
(2014) 04 CAL CK 0087
In the Calcutta High Court
Case No : WP No. 055 of 2009

Shri Sachinder Lall and Others

APPELLANT

Vs

The Lieutenant Governor and Others

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2014) 04 CAL CK 0087

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Mohammed Tabraiz in WP No. 055 of 2009 and Mr. K.M.B Jayapal in WP No. 110 of 0210, Advocate for the Appellant; Santosh Kumar Mandal, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Soumen Sen, J.—Since common questions of law and facts are involved in both the writ petitions, the hearing of the writ petitions, by consent of the parties, are taken up together and disposed of by this common judgment and order. The petitioners, in both the writ petitions, are holding Continuous Discharge Certificate (hereinafter referred to as CDC) in different ratings from Mercantile Marine Department, Kolkata. The petitioners, before obtaining CDC, have undergone pre-sea course for various ratings for the purpose of rostering them in the roster of the Administration. They are in possession of requisite certificates issued in their favour.

2. On 16th July, 2004, the Director of Shipping Services, Port Blair issued an advertisement seeking applications from eligible candidates possessing CDC with standard of training certificate in order to prepare a panel of crew members on board on MS vessel of the directorate in operation in foreshore sector on contract basis (out of roster) for short term and purely on temporary basis as and when require in respect of the following ratings namely;

1. Seacunny/Helmsman (should possess valid Watch Keeping Certificate)

2. General Purpose (Dech & Engine)

3. Saloon (Cook)

4. Deck Utility Hand

3. The advertisement specifically mentions that the selected candidates shall have no right or claim for registration and/or enrolment of their names in the foreshore company roster of the administration. They would be further required to execute an agreement with the directorate before they would be actually engaged on short term basis subject to their eligibility for the respective rating in the form as placed in the DSS notice board. The petitioners duly participated in the said selection process and were found to be eligible. At the relevant point of time, the respondent was having 12 vessels. At that point of time 72 candidates from the marine department were borrowed by the Directorate of Shipping Services for their employment in the foreshore sector. After completion of the interview, the respondent authority prepared two lists namely: One selected merit list and another selected panel list. The respondent authorities in terms of the selected list under different ratings have given appointment for the 12 vessels at rate of 8 crews per vessel by maintaining 140 % ratio. According to the petitioners, the respondents were supposed to give appointment of 144 crew men which includes 72 who have been brought from marine department. These 144 posts, in the 12 vessels are required to be filled-up from all the ratings mentioned above.

4. Since the aforementioned appointment was initially for 12 vessels, the respondents have also prepared a list from selected merit list and selected panel list in order to fill up vacancies in near future. In the said list under seaman rating, the name of Sanjay Kumar as one of the writ petitioners appeared.

5. The grievance of the petitioners is that the respondent ought to have maintained said ratio of 140% in respect of seaman and other ratings for the remaining vessels for which a separate list was prepared.

6. Mr. Tabraiz and Mr. KMB Jayapal appearing on behalf of the writ petitioners submitted that there are 18 MS vessels of 100/75 passenger capacity in foreshore sector to be manned by the crew of STCW qualification and the said vessels are under technical management of Shipping Corporation of India. The roster was started with 72 personnel's who opted out from FR/SR and CCS Rules. The Director (SS) in its communication dated August 06, 2004 addressed to the Commissioner-cum-Secretary (Shipping) inter alia stated that the total requirement of crew was $18 \times 9 \times 140\% = 227$ however at the material time, there were only twelve vessels commissioned in this category and crew requirement was limited to $12 \times 9 \times 140\% = 151$ for the time being. As per the aforesaid letter there was a variation and or shortage of 79 crews in relation to the aforesaid 12 vessels the letter dated 06th August 2004 further states that the remaining crew i.e. 79 were taken on short term contract basis to maintain the passenger service. However, in WP No. 232 of 2003 the Hon'ble High Court

had directed that whenever vacancies would arise, advertisement are to be published in the news paper by the administration and the candidature of the petitioners would be considered in accordance with law. Accordingly the directorate had advertised for filling up of above vacancies on contract basis (non retainer) and as received about 283 applications from local CDC holders.

