

(2011) 04 CAL CK 0050
In the Calcutta High Court
Case No : W.P.S.T. No 599 of 2009

Sri Goutam Surul

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Citation : (2011) 3 CHN 183

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Md. Abdul Ghani, J

Bench : Division Bench

Advocate : Kashi Kanta Maitra and Mintu Kumar Goswami, for the Appellant;Pratik Dhar, Jayeeta Chakraborty and Suryasanthi Basu, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This writ petition has been filed assailing the judgment and order dated 10th August 2009 passed by the West Bengal Administrative Tribunal in O.A No. 225 of 2009 whereby and whereunder the said Learned Tribunal dismissed the writ petition on merits.

2. The Petitioner applied for the post of constable in Kolkata Police and was called for interview on 13th August 1998. The date of birth of the Petitioner as mentioned in the Admit Card of the Madhyamik Examination is 25th October 1971. The maximum age for appointment to the post of constable in Kolkata Police was 25 years at the relevant time when the said Petitioner was called for interview. The said Petitioner had undisputedly crossed 25 years on the date of interview and therefore the candidature of the Petitioner was rejected on that ground of crossing the prescribed upper age limit.

3. It has been submitted on behalf of the Petitioner that the said Petitioner did not cross the prescribed upper age limit on the date of the interview i.e. on 13th August 1998. On behalf of the Petitioner reliance was placed on the office memorandum dated 19th May, 1998 issued by the Special Secretary, Finance

Department, Government of West Bengal and the subsequent office order dated 14th June, 1999 issued by the Home Department, Police Branch, Government of West Bengal. In partial modification of the provision of the West Bengal Services (Raising of age limit) Rules 1981 the upper age limit for direct recruitment to posts/service was raised by the notification dated 19th May, 1998 issued by the Finance Department, Government of West Bengal. Following the aforesaid memo dated 19th May, 1998 issued by the Finance Department, another office order was issued by the Home Department, Government of West Bengal raising the upper age limit for direct recruitment to the different posts under West Bengal Police and Kolkata Police to 27 years from the age of 25 years. The said office order dated 14th January, 1999 Home Department, Police Branch is set out hereunder:

From: P.K. Sengupta, OSD and DS., Govt. of West Bengal.

To 1) The D.G. and I.G.P., West Bengal Writers' Buildings, Calcutta.

Dated Calcutta, the 14th day of January 1999

2) The Commissioner of Police, Cal., 18, Lalbazar Street, Cal-1.

Sub: Raising of upper age limit for direct recruitment To the posts of Constables (both male and Female) A And Sub-Inspector/Sub-Inspectors (both of Branch and Armed Brach) and in West Bengal Police and Calcutta Police.

Memorandum

Consequent upon the raising of age limit by the Govt. in terms of F.D. Memo No. 3900-F dt. 19.5.1998 the question of raising of upper age limit for direct recruitment to the different post under West Bengal Police and Calcutta Police were under consideration of the Govt.

After Careful consideration of the matter the government has been pleased to order that the minimum and maximum age of recruitment to the ranks of sub-Inspector/Sub-Inspectors, Sargent, Constable/Sepoy (male/female) and similar other ranks as are now guided by the provisions of the police Regulations Bengal/ Police Regulations Calcutta, should on the 1st day of January of the year of recruitment, be as follows.

(i) Sub-Inspector/Sub-Inspectors/Sergeant,

Minimum Age/ 20

Maximum Age/ 27

(The upper age limit may be relaxed by 5 years in the case of SC/ST Candidates)

(ii) Constable/Sepoy (Both male/female)

Minimum Age/ 20

Maximum Age/ 27

(The upper age limit may be relaxed by 5 years in the case of SC/ST Candidates)

2. This will take immediate effect.

3. Necessary amendments to the Police Regulations Bengal and Police Regulations Calcutta will be made in due course.

This issues with the concurrence of the Finance Deptt. Vide U/O No. Group-P 3092 dt. 23.12.98.

