

(1992) 06 CAL CK 0035
In the Calcutta High Court
Case No : F.M.A.T. No. 2575 of 1990

W.B. Scheduled Castes and Scheduled Tribes Development Finance Corporation and Others APPELLANT

Vs

Ashis Kumar Samanta and Another RESPONDENT

Date of Decision : 09-06-1992

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4, 7
West Bengal Scheduled Castes Development and Finance Corporation Act, 1976 — Section 28

Citation : 96 CWN 1170

Hon'ble Judges : Bhagabati Prasad Banerjee, J;A.M. Sinha, J

Bench : Division Bench

Advocate : A.K. Mitra, R.N. Majumdar and S. Sil, for the Appellant;Sudipta Moitra and Subhasish Panchaal, for the Respondent

Final Decision : Dismissed

Judgement

Abani Mohan Sinha, J

1. This appeal, at the instance of West Bengal Scheduled Castes and Scheduled Tribes Development Finance Corporation and Others respondents including its Managing Director and State of West Bengal is directed against the judgement and order of learned single judge allowing the writ petition and also issuing directive to the opposite establishment, now the appellants in the present appeal by a writ of prohibition not to give any appointment to the post of Junior Assistant without first giving the appointment to the writ petitioner, the respondent. The writ petitioner, a graduate, appeared in the written examination held by the appellant undertakings on June 5, 1988 His name was sponsored by the Employment Exchange concerned on the requisition made by the appel (sic) establishment for appointment to the post of Junior Assistant. He was successful in the examination and viva voice test and his name was included in the panel of 12 candidates which was prepared and published on August 11, 1988 for

appointment in the said post. His position in the panel in order of merit was 9th, It was made clear at the time of publication of such panel that it would remain valid for one year from the date of its publication. Seven persons were given appointment from the said panel but he, however, was not given any appointment. In the meantime, further 20 vacancies occurred in the post of Junior assistant. The said corporation, appellant, sent fresh requisition to the Employment Exchange calling for names of fresh candidates in May 1983 which was occasioned on account of promotion of Junior Assistants to the post of Field Organizers. The second panel was prepared and published on September 4, 1989. The Corporation made appointments from the said panel without giving any appointment to the writ petitioner whose name existed in the first panel which was alive before processing the second panel. The grievance of the writ petitioner was that he was not given appointment although there were vacancies in the post of Field Assistant numbering about 20 which was filled up from the candidates of the second panel only ignoring the fact that the life of the first panel was not exhausted even 4 1/2 months after the starting of processing of the second panel in April, 1989. The learned Trial Judge on consideration of the respective cases and contentions of the parties and laws applicable to the facts and circumstances of the case allowed the writ petition in the manner stated above.

2. Being aggrieved by and dissatisfied with such judgement and order, the Corporation and other respondents have come up in appeal. They applied for stay of the judgement and order of the trial court before a Division Bench of this High Court but the Bench refused to grant stay holding that the petitioner could not be deprived of his right of being employed in the post for which he was selected and included in the panel for appointment to such post by having recourse to technical interpretation of the relevant provision of Employment Exchange (Compulsory Notification, of Vacancies) Act, 1959. The appellant moved in SLP for stay against such order. The Supreme Court refused to interfere with the order of the Division Bench directing the appeal to be disposed of expeditiously.

3. The only point that falls for determination of the learned trial judge can be sustained in law and in facts.

4. Mr. Anindya Mitra, learned Counsel representing the appellant being duly Assisted by Mr. R.N. Majumdar and Mr. S. Sil, has drawn our attention to section 4 of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 which requires of every employer in every establishment in public sector or in the State to notify the vacancies to the Regional Exchanges and has also urged that according to Section 28 of the West Bengal Scheduled Castes and Scheduled Tribes Development Finance Corporation Act, 1976 Corporation is bound to act according to general instruction given by the State Government to the Corporation for the purpose of recruitment of any employee under the corporation. He has again referred to the Circular issued by the Labour

Department, Government of West Bengal, to all the departments undertakings, quasi government and local bodies for the purpose of requirement establishment of employees only by making requisition of the appointments to the employment exchange and such appointments should be made through Employment Exchange, i.e. from amongst candidates forwarded by the Employment Exchange from their registered enrollment of unemployed persons after holding necessary test and selection. The relevant circular is no. 5120(60) LW dated 17th October, 1977. He has added that non compliance to the provisions of Employment Exchange (compulsory Notification of Vacancies) Act, 1959 will lead to penal consequences and make the employer liable to punishment and penalty u/s 7 of the said Act. Mr. Mitra wants to impress upon us that the appellant corporation was under compelling necessity to make the appointment from the second panel abiding by the law and rules mentioned above.