7. The authorities on the basis of the interview held pursuant to the advertisement dated 6th October, 2004 prepared the panel of suitable candidates in different ratings for the foreshore sector. The authorities concerned also prepared a panel of candidates in different ratings which were to be kept in the panel to fill up the vacancies as and when the remaining vessels from mainland join the fleet of the department. The learned counsel for the petitioners refers to the information received from the Right to Information Act and submitted that some of the candidates whose names were kept in the said waiting list were accommodated as and when the ships arrived at shore and others have been left out due to non arrival of the ships. It is submitted that it would appear from the note sheets available to the petitioners and form the part of the Annexure P-6 that the Standing Committee also selected and recommended the names of certain candidates to be kept in the panel to fill up future vacancies and as and when the new vessels join the fleet from the ship yard. The names of the candidates to be kept in the panel for the four categories were indicated in the minutes.

8. The attention of the court is drawn to an endorsement made by the Assistant Director (Admn.) on 14th March, 2005 to show that with the arrival of the vessel MV Hut Bay some of the persons were accommodated and requirement of the 13th vessel was made from the existing selected panel list already prepared for existing 12 vessels.

9. In support of its claim that the said panel is still alive, reference has been made to the letter dated 10th May, 2007, written to the Assistant Secretary (Shipping) by the Manager (ISM), Andaman and Nicobar Administration, Directorate of Shipping Services.

10. The attention of this Court has been drawn to the notings in the files relevant extracts whereof are reproduced below.

The standing selection committee also selected and recommended the names of certain candidates to be kept in the panel to fill up the future vacancy as and when arise in the roster on joining of more vessels from the shipyard in mainland. The names of candidates to kept in panel for the category of Seacunny, Seaman, ERR, Cook and DUH Ratings may kindly be seen at Para 81/N, 82/N, 83/N, 84/N, & 85/N at page 21 and 22/ante in the file.

11. Now one more vessels of the same class viz. MV Hut Bay has joined the fleet of the Department on 1.2.2005 totalling to 13 MS Class vessels to ply in the foreshore sector, but no selection of crew members have been made separately for this new vessel and hence the requirement of crew members is to be met

from the existing select/panel list already prepared for existing 12 vessels.

12. It is therefore suggested that to maintain the foreshore sector Roster in the ratio of 140% of the total jobs for all the 14 vessels (13+1). The following crew members who are in the panel in different ratings may be enrolled in the foreshore roster in order of their seniority and utilise their services as such in different vessels.

Seacunny

1. Shri Arvinder Singh, CH 16171
2. Shri Sharif, MS 13322
3. Shri Papa Rao, Y, CL 48048

Seaman

1. Shri Presanna Kumar, MUM 92679
2. Shri A. Aboobaker, CL 49167
3. Shri Shibu Lal, CH 16114
4. Shri Shail Mohd. CH 19630

Cook

1. Shri Brijesh Lal, MS 15020
2. Shri A. Jobe, CH 16821
3. Shri D. Krishna Rao, CL 312

DUH

1. Shri M. Shaktivel, M 14053
2. Shri D. Santhosh Kumar, MUM 86300
3. Shri Appal Raju, MUM 86666
4. Shri Anshu Murugan, CH 18633

Submitted for consideration and approval please.

13. The main thrust of the argument, however, is based on the communication made by the Manager (ISM) to the Assistant Secretary (Shipping) on 10th May, 2007 in which the said authority has stated that it appears from the record that around 50% of the candidates selected and kept in the panel list were regularized and enrolled in the Foreshore sector against the permanent vacancy in their respective categories as and when vacancies arise and the remaining selected candidates on panel list could not be regularized and enrolled in the Foreshore Sector so far for want of any permanent/regular vacancy in the said Roster as the 04 MS Class Type VI vessels are yet to join in the said sector. As

and when these vessels are inducted in the services in Foreshore sector, all the remaining candidates including the applicants under the selected panel list would be permanently registered and enrolled in the Foreshore sector.

14. It is submitted that the concerned respondent out of 50 waitlisted candidates, have rostered about 25 candidates and the concerned respondents did not prefer to pay any attention in respect of the left out petitioners for being rostered in the company roster for the foreshore sector, for reasons not known to the petitioners and as such the respondents authorities cannot act discriminately.