4. Mr. Kashi Kanta Maitra, learned Senior Counsel representing the Petitioner submitted that on the date of interview i.e on 13th May, 1998 the said Petitioner was within the prescribed upper age limit of 27 years in terms of the office memorandum dated 19th May, 1998 issued by the Finance Department, Government of West Bengal and therefore, the Respondent authorities should not have denied appointment to the said Petitioner to the post of constable of Kolkata Police on the ground of crossing the upper age limit. Since the Petitioner was not appointed to the post of Constable by the Respondent authorities in spite of the aforesaid office memorandum dated 19th May, 1998 issued by the Finance Department, an application was filed before the Learned Tribunal by the Petitioner herein being O.A. No. 5490 of 1998. The said application was, however, dismissed by the Learned Tribunal on 13th June, 2000.

5. Challenging the aforesaid order dated 13th June, 2000 passed by the learned Tribunal, a writ petition was filed before this Court being No. WPST 665 of 2000 by the Petitioner herein. The said writ petition was finally disposed of by a Division Bench of this Court by the order dated 14th August, 2008 whereby the Secretary, Home Department, Government of West Bengal was directed to consider whether the benefit of upper age limit can be given to the Petitioner on the basis of the notification dated 14th January 1999 issued by the Home Department, Government of West Bengal. Pursuant to the aforesaid direction passed earlier by this Court, Additional Chief Secretary and Home Secretary, Government of West Bengal considered the claim of the Petitioner and passed a reasoned order on 30th December, 2008. By the aforesaid reasoned order, Additional Chief Secretary and Home Secretary held that the Petitioner herein was disqualified to be considered for appointment as Constable.

6. Being aggrieved by the aforesaid order dated 30th December 2008 passed by the Additional Chief Secretary Government of West Bengal, the Petitioner herein filed an application before the learned Tribunal which was numbered as O.A. No. 225 of 2009.

7. Learned Tribunal ultimately by the judgment and order dated 10th August, 2009 finally disposed of the aforesaid application filed by the Petitioner herein upon holding that there was no impropriety and/or illegality in the order dated 30th December, 2008 passed by the Additional Chief Secretary, Government of West Bengal and therefore, dismissed the application. Challenging the aforesaid judgment and order passed by the learned Tribunal, instant Writ petition has

been filed.

8. Mr. Kashi Kanta Maitra, learned Senior Counsel representing the Petitioner submitted that the Petitioner herein did not cross the upper age limit on the date of the interview in terms of the memorandum dated 19th May 1998 issued by the Finance Department, Government of West Bengal. Mr. Maitra further submitted that following the aforesaid memorandum issued by the Finance Department, Government of West Bengal, subsequent office order was issued by the Home Department on 14th January, 1999 enhancing the upper age limit for direct recruitment to the different posts under West Bengal Police and Kolkata Police. The upper age limit for the post of constable was fixed at 27 years. The aforesaid circular, according to Mr. Maitra, was issued as routine measure pursuant to the decision of the Government of West Bengal which was specifically mentioned in the earlier office memorandum dated 19th May, 1998 issued by the Finance Department.

9. The aforesaid routine circular was however, issued by the Home Department after a lapse of couple of months and the Petitioner herein was not at all responsible for the aforesaid delay in issuing the office order by the Home Department. Mr. Maitra submitted that the Government of West Bengal cannot pursue different policies in respect of similar types of employees engaged in two different departments.

10. Mr. Maitra further submitted that both the departments namely the Finance Department and the Home Department are two different departments of the same Government and therefore, the decision of the State Government with regard to the raising of the upper age limit as mentioned in the memorandum issued by the Finance Department cannot only confer the benefits to a particular section of its employees. Mr. Maitra submitted that one sector of the State Government employees while enjoying the benefit of the cabinet decision regarding relaxation of the upper age limit, pursuant to the office memorandum dated 19th May, 1998 issued by the Finance Department, Government of West Bengal, cannot be denied to the candidates seeking employment under the Home Department of the same State government. Mr. Maitra also submitted that the Home Department, Police Branch, Government of West Bengal issued the relevant circular dated 14th January 1999 in terms of Finance Department Memo dated 19th May, 1998 and therefore, the benefit under the said circular dated 14th January 1999 with regard to raising of the upper age limit should be given effect to from the date of implementation of the decision of the Government of West Bengal regarding the raising of the said upper age limit as mentioned in the memorandum issued by the Finance Department, Government of West Bengal on 19th May 1998.

