

(2022) 03 CAL CK 0039

In the Calcutta High Court

Case No : MAT No. 348 Of 2016, CAN 1, 2 Of 2016(Old No. CAN 2974, 2976 Of 2016)

State Of West Bengal And Another

APPELLANT

Vs

Tulasi Dey And Others

RESPONDENT

Date of Decision : 11-03-2022

Acts Referred:

Citation : (2022) 03 CAL CK 0039

Hon'ble Judges : Prakash Shrivastava, CJ;Rajarshi Bharadwaj, J

Bench : Division Bench

Advocate : Susanta Pal

Final Decision : Allowed

Judgement

Prakash Shrivastava, CJ

1. Order of the learned Single Judge dated 14th August, 2015 whereby WP 5549 (W) of 2015 has been allowed, is under challenge at the instance of the State.
2. The affidavit-of-service filed by the appellant is taken on record. In spite of service of notice, no one is present for the respondent.
3. Since there is a delay of 143 days in filing this appeal, hence, CAN 2974 of 2016 has been filed seeking condonation of delay.
4. Having regard to the submission of the learned Counsel for the appellant and considering the plea taken in the application, we are satisfied that delay has properly been explained, hence CAN No. 2974 of 2016 is allowed and delay in filing this appeal is condoned.
5. Heard on merit.
6. The respondent No. 1 (writ petitioner) had approached the writ court by filing the writ petition challenging the order dated 07th October, 2013 issued by the appellant No. 2 and seeking a direction to record the name of the writ petitioner

as exempted category candidate and to extend the benefit of reserved as exempted category candidate for employment. The above prayer was made on the plea that the respondent No. 1 had worked as census worker in the year 1990-91 and the appointing authority had issued the certificate in his favour. The respondent No. 1 had earlier filed the WP No. 12017 (W) of 2013 which was disposed of by order dated 07th May, 2013 with a direction to the appellant No. 2 to consider and decide the application of the respondent No. 1 for recording his name in the exempted category in accordance with law after granting him an opportunity of hearing. The appellant thereafter had passed the order dated 07th October, 2013 rejecting the case of the respondent No. 1 which led to the filing of the present petition before the Writ Court.

7. Learned Single Judge by the order under appeal has found that the rejection of the application of the respondent No. 1 was not proper, hence has directed the appellant No. 2 to enroll the name of the respondent No. 1 as an ex-census worker of 1991 census in the exempted category.

8. Submission of learned Counsel for the appellant is that the learned Single Judge committed an error in allowing the petition without appreciating that the claim of the respondent No. 1 was based upon the certificate issued by the Chairman, Borough who had no authority to issue such certificate and this issue is already settled by the Hon'ble Supreme Court.

9. Having heard the learned Counsel for the appellant and on the perusal of the record, it is noticed that the appellant No. 2 by the order dated 07th October, 2013 had rejected the claim of the respondent No. 1 noting that the claim was based upon the certificated dated 15th April, 2000 issued by the Chairman of Borough-XII of Kolkata Municipal Corporation and that certificate did not state that the respondent No. 1 had satisfactorily completed his job. Taking note of clause 4(b) of the notification No. 301-EMP/1M-10/2000 dated 21st August, 2002, a doubt was expressed that the Chairman of Borough-XII was competent and duly authorized by the Director of Census Operation, West Bengal to issue the certificate. Even otherwise, the very acceptability of the certificate was found to be questionable.

10. The above issue in the similar factual background had come up before the Hon'ble Supreme Court in Civil Appeal No. 7327 of 2016 in the matter of State of West Bengal and Another vs. Kalyani Samanta (Mondal) and Others wherein the Hon'ble Supreme Court by order dated 01st September, 2021 has stated that:

"The principal objection to the grant of benefit of reservation is based on the respondent's claim of having worked as a census enumerator for the period mentioned in the certificate dated 15.04.2000 is suspect.

The respondent's submission on the other hand is that there could not be any doubt that she was engaged as a census enumerator and that the certificate was issued by the concerned Chairman of the Municipal Corporation during his term and therefore, it cannot be termed as suspect. Reliance is also placed by the

certain orders of the state to say that the record keeping was in out-sourced, in a manner of speaking to the Municipal Corporation, Boroughs.

