
(2018) 07 CAL CK 0001
In the Calcutta High Court
Case No : W.P.S.T. No. 39 of 2017

Sanjoy Bera

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 32, 226, 227, 323A, 323B

Citation : (2018) 07 CAL CK 0001

Hon'ble Judges : DEBASISH KAR GUPTA, J; SHAMPA SARKAR, J

Bench : Division Bench

Advocate : S.P. Pahari, Joytosh Majumder, Pinaki Dhole, S.P. Lahiri

Final Decision : Disposed Of

Judgement

This writ -application is directed against a final order dated January 30, 2017 passed by the West Bengal Administrative Tribunal in the original

application. By virtue of the order impugned to this writ application, the original application of the applicant/writ petitioner was dismissed. This matter

has a chequered history as follows:

The Staterespondents initiated a selection process for recruitment of Excise Constables in the District of Purba Medinipur in the year 2006. After

physical measurement and efficiency test, the respondent authority sat tight over the matter. the petitioner participated in the above selection process.

Subsequently, he filed original application bearing O.A. No.198 of 2013 before the West Bengal Administrative Tribunal alleging inaction on the part of

the respondent authority. The above original application was disposed of on January 3, 2014 and the operative portion of the above order is quoted

below:

â??In view of this undisputed position, we dispose of this application by directing the department to complete the pending recruitment process, in

which the Petitioner was a participant in accordance with rule and to complete the entire process including preparation of panel within a period of 4

months from communication of this order with intimation to the Petitioner about his position in the panel prepared after completion of the selection

process. The application is accordingly disposed of.â? Thereafter, the State Government passed an order dated January 24, 2014 and the relevant

portion of the above order is quoted below:

â??Whereas, since the recruitment process was initiated in 2006 without taking recourse to wide publicity/open advertisement such recruitment

process has to be discontinued;

AND

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Whereas, since, the very initiation of the process of recruitment offended Article 14 and even the Recruitment Rules of 2012 requires wide

publicity/open advertisement it has been decided to annul the said earlier process of recruitment initiated in 2006, in public interest; Therefore, the

process of recruitment of Excise Constables initiated in 2006 is hereby annulled. By order of the Governor, H.K. DWIVEDI Principal Secretary to the

Government of West Bengal N. 568Ex dated, Kolkata the 24th June, 2014.â??

Challenging the aforesaid order dated June 24, 2014, the petitioner filed the original application which gives rise to this writ application. The above

original application was dismissed by the order impugned to this writ application and the operative portion of the above order is set out below:

â??â?|â?|â?|â?|â?|.Although there is substance in this submission of Shrimati Mitra, when in the contempt proceeding, the Tribunal accepted the

logic behind the decision to annul the recruitment process without going into the procedural propriety of the action taken by the Principal Secretary,

Finance Department, we are unable to grant any relief to the present applicants. The applications are accordingly disposed of.â??

It is submitted by Mr. S.P. Pahari, learned Advocate appearing on behalf of the petitioner that the learned Tribunal was in error in dismissing the

original application relying upon the observations made by the learned Tribunal in connection with the order passed in an application filed under the

Contempt of Courts Act, 1971. It is submitted by him that on the ground of alleged wilful disobedience of the final order dated January 3, 2014 passed

in O.A. No.198 of 2013 a group of similarly circumstanced candidates filed an application under the Contempt of Courts Act, 1971 before the learned

Tribunal. The learned Tribunal was pleased to drop the above application making some observations therein. It is the contention of the learned

Advocate appearing for the petitioner that there was no scope to take into consideration the above observations by the learned Tribunal instead of

giving independent reasons in support of the order impugned to this writ application.

It is submitted by Mr. Joytosh Majumder, learned Government Pleader, High Court, Calcutta, that the validity of the order passed by the Government

for discontinuing with the selection process of 2006 was examined in connection with the application filed under the Contempt of Courts Act, 1971.

Therefore, the learned Tribunal while passing the order impugned to this writ application was right in relying upon the observations made in that order.

It is also submitted by Mr. Majumder that the order passed in connection with the above application filed under the Contempt of Courts Act has not

been challenged by the petitioner. It is the third limb of submission of Mr. Majumder that the learned Tribunal while passing the order impugned to this

writ application took into consideration the validity of the order passed by the Government for discontinuing with the selection process of 2006

independently. We have heard the learned Counsel appearing for the respective parties at length and we have taken into consideration the facts and

circumstances of this case.

It is not in dispute that after disposal of the first original application, where the writ petitioner was one of the applicants, the Government passed an

order for discontinuing with the selection process which had been initiated in the year 2006. It is also not in dispute that in an application filed under the

Contempt of Courts Act, the learned Tribunal took into consideration the above order for arriving at a conclusion that there was no wilful disobedience

on the part of the Government in dropping the above selection process. The only question which is to be adjudicated by us as to whether the

observations made in an application filed under the Contempt of Courts Act, 1971 for dropping such proceeding can be relied upon at the time of

adjudicating the order passed by the authority on its merit.

An application under the Contempt of Courts Act, 1971 is filed alleging wilful disobedience of the order passed by the Court. Therefore, the subject

matter for consideration in such an application is the act and conduct of the alleged contemnor in dealing with the order passed by that Court. In the

event an order is passed by the authority in compliance of the order passed by a Court, the validity of such order cannot be the subject matter of

scrutiny of such an order on its merit. A fresh proceeding has to be initiated by the aggrieved party.

Here in this case after disposal of the application under the Contempt of Courts Act, the petitioner filed the original application challenging the order

passed by the Government for discontinuation of the selection process of 2006. The learned Tribunal was under obligation to consider the above order

on its merit without being influenced by any order passed by the learned Tribunal in connection with an application filed under the Contempt of Courts

Act. From the order impugned to this writ application, we do not find a single sentence in support of consideration of the validity of the order passed

by the Government for discontinuation of the selection process of 2006 independently. The learned Tribunal though observed that there had been

substance in the submissions made by the learned Advocate appearing for the petitioner, the learned Tribunal was not in a position to adjudicate the

issue in view of the order passed in the contempt proceeding. We do not approve the procedure adopted by the learned Tribunal in course of judicial

review of the validity of an order passed by an authority and the same stands quashed and set aside. As oftenly observed by us that the validity of an

order passed by the authority has to be examined by the learned Tribunal created under a Statute promulgated in exercise of power conferred under

Article 323A or Article 323B of the Constitution of India as a Court of first instance. Reference may be made to the decision of L. Chandrakumar vs.

Union of India reported in AIR 1997 SC 1125:

â??99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude

the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the

Act and the â??exclusion of jurisdictionâ? clauses in all other legislations enacted

under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.â??

Since the learned Tribunal did not examine the validity of the order passed by the respondent authority discontinuing the selection process of 2006 on its merit the matter is remanded back to the learned Tribunal for its decision afresh in accordance with law expeditiously and preferably within a period of six months from the date of communication of this order. As abundant precaution, let it be observed by us that we have not examined the issue involved in the original application on its merit and all points are kept open to be decided by the learned Tribunal. This writ petition is, thus, disposed of. There will be no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the parties at an early date.