11. Mr. Maitra further submitted that the cabinet decision of the Government of West Bengal cannot be applied in a discriminatory manner and the benefits of relaxation of upper age limit as mentioned in the office order issued by the Home Department, Government of West Bengal on 14th January 1999 must have a

retrospective effect from the date of issuance of the parent notification issued by the Finance Department, dated 19th May, 1998 since on the basis of the aforesaid memorandum, formal office order on 14th January 1999 was issued by the Home Department, Government of West Bengal. Mr. Maitra specifically urged before this Court that the State Government cannot form a class within a class without any reasonable basis in the matter of awarding a benefit pursuant to the cabinet decision. Mr. Maitra referred to and relied on a decision of the Supreme Court in the case of S.G. Jaisinghani Vs. Union of India (UOI) and Others, (Paragraph 14). Mr. Maitra also submitted that doctrine of equality cannot be substituted by the doctrine of classification. Mr. Maitra relied on another decision of the Supreme Court in the case of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, (Paragraphs 11, 36 and 38).

12. Mr. Pratik Dhar, learned Counsel representing the state Respondents submitted that the upper age limit for the recruitment to the post of constable in Kolkata Police cannot be the same like other posts under various other departments of the State Government which are governed by the West Bengal Service Rules. Mr. Dhar further submitted that the recruitment of constable in Kolkata Police is governed by the Police Regulations of Kolkata 1960 and relaxation of upper age limit in the recruitment of constable in the Kolkata Police was given after issuance of the office order by the Home Department, Government of West Bengal on 14th January, 1999. Mr. Dhar also submitted that the benefits arising out of the aforesaid office order dated 14th January 1999 cannot have any retrospective effect.

13. Mr. Dhar submitted that on the date of interview i.e. on 13th August 1998 the Petitioner had crossed 25 years and the age relaxation benefit under the office order issued by the Home Department dated 14th January 1999 was not admissible prior to 14th January 1999. In the aforesaid circumstances, the Additional Chief Secretary and Home Secretary, Government of West Bengal had no other alternative but to reject the prayer of the writ Petitioner. Mr. Dhar referred to and relied on a decision of the Supreme Court in the case of Government of Andhra Pradesh and Ors. v. N. Subarayudu and Ors. reported in (2008) 14 SCC 702 in support of his aforesaid argument.

14. It is not in dispute that the Government of West Bengal pursuant to the cabinet decision relaxed the upper age limit in respect of the state government employees. The aforesaid policy decision of the state government was specifically mentioned in the office memorandum dated 19th May, 1998 issued by the Finance Department, Government of West Bengal. The candidates sought for employment in various departments of the State Government enjoyed the benefit of the aforesaid relaxation of the upper age limit after issuance of the aforesaid notification of the Finance Department, dated 19th May, 1998. Following the aforesaid policy decision of the State Government, subsequent office order was issued by the Home Department, Government of West Bengal on 14th January, 1999 relaxing the upper age limit for recruitment in the different posts of the

West Bengal Police and Kolkata Police. In the aforesaid office order dated 14th January, 1999 it has been clearly mentioned that consequent upon the raising of the age limit by the Government in terms of Finance Department Memo No. 3900-F dated 19th May, 1998 the question of raising of upper age limit for direct recruitment to the different post under West Bengal Police and Kolkata Police were under consideration of the Government, and the upper age limit was therefore relaxed for recruitment to the different posts under West Bengal Police and Kolkata Police. Home Department, Government of west Bengal issued the aforesaid office order dated 14th January 1999 in order to implement the policy decision of the government of West Bengal as mentioned in the memo dated 19th May, 1998 issued by the Finance Department with regard to relaxation of the upper age limit for direct recruitment to the different posts in West Bengal Police and Calcutta Police.