5. Mr. Moitra, learned counsel representing the respondent writ petitioner, on the other hand has urged that there is no dispute that the first panel was to be kept alive for one year and the process for making the second panel started when the first panel was alive and there is no point for not giving appointment to the writ petitioner who was enrolled in the first panel after his test and selection. The Corporation could have appointed the remaining candidates of the first panel after appointing seven successful persons in order of merit enrolled in the panel. This could have been done by offering two posts of the 10 vacancies which occurred subsequently and for which there was necessity for second requisition to the Employment Exchange and preparation of the second panel. He has referred to a decision of the Supreme Court: S. Govindaraju Vs. Karnataka S.R.T.C. and Another, which lays down that once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations, he gets the right to be considered for appointment as and when vacancy arises. It was further held with reference to the relevant regulations prepared under the Karnataka State Road Transport Corporation Act, 1950 that u/s 10(5) of the Regulation of 1982 if a candidate is enpanelled for Badli list and given employment, he will forfeit his right for being appointed in regular vacancies for which he was empanelled in the select list. Mr. Moitra has argued that the Employment Exchange concerned could not forward the name of the writ petitioner as his selection and enrollment in the first panel was not cancelled by the appointing authority. Had his candidature been cancelled, his name could have been forwarded by the Employment Exchange at the time of second requisition. It has been urged that the acts and conduct of the appointing authority put the writ petitioner in jeopardy. It is not disputed that the panel was to remain valid for one year after publication. The panel was evidently published on 11th August, 1988. So, its life would remain upto August 10, 1989. This point is not disputed by the appellant. The appellants have not made out any case why they could not give appointment to the enpanelled candidates of the first list when there were vacancies even after fulfillment of the vacancies of the first panel, for Rule 5(3) of the Employment Exchange (Compulsory Notification of

Vacancies) Rules, 1960 requires that an employer shall furnish to the concerned Employment Exchange the result of selection within 15 days from the date of selection. There is nothing on record to show that the appellant ever complied with such rule although they have recourse to the Employment Exchange Act and the Rules by way of defence throughout. The keeping of the panel alive gives minds of the empanelled persons, though could not be appointed, that they would get a chance of appointment as and when vacancy arises. The appellant-corporation did not act and conduct themselves as a fair employer. The decision cited above lays down that the rules of natural justice should come to play In such cases when an employee has been deprived of his opportunity of being employed after being selected ad empanelled.

6. In our view, the corporation should have considered the candidature of the writ petitioner before making the second requisition for employment in 16 or more vacancies from amongst the candidates forwarded by the Employment Exchange. The writ petitioners have lost the chance of getting the success of their first empanelment and also the chance of being selected in the second panel on account of peculiar acts and conduct of the Corporation. It is no argument that candidate, above the writ petitioner, no. 8 would have got chance before the writ petitioner whose serial number is 9. The person in serial no. 8 might have got appointment in some other employment in the meantime and waived his right for the appointment under the Corporation. In a recent decision:.. Sri Ashoke Alias Somna Gowda & Anr. vs. State of Karnataka, AIR 1992 SC SO on a similar case where only two aggrieved candidates sought for relief of appointment by approaching the Administrative Tribunal was granted relief in time while the Supreme Court did not feel inclined to grant relief to others not approaching for redress within reasonable tile i.e. after the lapse of four years

7. Besides on the application filed by the appellant during the pendency of this appeal wherein they prayed for leave to fill up the vacant posts under promotion quota in the category of Group C and D employees the appeal Court by an order passed on October 8, 1991 allowed the application with a direction that the appellant would be entitled to fill up the vacancies by keeping one post for the respondent writ petitioner who is interested in the proceeding subject to the decision of the appeal. So, there is no difficulty to giving appointment to the respondent writ petitioner in one of the posts of Junior Assistants as directed by the appeal court upon hearing both the parties.

8. We may refer to another decision of Supreme Court P.K. Narayanan vs. State of Kerala, reported in 1984 Supp. SCC 212 which held that the direction can be given by the Court to solve the problem of the employees when the employer wants to recruit through regular channel of Public Service Commissions terminating the services of the erstwhile employees to make room for the incoming candidates after allowing opportunities to the erstwhile employees similarly placed for being considered for appointment to the proposed vacancies.

Here the only difference is instead of Public Services Commission the processing of appointment is to be made through Employment Exchange according to Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. The principle enunciated in the decision may be applied to the case of the respondent also. Accordingly, we find no merits in the appeal which shall stand dismissed. The order of the trial court is modified to the extent that the appellant Corporation shall give appointment to the respondent in the post of Junior Assistant as undertaken by them before the court which passed an order on October 8, 1991 on their application dated 18-7-91. This order is to be implemented within one month from the date of passing of the order as such time has elapsed, say three years, since the filing of the writ petition. There is no order as to costs.

Bhagabati Prosad Banerjee, J.

I agree.