 in respect of an examination held in 2007. He pointed out that a new Select List in respect of vacancies which arose in 2008 was published on 28th February, 2009. According to him therefore, the Select List of 2008 has lapsed after the publication of the new Select List. He relied on the judgment of the Supreme Court in the case of *Malik Mazhar Sultan & Anr. vs. U.P. Public Service Commission and Ors.* Civil Appeal No. 1867 of 2006 decided on 4th January 2007. In this judgment the Supreme Court has directed that the Select List prepared for all categories of officials namely the Subordinate Courts at all levels will be valid till the next Select List is published. Reliance has also been placed by Mr. Ghosh on the judgment of the Supreme Court in the case of *Rakesh Ranjan Verma and others Vs. State of Bihar and others*, to fortify this submission.

13. In the case of *Rakesh Ranjan Verma* (supra) the Supreme Court dealt with the operation of a Select List in respect of Junior Electrical Engineers in the State Electricity Board of Bihar. The Court observed in that case that the life of the panel of meritorious candidates, that is, the Select list was valid for one year and, therefore an empanelled candidate had no right to be appointed beyond the period of one year from the date of the Select List.

14. There is no doubt that it is for the employer or organization to decide as to how long a Select List would be in operation. However, the Supreme Court while dealing with recruitment of officers to the subordinate judiciary in the country in the case of Malik Mazhar Sultan & Anr. (supra) has directed that the Select List would be in operation only till the new Select List was published. As we have already noticed the Select List in respect of the vacancies of the year 2007 was published on 19th March 2008. The vacancies for the year 2008 were advertised after which the selection process was completed. The Select List was published in on 28th February 2009. Consequently, the old Select List of 2008 lapsed. Therefore, although Minakshi's name was in the old Select List she is not entitled to appointment after the new Select List was published.

15. Mr. Mazumdar has argued that there is no inviolable principle that the panel or Select List of candidates exists only for one year by relying on the judgment of the Supreme Court in the case of State of U.P. Vs. Ram Sawrup Saroj, . The Learned Counsel submitted that merely because the period of one year had lapsed during the pendency of litigation relief cannot be denied to Minakshi.

16. In the aforesaid case, the Supreme Court has observed that the question as to whether a list of selected candidates for appointment remains valid for a period of one year is primarily dependent on the facts in each case. The Supreme Court noticed that in the case before them, this plea was not raised in the High Court. It then observed that the Select list was finalised in November 1996 and the writ petition was filed in the High Court before the expiry of one year from the date of the list. It in these circumstances that the Supreme Court found that relief could not be declined to the candidate only because of the pendency of the litigation for more than one year.

17. It is true that there is no inviolable rule that a Select List would remain in force for one year. It is for the employer to decide the period. However, in the present case in view of the judgment of the Supreme Court in Malik Mazhar Sultan's case (supra) the submission of Mr. Mazumder is untenable. Furthermore, in the present case the Select List was published on 19th March 2008. The writ petition was filed in the same year. However it has been decided in 2011. When there is an authoritative pronouncement of the Supreme Court regarding the procedure to be followed for recruitment to the subordinate judiciary in the country, the procedure would have to be followed, strictly. Thus after the lapse of the Select List in February 2009 Minakshi has no right to be appointed only because she was empanelled.

18. It has been argued by Mr. Ghosh, that the vacancy which arises by the cancellation of Chaitali's appointment cannot be counted as a vacancy for the year 2007 but it has to be considered as a vacancy having arisen when her appointment was cancelled. He submitted that a current vacancy cannot be filled in by candidates who found place in the Select List of earlier years. Mr. Mazumder on the other hand submitted by relying on the judgment in the case of State of Punjab Vs. Raghbir Chand Sharma and Another, that a vacancy exists till

the candidate is given a letter of posting.

19. In Raghbir's case (supra) the first candidate in the Select List was appointed. He subsequently resigned. The Court observed that once the selection was made, the panel ceased to exist and had outlived its utility. It was held that no one else in the panel could legitimately contend that he should have been offered an appointment either in the vacancy which arose on account of a subsequent resignation of the person so appointed or because of vacancies arising subsequently. We do not think that this judgment aids Minakshi in any manner. In fact the judgment categorically lays down that creation of a vacancy because of a resignation of one candidate will not give any legitimate right to another candidate in the panel to claim appointment.

20. The next submission of Mr. Ghosh was that even if a vacancy exists there is no compulsion on the part of the employer to appoint a candidate though his name figured in the select panel. According to him for the vacancies which arose in 2007, 75 candidates from the general category were appointed while 96 were taken from reserved category. Thus, submitted Mr. Ghosh, no vacancies remain as they have to be filled in on a year to year basis. He relied on the judgment in the case of State of U.P. and Others Vs. Rajkumar Sharma and Others, in support of his submission that a selected candidate had no right to appointment and, therefore, Minakshi, though selected, had no right to be appointed in the vacancy which arose on the cancellation of Chaitali's appointment.

21. We do not think it would be right to permit Minakshi to be appointed to the post merely because the appointment of Chaitali has been cancelled. More than five years have elapsed since the examination was held for the vacancies which arose in 2007. The Select List was published in March 2008 and now it is too late in the day to grant appointment to Minakshi. Moreover, the Public Service Commission has not recommended her appointment as she was placed at Serial No. 76 in the panel of the unreserved category candidates. Mr. Mazumder has harped on the affidavit filed by the High Court before the Learned Single Judge in support of his submission that on the cancellation of Chaitali's posting Minakshi is automatically entitled to the post. The averment in the affidavit on which he relied is as follows;-

The facts and circumstances as above do not show that any decision was taken to fill up 75 posts from the empanelled candidates of general category and that the petitioner having her position in Sl. No. 76 of the merit list is the next eligible candidate for appointment in the event of cancellation of the empanelment of the Respondent No. 4.

22. A plain reading of the paragraph does not in any manner indicate that the High Court had admitted that Minakshi is entitled to appointment in the event of cancellation of the empanelment of Chaitali.

23. In our opinion it is too late in the day to put the clock back and to grant the appointment to Minakshi. The post was not kept vacant and, therefore, the

vacancies which arose were declared in each year subsequent to 2008. Candidates were absorbed in service and appointed in those vacancies. It could be possible that had the vacancy been declared in the following year, a candidate, more meritorious than Minakshi, would have been available. Minakshi has no right to appointment on the cancellation of Chaitali's appointment. The vacancy which arises on the cancellation of her appointment would have to be treated as the vacancy which arose on the date when her appointment was cancelled by which time the Select List of 2011 would have been in operation.

24. Accordingly, the appeals are allowed. There shall be no order as to costs. Urgent certified photocopies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Anindita Roy Saraswati, J.

I agree.