15. Therefore, it is not in dispute that the subsequent office order dated 14th January 1999 was issued by the Home Department, Government of West Bengal in order to extend the benefit of the policy decision of the Government of West Bengal with regard to the relaxation of the upper age limit for direct recruitment to the different posts under Calcutta Police as well as West Bengal Police like various other posts under different departments of the State Government, herein the said decision of the Government of West Bengal was being implemented pursuant to the memo dated 19th May, 1998 issued earlier by the Finance Department, Government of West Bengal.

16. Benefits granted to the employees by the State Government pursuant to any policy decision cannot be restricted to a particular department or departments as sought to have been done in the instant case. The benefit of relaxation of upper age limit for direct recruitment to the posts/service of the Government of West Bengal cannot be withheld in respect of the direct recruitment to the posts of West Bengal Police and Calcutta Police under the Home Department, Government of West Bengal. In the absence of adequate valid reasons, benefits granted to the employees in general by the State Government cannot be denied to the employees of a particular department. The policy decision of the Government of West Bengal with regard to relaxation of the upper age limit in the case of direct recruitment to the different posts will be applicable to all the departments under the Government of West Bengal uniformly and the said benefit cannot be denied or implemented from a subsequent date in respect of the West Bengal Police and Calcutta Police under the Home Department, Government of West Bengal on the ground that the relevant circular or office order was issued in this regard subsequently.

17. Candidates seeking employment in Calcutta Police or West Bengal Police cannot be classified separately in order to exclude them from enjoying the benefit with regard to relaxation of upper age limit as are available to others pursuant to the policy decision of the State Government as notified in the memorandum dated 19th May, 1998 issued by the Finance Department although

the aforesaid memorandum dated 19th May, 1998 does not contemplate any artificial classification in the matter of employment in the State Government. The aforesaid irregular classification cannot be approved by this Court. In the Case of State of J and K v. T.N. Khosa (Supra) Hon"ble Supreme Court observed:

37. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

38. Judicial Scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

18. Mr. Dhar, Learned Counsel of the State Respondents relied on the decision of the Supreme Court in the case of Government of Andhra Pradesh and Ors. (Supra) which in our opinion has no manner of application in the facts of the present Case.

19. In the aforesaid circumstances, the effect of the circular dated 14th January, 1999 has to be given effect to and or implemented from the very day the policy decision of the State Government with regard to the relaxation of upper age limit was given effect to pursuant to the earlier notification dated 19th May, 1998 issued by the Finance Department, Government of West Bengal.

20. The Petitioner herein was admittedly selected to the post of constable in Kolkata Police on the basis of the interview held on 13th August, 1998 i.e. long after the issuance of the memorandum dated 19th May, 1998 by the Finance Department, Government of West Bengal notifying the policy decision of the State Government with regard to the relaxation of the upper age limit for direct recruitment to posts/service. The Petitioner herein therefore, is entitled to enjoy the benefit of the aforesaid policy decision of Government of West Bengal with regard to relaxation of the upper age limit.

21. In the aforesaid circumstances, the decision of the Additional Chief Secretary Government of West Bengal rejecting the prayer of the Petitioner by the written communication dated 30th December, 2008 cannot be sustained and the same is accordingly quashed. For the identical reasons, the judgment and order dated 10th August, 2009 passed by the learned West Bengal Administrative Tribunal in O.A. No. 225 of 2009 cannot be sustained and the same is therefore, set aside.

22. The Respondents herein are, directed to issue formal letter of appointment to the Petitioner to the post of Constable in Kolkata Police forthwith since the said Petitioner was declared selected by the competent authority of the Kolkata Police on the basis of the interview held on 13th August, 1998. The Petitioner will however, comply with other official formalities, if there be any, for the purpose of joining the post of constable.

In the result, the writ petition stands allowed.

In the facts of the present case, there will be, however, no order as to costs.

23. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

MD. Abdul Ghani, J.

24. I agree.