
(2013) 04 CAL CK 0058

In the Calcutta High Court

Case No : Writ Petition No. 20870 (W) of 2010 and C.A.N. No"s. 5004, 8022 of 2011

Sujit Kumar Naskar and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 3 WBLR 547

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Ashis Sanyal, Piush Chaturvedi, Amit Kr. Ghosh, Anwesha Saha, in W.P. No. 20870 W of 2010, Kishore Dutt, Sukdeb Sarkar, in W.P. No. 16058 W of 2011, Mukunda Lal Sarkar, in W.P. No. 16443 W of 2011 and Sk. Rejaul Alam, in C.A.N. Nos. 5004 and 8022 of 2011, for the Appellant; Asim Kr. Ganguly, Belial Shaikh for the State in W.P. No. 16058 (W) of 2011, Alope Kr. Ghosh and Dilip Kr. Chatterjee for the High Court Administration in all the writ petitions, for the Respondent

Judgement

Sambuddha Chakrabarti, J.—The subject matter of challenge in all these three writ petitions arise out of Employment Notice No. 1 of 2008 by which applications were invited for appointment to several posts of Group C and Group D staff of the Judgeship of South 24 Parganas. In WP No. 20870 (W) of 2010 there are 15 petitioners. Their case inter alia is that in the advertisement that was published the number of vacancies for the post Lower Division Clerks was 370, for the post of Process Servers it was 8, for the post of Office Peons 29, for the post of Sweeper 1 and the number of vacancies for the post of Farash was 2. The mode of examination that was prescribed was based on preliminary/final written examination/interview, both objective and subjective pattern, in subjects as mentioned therein. For employment to Group D posts selection would be based on interview alone, 8 of the petitioners applied for group C posts and 7 for Group D posts.

2. The petitioners subsequently received their respective admit cards which,

however, did not contain signatures of any authorised signatory of the learned District Judge. A written test was held on July 4, 2010. Results were published in the notice board of the learned District Judge, South 24 Parganas on September 3, 2010. The petitioners' names did not appear in the list. It mentioned the names of the members of the recruitment committee and it was also mentioned that interview would commence on and from September 28, 2010 for the Group C posts and September 27, 2010 for the Group D posts. It was mentioned that the exact date and time was to be mentioned in the interview letter to be issued by the Institute of Psychometry (hereinafter referred to as the "said Institute") to be issued on September 23, 2010.

3. The petitioners alleged that the whole process of selection was organised and supervised by the said Institute and not by the office of the learned District Judge or his authorised representative and till the publication of the results of the written examination the petitioners were not aware about the role played by the said Institute in the process of selection. According to them there is no rule authorising the office of the learned District Judge to give out the duty to an outside agency for conducting the examination and the objects of the said Institute also did not permit it to act as an agency for conducting such examination. The petitioners have described this procedure as vitiated by illegality, nepotism and non-transparency. For recruitment to High Court or Government Services the Deputy Registrar (Administration) and such other competent officers used to issue admit cards and hold selection of candidates. This present writ petition has been filed challenging the process of selection for appointment to the Group C and Group D posts.

4. On behalf of the respondent No. 3 the then Registrar General, High Court at Calcutta affirmed an affidavit-in-opposition denying the allegations made in the writ petition. The said respondent has questioned the petitioners' locus standi to move this application after participating in the selection process and after being unsuccessful to qualify for the respective posts. The respondents have further contended that the petition is bad for mis-joinder of parties inasmuch as participants for the posts of Group C and Group D have joined hands together to present a single writ petition challenging the selection process. Admittedly the petitioners received the admit cards for participation at the selection process. Computerised admit cards were issued to the eligible candidates. The petitioners cannot attach much importance to the fact that they did not contain signatures of any authorised signatory, particularly when the admit cards authorised the candidates to participate at the selection process and none of the petitioners faced any difficulty in that. The procedural irregularities alleged by the petitioners cannot vitiate the entire selection process. The petitioners after accepting the procedure and taking chance to be selected for recruitment and after being unsuccessful cannot make any allegation about the process of selection. The petitioners have thus made an attempt to go back to the stage already completed without raising any objection. The allegations regarding illegality, nepotism etc. have been categorically denied by the respondent No. 3. The

respondent No. 3 has also taken a very specific point that the Governor was pleased to accord administrative approval for recruitment of staff in different categories in the judgeship of South 24 Parganas and the Hon'ble Chief Justice, High Court, Calcutta was pleased to accord permission to the learned District Judge, South 24 Parganas to continue with the recruitment process already initiated and to make preliminary selection through the said Institute by utilizing the fund of Rs. 24.5 lacs.