15. It is submitted that the Merchant Shipping Act and Rules framed there under and as per the CDC Rules of 1986 and subsequently being amended from time to time, under the Merchant Shipping Act, 1958 and the Rules framed thereunder, there are two types of rosters one is company roster and the other one is General Roster. It is also stated herein that general roster is meant for the general Candidates and the Company roster is meant for the candidates who have worked on various vessels of the Administration vessels, and the company in order to run the vessels smoothly prepared a roster including the various candidates who have worked on various times on various vessels and in case of non availability of rostered seamen the seamen in each category is employed engaged on various vessels in category purely on contractual basis for specific periods.

16. It is submitted that although under the Merchant Shipping Act, 1958 and the Rules framed thereunder there is not concept of the "panel" except the concept of "roster", it is the bounded duty on the part of the respondent authorities to maintain two rosters-one is company roster and the other one is General Roster. In the instant case, all the petitioners were duly selected in compliance of all the formalities, and as such, they are entitled to be rostered in the company roster keeping in view the services rendered by the petitioners.

17. The learned counsels have referred to the information furnished under Rights to Information Act on 27.02.2009 to show that there are a large number of vacancies that are required to be filled up by the Administration. However, the respondent authorities are not taking any steps to engage the petitioners for the purpose of filling up the said vacancies. It is submitted that in terms of the letter 10th May, 2007, it is incumbent on the respondent authorities to engage the petitioners in the MS vessels from the panel. The respondent authorities, however, denying such right to the petitioners and call notices dated 08.8.2008 have been issued followed by another notice dated 22.02.2009 initiating fresh selection and thereby giving a go-bye to the panel already prepared but not exhausted.

18. It is further submitted that the Administration has prepared a list of unemployed youths for their engagement in the ship on temporary and contractual basis primarily with a view to deny their engagement in the vessel.

19. Mr. S.K. Mandal appearing on behalf of the Administration submitted that all the selected candidates as per the then existing vacancies in the Administration in the foreshore company roster have been allowed to be enrolled and joined in the roster in terms of the norms as laid down by the Director General of Shipping under the MS Act, 1958 and no further replacement or regular vacancy arose during the validity period of panel (for one year) in the Administration foreshore roster as the remaining four MS class vessels did not join the fleet of Administration in foreshore sector. Accordingly, the claims of none of the candidates including the writ petitioners for their enrolment and registration in the company roster for foreshore sector from the panel (waiting list) cannot and does not arise.

20. It is submitted that in order to protect the interest of the locally available unemployed youth, the respondent authorities-administration has decided to go for fresh selection from the locally available candidates for the vacancies/job as has been or shall be created in the Administration foreshore roster on joining of the remaining 04 MS class vessel in the near future. As and when vacancies would be notified, all the candidates in the reserved panel list would also be at liberty to apply for the same and to compete with other eligible candidates in accordance with the laid-down procedure.

21. Mr. Mandal submitted that the crews are engaged on board Administration's passenger-cum-cargo vessels as per their roster seniority on rotational basis and under any circumstances, the roster cannot be allowed to exceed beyond the ratio of 140% of the total available jobs/posts in the roster.

22. The moot question arises in this writ application is the entitlement of the petitioner to claim enrolment/registration and roster of their names on the expiry of the period of one year from the date of preparation of the panel.

23. The argument advanced on behalf of the petitioners with regard to the continuation of the panel beyond the period of one year is based on some notings in the file and letter dated 10th May, 2007.

24. Mr. S.K. Mandal has submitted that the petitioners have no legal right to claim their enrolment and/or registration after the life of the panel has expired. It is submitted that the Hon'ble Supreme Court in a large number of decisions have held that the life of panel remains valid only for a year and once it lapses, unless an appropriate order is issued by a State, no appointment can be made out of the said panel.

25. Mr. Mandal has referred to the decision of the Hon'ble Supreme Court reported in State of Rajasthan and Others Vs. Jagdish Chopra, .

26. Mr. Tabraiz and Mr. Jayapal appearing on behalf of the writ petitioners countered the said argument by submitting that it would be evident from the record of the respondent authority that there are existing vacancies and it was by reason of their own latches that four vessels could not be commissioned. The

communication dated 10th May, 2007 clearly shows that the remaining candidates including the petitioners under the selected panel list would be primarily enrolled in the foreshore sector, as and when 04 MS class type VI vessels are inducted in the service in foreshore sector. Since the said vessels for reasons entirely attributable to the respondent authorities did not reach the shore, the services of the petitioners could not be utilized. However, call notices were issued inviting fresh application for doing the self same job which the petitioners are qualified to perform and such call notices have been issued arbitrarily and with a view to deprive the petitioners to get job on the basis of the panel prepared by the authorities concerned.