The letter of the State Government dated 19.11.1999 is a part of the record. The relevant paras 3 and 4 of the letter are as under:

"3. The census operations in the cities of Calcutta and Howrah were conducted under the direct supervision of the Directorate of Census operations. In the districts, the District Magistrates, the Sub-Divisional Officers, the District Census Officers, the Block Development Officers and, in the case of Municipalities and Notified Area Authorities, the Chairmen/Executive Officers were responsible for undertaking the census in their areas. These officials had accordingly been notified in the 1981 Census as Census Officers and vested with the powers of appointing the other Census Officers under their charge.

4. It was this Directorate which issued the experience certificates in respect of the Enumerators and Supervisors who had worked in Calcutta and Howrah Cities, indicating the period of deployment of the Enumerators/Supervisors in either or both the operations. The experience certificates in respect of the Enumerators and Supervisors who had worked in all other areas of West Bengal have to be issued by the Offices who had been empowered to appoint them and who oversaw their performance as Census Officers. To be more specific, the certificates are to be issued by the Block Development Officers and the Chairman/Executive Officers of Municipalities and Notified Area Authorities, who are to be treated as competent authorities to issue the experience certificates by the Enumerators/Supervisors whom these officials had deployed to undertake the census in either or both the phases."

It follows from the plain reading of the above letter that the primary task of carrying on supervision of the census was with the Directorate of Census Operation. In the case of Municipalities and notified areas, the Chairman or Executive Officer was responsible for census operation. Para 3 refers to this position in respect of 1981 census when state authorities were notified as census centres. Para 4 clearly states that "It was this Directorate which issued the experience certificates in respect of the Enumerators and Supervisors who had worked in Calcutta and Howrah Cities".

In the present case, the respondent claimed to have worked as a Enumerator in the city of Kolkata. Clearly in terms of Para 4, the Directorate is the proper and competent authority to issue a certificate of experience. To underline this aspect, the latter part of the paragraph, the certificates are to be issued by the Block Development Officer and Chairman/Executive Officers of the Municipalities who had to be treated as competent authority to issue experience certificate.

Now if the respondent's contention were to be accepted, there is no reason for the Directorate or the concerned Municipal Authorities to have declined to issue experience certificate at the time of completion of Census for the year 1991. The tenure of engagement was between 1990-1991. It is also not her case that she

applied for the certificate contemporaneously. In these circumstances, the doubts entertained by the appellant-state with respect to the genuineness of the certificate had some force. The letter dated 20.04.2015 issued by the Chairman, Borough-XII Municipal Corporation, Kolkata clearly states that late Sri Ganesh Guha Thakurta functioned as Chairman for the period 13.09.1995 to 28.06.2000.

Keeping these facts in mind, if we examine the certificate issued to the respondent on 15.04.2000 it is apparent that the document does not refer to any records maintained by the Borough Municipal Corporation- which ordinarily would have been only source for the Chairman to have issued the certificate. The records also reveal that as a matter of fact in the year 2002, the Borough records were not available. Having regard to these important circumstances, this Court is of the view that the High Court fell into error, and uncritically accepted the respondent's argument and directed acceptance of the certificate dated 15.04.2000.

Reliance was placed by the respondent upon letter dated 09.12.2002 of the Labour Department. Here too this court is of opinion that the said letter only underlines the fact that at the time when certificate is alleged to have been issued, as a matter of fact, the records were not available with the Municipal Corporation Borough.

The further argument that the respondent's initial engagement in 1990 cannot be doubted, in this course is of no assistance. Mere issuance of an appointment letter or an identity card cannot per se lead to an assumption that an employee performed all the tasks that he or she was expected to, and for the duration that the census operations were, in fact, undertaken.

In the light of the above findings, we are of the opinion that the impugned order and conclusions of the High Court including that of the Single Judge cannot be sustained; they are hereby set aside.

The appeal is allowed accordingly, with no order on costs."

11. The present case also stands on the same footing. The claim of the respondent No. 1 is based upon the certificate issued by the Chairman, Borough on 15th April, 2020 which has been found to be suspicious and questionable by the appellant No. 2. The learned Single Judge without considering the relevant aspects of the matter noted above has allowed the writ petition. Learned Single Judge committed an error in placing reliance upon the certificate issued by the Chairman of the concerned Borough in favour of the respondent No. 1. Hence, the order of the learned Single Judge cannot be sustained and is hereby set aside and the appeal is allowed.

12. Accordingly, the appeal and CAN 1 of 2016 (Old No. CAN 2974 of 2016) are allowed and CAN 2 of 2016 (Old No. CAN 2976 of 2016) is disposed of.