5. On the basis of the an agreement work-order was placed in favour of the said Institute for conducting the examination. The District Judge had every access to any document at any stage, if he thought fit. The said Institute filed an undertaking that the preliminary selection of Group C and Group D staff would be conducted on July 4, 2010 and the merit list would be submitted within the last day of July, 2010 in case of Group C staff. For Group D staff it was undertaken that some more time would be required. The selection committee completed the interview on October 1, 2010 and the final merit list was placed before the learned District Judge which was subsequently duly displayed in the notice board.

6. In the writ petition being WP No. 16058 (W) of 2011 the petitioner's prayer is more specific. He wants a writ in the nature of Mandamus commanding the respondents to issue a letter of appointment for the post of Group D under the learned District Judge, South 24 Parganas. He applied for the said post, appeared at the examination and received a letter of interview. He also appeared at the interview. Subsequently he came to learn that the respondents have been already issued the letters of appointment to the candidates upto the merit rank of serial No. 8. But no letter of appointment had yet been issued in favour of the petitioner who ranked 12th.

7. In reply to a query of the petitioner he was informed that certain vacancies for different categories have already been filled up though initially it was brought to his notice that as per the merit ranking his position was 12 when admittedly the total number of vacant posts declared was 14. The petitioner alleges that the total number of vacant posts for Peon in the General Category being 14 the petitioner was well within the zone of consideration and should not be deprived of getting such appointment.

8. In WP No. 16443 (W) of 2011 also the petitioner has prayed for a writ in the nature of Mandamus commanding the respondents to allow him to join in the permanent post of Peon in the Court of the learned District Judge, South 24 Parganas as against the reserved category.

9. The case of the petitioner in the last mentioned petition inter alia has been that pursuant to an advertisement inviting applications for recruitment to the post of a Peon in the Court of the learned District Judge at Alipore he made an application, successfully passed the written test, appeared before the selection committee for an interview on September 27, 2010 and stood first post-wise and category-wise (OBC merit list of Peons). The total number of vacancies for the

OBC candidates were 2 for the post of Peon and the petitioner had stood first. The petitioner's allegation is that in spite of his topping the panel the authorities have been unnecessarily dillydallying in providing employment to the petitioner and have not allowed the petitioner to join the post.

10. All these writ petitions were heard together. In connection with these three writ petitions several applications were filed. The writ petitions and all the applications are being disposed of together.

11. The chief contention of the petitioner in the writ petition being WP No. 20870 (W) of 2010 is that the entire selection process has been vitiated by procedural irregularities inasmuch as it has been unauthorisedly delegated to a private agency, i.e., the said Institute despite objection of the state government and more particularly the finance department which allotted funds for the recruitment process. The limited permission which was confined to preliminary selection only was also violated by the said private agency in having completed the entire selection process by and through a private agency and the role of the selection committee was reduced to that of a body approving the dates of interview. Moreover, according to them, the advertisement did not disclose that the selection process would be delegated and conducted by a private agency. Such delegation smacks of bias and mala fide and raises reasonable suspicion that candidates would not be treated fairly and as such the entire selection process was liable to be cancelled.

12. In support of their contentions the petitioners have relied on the case of The Chairman, Sagar Gramin Bank and Others Vs. Manicklal Bhowmick and Others, for a proposition that unless it is clear to the writ petitioners that a certain procedure followed by the employer is contrary to the avowed policy it is not possible for them to object to the same and as such there can be no estoppel in such a situation. They have also relied on the case of Raj Kumar and Others Vs. Shakti Raj and Others, wherein it was held that since the government had committed glaring illegalities in the procedure to get the candidates for examination under the 1955 rules the principle of estoppel by conduct or acquiescence has no application. The other two decisions relied on by the petitioners in opposing the application for addition of parties are not necessary for the disposal of the writ petition.

13. The main pillar of the petitioners' allegation is that the examination was conducted through an outside agency namely the said Institute and the petitioners came to know of it only after the results of the written test were published. The petitioners have stopped at that. How they have been prejudicially affected by this has neither been pleaded nor is it clear from their submissions. Mr. Ghosh, the learned Advocate for the respondent No. 3 has taken a point that if the petitioners were successful they would have no grievance against the said Institute conducting the examination. It may alt be very true, but to indulge in it will be to speculate in the realm of possibilities.

