

(2008) 08 CAL CK 0022

In the Calcutta High Court

Case No : F.M.A. No. 421 of 2008 and C.A.N. No. 9839 of 2007

West Bengal State Electricity Distribution Co. Ltd. and Others	APPELLANT
Vs	
Mahadeb Das and Others	RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 — Section 3

Citation : (2008) 4 CHN 1

Hon'ble Judges : Tapan Mukherjee, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Anindya Mitra, Bhaskar Mitra and S.S. Koley, for the Appellant;Partha Sarathi Sengupta and Debjani Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—In this appeal, the basic questions that arise for consideration are:

(1) Whether the selection process that has commenced when different circulars and executive instructions held the field should be completed on the basis of those circulars and executive instructions?

(2) Whether the notifications dated 21st August, 2002 will have to be followed as that supersedes all earlier circulars and executive orders issued from time to time by the Government of West Bengal, Labour Department relating to employment of persons belonging to the exempted categories even in respect of vacancies for filling up of which selection process has already commenced?

2. The facts relevant for the purpose of deciding the above questions may be succinctly stated at the threshold to appreciate the contentions urged on behalf of the parties in this appeal.

3. The writ petitioners are all Ex-ITI trainees. On 3rd November, 1999, West

Bengal Act XIV of 1999 (hereinafter referred to as "the said Act of 1999") came into operation providing for regulations of recruitment in State Government Organisations, which included Statutory Bodies like West Bengal State Electricity Board. Section 3(a) of the Act of 1999 empowered the State Government to declare by gazette notification the categories of persons to be exempted category and Section 3(b) empowered the State Government to reserve a percentage of vacancies in the posts to be filled up by persons falling within the exempted category.

4. In March, 2001 notification for recruitment of 150 posts of Junior Operating Assistants was issued by the West Bengal State Electricity Board (predecessor-in-interest of WBSEDCL, the appellant) with a note that 30% is reserved for exempted category. The remaining 70% came within general category. At that point of time, Ex-ITI trainees, along with dependants of deceased employees, land-loosers, ex-servicemen were included within the exempted category by reason of executive instructions contained in the earlier State Government Circulars.

5. On 3rd October, 2001, WBSEB formulated the procedure of selection on the basis of performance in written tests and calling three times the number of posts for interview and medical test. The age limit was fixed at 28 years. Separate call letters were issued on 9th November, 2001 to the persons falling within the exempted category at that time including Ex-ITI trainees trained by WBSEB. Writ petitioners (respondents in the appeal) were Ex-ITI trainees and, therefore, letters were also issued to them on 9th November, 2001.

6. Written test was held on 9th December, 2001. The writ petitioners were successful and hence, called for interview. Interview was held between 6th May and 24th May, 2002.

7. The statutory notification dated 21st August, 2002 was issued by the Government of West Bengal in exercise of power u/s 3(a) of the said Act of 1999 and was published in the Official Gazette on 21st August, 2002. By this statutory notification the Government determined and made a declaration that five categories of persons will constitute in the exempted category. The Ex-ITI trainees were not mentioned or included in the exempted category. By this statutory notification the Government of West Bengal superseded all earlier circulars and executive orders issued from time to time by the Government of West Bengal in the Labour Department relating to employment of persons belonging to the exempted categories.

8. Upon completion of process of aggregating marks obtained in written test and oral test and/or interviews, two separate lists were prepared in December, 2002, one for general category and the other for exempted category and the candidates who came within the zone of consideration were called for medical tests in December, 2002. The writ petitioners were asked to appear for medical test.

9. After completion of medical tests, the two panels, one for general category and the other for exempted category including therein Ex-ITI trainees, were sent to the Government of West Bengal for approval but were rejected by the State Government on the ground that it had not been prepared in terms of the Government's notification dated 21st August, 2002. Accordingly, the aforesaid two panels were cancelled in May, 2003 and the panels were prepared afresh in December, 2003, one for exempted category and the other for general category as per the said notification dated 21st August, 2002. Ex-ITI trainees like the writ petitioners were not included in the said panel of exempted category and were transferred to general category.

