

(1998) 08 CAL CK 0035

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction F.M.A. No. 1016 of 1996 F.M.A. No. 1017 of 1996

Sri Balaram Poddar and Others

APPELLANT

Vs

Sri Bhaskar Chandra Mondal and Others
 The State of West Bengal and Others Vs Sri Bhaskar Chandra Mondal and Others

RESPONDENT

Date of Decision : 13-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1
Constitution of India, 1950 — Article 14, 16, 21, 226
West Bengal Services (Determination of Seniority) Rules, 1981 — Rule 4, 6

Citation : (1998) 3 CALLT 24

Hon'ble Judges : Vinod Kumar Gupta, J; Sidheswar Narayan, J

Bench : Division Bench

Advocate : Mr. Sadananda Ganguly, Mr. Subir Hazra, Mr. D.B. Dutta, Mr. Chandra Sekhar Das and Mr. Ranjit Kumar Chatterjee, for the Appellant; Mr. Kashi Kanta Maitra and Mr. Gautam Thakur, for the Respondent

Judgement

V.K. Gupta, J.—This appeal under Clause 15 of the Letters Patent is directed against a judgment dated 8-11-90 passed by the learned Single Judge of this Court whereby the writ application filed by respondents 1 to 21 (minus 3 of them) was allowed setting aside the impugned gradation list of the Assistant Engineers (Agri-Mechanical) and with directions to the State-respondent to prepare such gradation list afresh in accordance with law and in the light of observations contained in the judgment of the learned single Judge.

2. Brief facts leading to the filing of the appeal are that the writ petitioners (Respondents in this appeal) were serving as Sub-Assistant Engineers, having been initially appointed on these posts by the Department of Agriculture, Government of West Bengal on different dates.

3. In the Department of Agriculture (Minor Irrigation), Government of West Bengal there are two classes of Assistant Engineers (Agri-Mechanical)--one class

comprising of the promotee Assistant Engineers (from the lower class of Sub-Assistant Engineers) and the other being the direct recruit Assistant Engineers selected through the Public Service Commission.

4. The dispute in this case revolves around the inter se seniority of the Assistant Engineers between these two classes en bloc. The seniority issue of these two separate classes of Assistant Engineers en bloc is governed by the West Bengal Services (Determination of Seniority) Rules. 1981.

Rule 6 of 1981 Rules reads as under:

"(i) The relative seniority between a promotee and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining.

(ii) The promotees shall be en bloc senior to the direct recruits of the same year."

5. The Government of West Bengal, in the Finance Department Audit Branch issued a Clarification Memo. No. 4444-F dated 13th June, 1981 clarifying certain misunderstandings/confusions with regard to the true scope and meaning of aforesaid Rule 6 and held as under:

"According to Rule-6 (ibid) the relative seniority between a promotee and a direct recruit is to be determined by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining.

Obviously the date of joining is not the factor for determination of inter-se seniority between a direct recruit and a promotee. The relevant factor for determination of seniority is the year of promotion or appointment. It means that year in which in compliance with the promotion order or appointment order issued, the first of the batch either of promotees or of direct recruits join.

Let us cite an example. Suppose in 1980 certain promotions were made by an Order issued in 1980, in November or December. The first of the batch might have joined in December 1980 and the rest doing the course in the following year, in this case the year of promotion is between 1980, But if the first of the batch joins in 1981, then the year of promotion will be 1981, although the Order for such appointment was issued in 1980, Similar principles should follow in the case of direct recruits also."

6. It is the admitted case of the parties that all the promotees-writ petitioners were appointed on 19-04-1982 and all the direct recruits Assistant Engineers were appointed on 26th April, 1982 or thereafter except in the case of Bikash Chandra Roy who had been working earlier on ad hoc basis and whose appointment as a direct recruit Assistant Engineer was made regular effective from 22nd September. 1981, to which we shall advert later.

7. On 14-08-1985 a draft gradation list of Assistant Engineers (Agri-Mechanical) as on 1-1-85 was circulated by the Directorate of Agricultural Engineering, Government of West Bengal. In this draft gradation list, the direct recruit

Assistant Engineers were shown senior en bloc to the promotee Assistant Engineers en bloc. The promotee Assistant Engineers objected to the placement of the direct recruit Assistant Engineers as senior to them in the draft gradation list but, despite such objection ultimately the State finalised the gradation list on 29-04-89. In the final gradation list also, the same pattern was followed in the sense that the direct recruit AEs were kept higher in seniority en bloc to the promotee AEs.

8. Aggrieved, the promotee AEs filed a writ petition under Article 226 of the Constitution of this court, which as noticed earlier was allowed by the learned single Judge to the extent indicated therein. It is against this judgment that the State of West Bengal and the direct recruit AEs have filed the aforesaid two appeals which are being disposed of by this common judgment.