27. I have carefully considered the advertisement on the basis of which the panel has been prepared. The advertisement clearly stipulates that the panel would be for a short term period purely on temporary and contract basis as and when required in respect of various ratings mentioned therein. The intending candidates would be required to execute an agreement with the Directorate before they are actually engaged on their short term contract.

28. The claim of the petitioners is based on assurance and notings in the file made in May, 2007. Such assurance and notings in the file cannot create a legal right to the petitioners to claim enrolment and registration. It is for the administration to decide how long it shall keep the panel valid.

29. The petitioners have not been able to produce any recruitment rules which specifically provides for the period for which the list prepared would remain valid after one year. The advertisement clearly shows that it was temporary in nature and on contractual basis. In absence of any rule, ordinary period of validity of select list should be one year as has been held in State of Rajasthan and others (supra). The life of the panel remain valid for a year has been the consistent view of the Hon''ble Apex Court which would be evident from the following decisions:

1. State of Bihar and Others Vs. Amrendra Kumar Mishra,
2. State of Rajasthan and Others Vs. Jagdish Chopra,
3. Girdhar Kumar Dadhich and Another Vs. State of Rajasthan and Others,
4. S.S. Balu and Another Vs. State of Kerala and Others,
5. Union of India (UOI) and Others Vs. B. Valluvan and Others,

30. The reading of the aforesaid decisions would show that the Hon''ble Supreme Court has held that the recruitment process must be commensurate with the statutory rules operating in the field. The life of the panel ordinary is one year. The same can be extended only by the State and that too if the statutory rule permitted it to do so. The High Court ordinarily would not extend the life of a panel. Only because of a panel has been prepared, the same by itself would not mean that the same would be given effect to irrespective of the fact that there was no such rules operating in the field. Vacancies should ordinarily be notified

keeping in view of the immediate future need. Once the life of a panel is lapsed, unless an appropriate order is issued by the State, no appointment can be made out of the said panel. A person does not acquire any legal right to be appointed only because that his name has appeared in the select list.

31. The selected candidates do not have any legal right to obtain a writ of mandamus directing the state as an employer to appoint them in a particular post. Even it is accepted that the validity of the select list was extended, such extension would be done in accordance with law. The wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.

32. The scope of the writ petitions is required to be decided on the anvil of the law laid down by the Hon''ble Supreme Court in this regard. It is true that in the communication dated 10th May, 2007, there is an indication that the select list would remain valid for some time till the other vessel arrive but, in my mind, the said communication is dehors the terms of the advertisement and contrary to the law laid down by the Hon''ble Supreme Court.

33. However, one fact cannot be disregarded. It is borne out from the record that there are large number of vacancies which are required to be filled up by the Administration. The nature of job are such that these jobs cannot be given to any persons who do not possess the required qualification. There are statutory rules which are required to be adhered to for engaging persons in the MS vessels.

34. Mr. Mandal, in his usual fairness, submitted that the selection process ought to have been initiated by issuing fresh advertisement. This Court is also of the view that the panel as was prepared in the year 2004 cannot be kept alive indefinitely and the authorities concerned ought to have initiated a fresh selection process as it was done in the year 2004. However, it is not in dispute that, on the basis of the eligibility criteria laid down in the earlier advertisement, the writ petitioners were found to be eligible and their names are appearing in the panel (waiting list). Although the writ petitioners may not have any legal right to claim permanent registration; they would be entitled to participate in the selection process that are required to be undertaken by the Administration immediately and not later than three months from the date of communication of this order.

35. In the event a fresh selection process is initiated, the petitioner shall be allowed to participate in the said selection process and in the event they are found to be eligible and qualified, then, in the panel to be prepared by the Administration, the names of the petitioners should not be kept in the waiting list and the Administration is expected to make all endeavour to ensure that this time they get an opportunity of enrolment in different ratings of the foreshore roster during the life of the panel.

36. Since the writ petitioners have approached the Court immediately with the issuance of the call notices, this benefit is extended to the petitioners only. With

the aforesaid observations, the writ petitions stand disposed of. However, there shall be no order as to costs.