14. According to the respondents a large number of applicants had applied for the posts and it was not possible for the Judgeship to conduct the examination all by itself within a short time by which the funds made available to it had to be utilised. I quite agree with the submission of Mr. Ghosh that this decision was an administrative one and the entire selection had taken place under the supervision of the selection committee.

15. It is a matter of record that the initial interim order granted in this case had been modified by a subsequent interim order and as a result of that the select list has been given effect to subject to the said interim order. Only 8 posts in Group C and 7 posts in Group D are lying vacant. The said respondent has relied on the case of Manish Kumar Shahi Vs. State of Bihar and Others, for a proposition that the petitioner having taken part in the selection process was not entitled to challenge the criteria of the process of selection. The judgments in the case of Marripati Nagaraja and Others Vs. The Government of Andhra Pradesh and Others, and K.A. Nagamani Vs. Indian Airlines and Others, are also on the same point of law as mentioned in respect of the earlier case. The respondents have also referred to several other judgments for the same proposition.

16. This, however, is not a case where the doctrine of waiver operates as a bar against the petitioners. Waiver means deliberate relinquishment of a known right. In the case of Associated Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh, the limitation to the doctrine of waiver was fully explained "A waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights". Therefore, unless the petitioners are aware of a right there is no question of its relinquishment by them. Here the petitioners say that they were not aware of this entrustment of the conduct of examination with the said Institute before the publication of the select list. Thus they have a point that estoppel will not operate against them.

17. However, a more important and fundamental point to the issues involved in the writ petition remains unanswered by the petitioners, i.e., how they have been prejudicially or adversely affected by the said Institute conducting the examination. It is a matter of common knowledge that more often than not large public examinations are conducted by independent agencies and the Court cannot refuse to take note of that. In any examination where a large number of applicants apply it may frequently become almost impossible for an appointing authority to conduct the examination all by itself and, therefore, such decisions are quite frequently taken and examinations are not vitiated merely because the conducting agency is not the employer itself.

18. The authorities in the present case had decided to entrust the said Institute and the said decision is a purely administrative one. How the employer shall conduct an examination must be left to the administrative decision of the employer unless of course there is any statutory provision clearly requiring the

employer to follow a certain course of action. In the case of State of Andhra Pradesh and Another Vs. V. Sadanandam and Others, the Supreme Court also recognised that the mode of recruitment is a matter falling exclusively within the domain of the executive. The scope of judicial review is severely restricted. Court cannot sit in appeal over the decision of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made which exclusively falls within the purview of the executive.

19. The question of prejudice is very important in the present case. It was for the petitioners to plead and prove how they were prejudiced by the said Institute conducting the examination. A mere violation of any rule, even if there had been any, does not necessarily make a case of prejudice. In the case of Canara Bank and Others Vs. Shri Debasis Das and Others, and in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , the Supreme Court held that there was no pleading about the alleged prejudice suffered by the petitioners in those respective cases.

20 State Bank of Patiala and others Vs. S.K. Sharma, is an authority for the proposition that in the case of violation of procedural provision which is not of substantive nature or mandatory character, if no prejudice is caused to a person, judicial interference is not called for.

21. I find that the conduct of examination by the said Institute is a matter of procedure, and the petitioners having no vested right in the procedure to be adopted by the employer for the conduct of the examination have also no right to challenge the same by way of a writ petition. No legally enforceable right of the petitioners having been violated the writ petition is clearly not maintainable.

22. The mere fact that the State Government had initially opposed the idea of the examination being conducted by an outside agency does not give the petitioners any right to challenge the entire process of selection which was validly entrusted to the said Institute.

23. So far as the other two writ petitions are concerned it appears that they have become infructuous as all the posts except the 15 posts mentioned above have already been filled up and after the observations made in connection with WP No. 20870 (W) of 2010 the other two writ petitions need not be considered any more.

24. Thus the writ petition being WP No. 20870 (W) of 2010 is dismissed and the other two writ petitions are disposed of as infructuous. All interim orders stand vacated.

25. With the disposal of the writ petitions all the connected applications are also disposed of without passing any further order on any one of them. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.