9 Two preliminary objections were raised by the learned advocate appearing for the appellants in FMAT 1016 of 1996. One was about the joinder of a number of promotee AEs as writ-petitioners by filing a common writ application and the other was with regard to the maintainability of the writ application on the appellate side of this court. In so far as the question relating to the joinder of the writ-petitioners is concerned, the same has to be rejected in view of the provision contained in Order 1 rule 1 Code of Civil Procedure, principles whereof are squarely applicable to writ proceedings. Undoubtedly in the present case, the only question for determination in the writ application was the seniority dispute between direct recruit AEs en bloc and promotee AEs en bloc, and all the promotee AEs were actually promoted on the same date, i.e. 19-04-1982 and they were to be allotted seniority en bloc in the year 1982 itself. They therefore undoubtedly fell within the scope of Order 1 rule 1 CPC which reads as under:

Under Order 1, rule 1, C P C all the plaintiffs could only be Joined in one suit if the relief arose out of the same act of transactions and if any common question of law and fact arose. Some common link or nexus must be found in order that the requisite as to there being the same act or transaction or the same series of acts or transactions may be satisfied....."

10. The transaction is issuing draft gradation list, inviting objections, submission of objections and issuance of gradation list were all common to the writ petitioners. The relief claimed was also common to them. In this view of the matter therefore it cannot be said that the writ petition suffered from any mischief of misjoinder of parties.

11. In support of the other preliminary point regarding the lack of jurisdiction of this court in entertaining the writ application on the Appellate Side, the learned advocate appearing for the appellants drew our attention to a Division Bench judgment of this court in the case of University of Calcutta and Ors. v. Sri Shyamal Kumar Das & Ors. reported in 1984 (2) CLJ 320. It was very strongly urged that in the light of the ratio laid down in that judgment, the writ petition of the petitioners ought to have been filed on the original side of this court since it

was not maintainable on the appellate side and therefore, the same having wrongly been filed on the Appellate Side, following the analogy of the Order passed in the above-referred case, it attracted straight dismissal by the court. We are not at all impressed by this submission. First of ail, we want to make it very clear that the jurisdiction of this court under Article 226 of the Constitution is not at all dependent upon any subsidiary Rules as such. Jurisdiction under Article 226 is exercisable by this court under this court's constitutional power since any person approaching this court for the exercise of such a power does so based on his guaranteed right under this Article of the Constitution. Such constitutionally guaranteed right cannot be taken away or frustrated merely because the writ application for enforcing a right, filed under Article 226 may have wrongly been classified in terms of such subsidiary Rules on the Original Side or the Appellate Side. If a writ application under Article 226, even though otherwise maintainable constitutionally speaking, comes to be wrongly filed or entertained on the Appellate" Side because of some so-called infraction of some Rule on the subject, in our opinion, it cannot entail the dismissal on this ground alone. The filing of the writ application either on the Original Side or the Appellate Side, as the case may be, has nothing to do with its maintainability. The question of maintainability of a writ application is totally unrelated to any subsidiary Rules framed on the Administrate Side of this court for entertaining writ applications either on the Original Side or the Appellate Side. This is one aspect of the matter. The other aspect, even by following the ratio laid down in the aforesaid Division Bench judgment in *University of Calcutta v. Shyamal Kumar Das* (supra), it is clearly found that the writ application of the petitioners in the present case was maintainable even in accordance with the Rules relating to the division of writ applications either on the Original Side or the Appellate Side, as the case may be.

12. Rule 4 of the Rules of the High Court at Calcutta relating to applications under Article 226 of the Constitution which was made the basis of the judgment in the *University of Calcutta* case and which has been relied upon by the learned Advocate for the appellants before us reads as under :--

"All applications for writs in the nature of mandamus, prohibition and quo warranto, in which all the respondents reside or carry on business or have their offices situate within the ordinary original civil Jurisdiction of this High Court, whether they relate to a person, or court, or authority whether exercising civil, criminal or administrative jurisdiction, shall be dealt with the Original Side and shall be marked as "Original Side" applications."

By applying Rule 4 (supra), one finds that only such writ applications are to be filed exclusively on the Original Side in which all respondents reside or carry on business or have their offices situated within the Ordinary Original Civil Jurisdiction of this court. The expression "all the respondents" being relatable to their residence or carrying on business or having their Offices is of wide amplitude and cannot be narrowly construed only to mean and include such

official respondents as are impleaded in their official capacity in the writ application, and exclude private individuals, even though they are directly effected in the outcome of the litigation, in the sense that they being necessary and proper parties, and being vitally interested in the outcome of the case have been impleaded as such. Let us look at another Rule having a direct bearing on the subject. This is Rule 6 of the Rules which reads as under:--

"All other applications whether they relate to a period or authority or court exercising civil or criminal or other jurisdiction shall be dealt with by the Appellate Side of the High Court and marked as "Appellate Side" applications."

13. The argument that Rule 4 (supra) should be read to include only the official respondents is totally devoid of any force. The argument has no merit. If such a narrow interpretation is given to Rule 4, it would lead to absurd consequences. We are of the view that the expression "all the respondents" as occurring in Rule 4 actually includes respondents of all types in a writ application, whether private or official, in whatever capacity they may be and if their residence, place of business or location of office, or for that matter any of them, is not within the Ordinary Original Civil Jurisdiction of this court, the writ application on the true interpretation of Rules 4 and 6 [supra] can be filed and be entertainable on the Appellate Side of this court, irrespective of any question relating to its maintainability as such. The preliminary point therefore raised is rejected.

14. This now brings us to the main issue involved in the appeal.

Rule 6 of 1981 Rules, read with the clarificatory Memo. No. 4444-F dated 12th June, 1981 clearly provides that the seniority is to be determined with respect to the year of appointment and that if the promotee AEs and the direct recruit AEs appointed in the same year, the promotee AEs shall be en bloc senior to the direct recruits. Undoubtedly in the present case, the promotee AEs were appointed in the year 1982. In so far as the direct AEs are concerned, some of them were appointed in 1982 and some later, but because of Rule 6 (supra), even if one of them joins in 1982, all of them would be deemed to have been appointed in 1982 in so far as the limited question of determining their inter se en bloc seniority is concerned. The argument that the appointment of the direct recruit AEs should be relatable to the date of making the recommendation by the Public Service Commission, that is 22nd September, 1981 is untenable in law. The expression used in Rule 6 and on the clarification offered in the Clarificatory Memo lead to only one conclusion, plain and simple, that the determination of seniority is relatable to the year of appointment. The expression "year of appointment" as occurring in Rule 6 cannot be construed to mean year or the date of selection, or empanelment or so on. The year of appointment is per se and by itself means that year in which AEs actually come to be appointed, appointed by Order of the appropriate appointing authority. The expression "appointment" does not include either selection or empanelment or even the recommendation for appointment by the Public Service Commission.

15. This brings us to the last submission made by the appellants. The argument is that one of the direct recruit AEs namely, Bikash Chandra Roy had been working on ad hoc basis prior to 1982, even though he underwent selection process in the Public Service Commission and found his name recommended along with other direct recruits, in the recommendation dated 21-09-81, but his appointment on regular basis was made effective by the Government with effect from 22-09-81. It was urged that since his appointment on regular basis was effected from 22-09-81 and because he formed a part of the larger group of all the direct recruits, all of them should also be deemed to have been appointed in 1981 thus ranking senior to promotees as having been appointed one year before them. The argument is totally fallacious and absolutely untenable.

16. The order dated 20th December, 1982 regularising retrospective appointment of Bikash Chandra Roy reads as under:

"Government of West Bengal

Department of Agriculture

Estab-(Cell-III) Branch

NO. 21653-Estab (Cell-III)/12A-16/81 dated, Calcutta. The 20th December 1982. The Governor is pleased to appoint Shri Bikash Chandra Roy. son of Late Purna Chandra Roy, who has been working as Assistant Engineer (Agri-Mech) on an ad hoc basis, to act temporarily and until further orders as Assistant Engineer (Agri-Mech) in the West Bengal Service of Agricultural Engineers (Mech-wing) on a regular basis with effect from 22-9-81.

By order of the Governor

Sd/- R.C. Bhattacharyya

Special Officer & Ex-Officer

Assistant Secretary.

17. Whether the case of Bikash Chandra Roy in so far as his retrospective appointment as AE was correctly handled or not, the fact remains that he stood appointed with effect from 22-09-81. No one has challenged his appointment from that date. Even in the writ application filed by the present writ petitioners (promotee AEs), Bikash Chandra Roy's appointment as direct recruit AE effective from 22-09-81 has not been challenged. In the absence of any challenge to such appointment therefore, we are not inclined to hold that his appointment from 22-09-81 retrospectively is invalid. That however does not at all mean that his appointment retrospectively from 22-09-81 has any bearing or relation with other direct recruit AEs or that it can in any manner influence the infer se relative seniority of direct recruit AEs and the promotee AEs in terms of Rule 6 (supra). We are saying so, because all the direct recruit AEs, except Bikash Chandra Roy came to be appointed in 1982 or thereafter. As observed earlier, their seniority has to be determined with reference to the year of appointment. The ease of

Bikash Chandra is an individual, isolated case. Because of his having worked earlier on ad hoc basis, rightly or wrongly his appointment as a direct recruit AE was made effective from 22-09-81. He therefore falls in a separate class, all by himself, having nothing to do with other direct recruit AEs. Both have no connection with each other. The Order dated 20th December, 1982 makes him alone as having been appointed from 22-09-81. It does not relate to any other direct recruit AE.

18. For the reasons stated above therefore, we find no merit in both the appeals. The appeals are dismissed and the judgment of the learned single Judge is upheld with all consequences.

No order as to costs.

S. Karayan, J.

19. I agree.

20. Appeal dismissed