10. Out of the general category (that is 70%), the first 105 candidates were selected on the basis of the aggregate marks obtained by them. The writ petitioners did not come within the zone of first 105 candidates. The State Government approved the said fresh list/panel. Accordingly, the respondents/writ petitioners were not given appointment in view of the prevailing Government policy as embodied in the notification dated 21st August, 2002.

11. Thus, the undisputed fact is that at the time of commencement of selection process, the respondents/writ petitioners as per the then executive instructions were eligible for consideration in the Exempted Category as Ex-ITI trainees. In the midst of selection process, the statutory notification dated 21st August, 2002 came into operation with immediate effect and superseded all Government circulars and executive orders.

12. The core issue is whether after the aforesaid statutory notifications became effective on and from 21st August, 2002, which superseded all earlier circulars and executive order, the respondents/writ petitioners could be considered to be within the exempted category.

13. Mr. Anindya Kr. Mitra, learned senior Counsel of the appellants herein submits that before 21st August, 2002 all steps were taken by the appellants herein for filling up the vacant posts of 105 Junior Operating Assistants under the circulars/executive instructions which were issued by the Department, of Labour, Government of West Bengal. Mr. Mitra submits that those circulars cannot confer any vested right upon the writ petitioners. It has been specifically submitted on behalf of the appellants that nonstatutory rules based on the circulars/executive instructions were in existence at the time of commencement of the selection process for filling up the aforesaid 105 vacant posts of Junior Operating Assistants in the month of March, 2001.

14. Mr. Mitra, learned Senior Counsel of the appellants urged before this Court that executive instructions do not confer any legal right and in any event, get obliterated after issuance of the statutory rules. Mr. Mitra submits that in the instant case, when the panel of exempted category was under preparation, the executive instructions governing the field stood obliterated and had become non est because of the expression "supersede" used in the statutory notification

dated August 21, 2002. Mr. Mitra further submits that the panel of exempted category was required to be prepared in accordance with the existing provisions of law and not in terms of the executive instructions which stood obliterated by the aforesaid statutory notification. Mr. Mitra relied on the following decisions of the Supreme Court in support of his aforesaid arguments:

1. K.P. Sudhakaran and Another Vs. State of Kerala and Others,

2. Balakrushna Behera and Another Vs. Satya Prakash Dash,

15. The learned Senior Counsel of the appellants submits that the writ petitioners cannot claim any right or enjoy any benefit under the executive instructions/circulars issued by the Government of West Bengal prior to 21st August, 2002 in view of the provisions of Act XIV of 1999 and pursuant to the effect of the subsequent notifications dated 21st August, 2002 in exercise of the powers conferred by Clause (a) of Section 3 of the said Act.

16. Mr. Partha Sarathi Sengupta, learned Counsel representing the respondents/writ petitioners, however, submits that the appellants herein did not refuse the claims of the said writ petitioners on the ground of application of the aforesaid notifications dated 21st August, 2002 issued under Act XIV of 1999. Referring to the written communication dated 25th June, 2004 of the General Manager, (P&A) of the appellant herein Mr. Sengupta submits that the appellants herein denied the rightful and legitimate claims of the writ petitioners upon placing reliance on the order passed by Justice Bhaskar Bhattacharya in another writ petition bearing W.P. No. 16235 (W) of 2002 whereby and whereunder Ex-ITI trainees were directed to be considered for selection in the 70% unreserved category.

17. Mr. Sengupta further submits that the aforesaid order passed by Justice Bhaskar Bhattacharya is not at all applicable in the facts of the present case. Furthermore, the said order passed by Justice Bhaskar Bhattacharya in the aforesaid writ petition was confined only to the petitioners of that writ petition and did not cover all the Ex-ITI candidates. In any event, the orders passed in the aforesaid other writ petition by Justice Bhaskar Bhattacharya do not decide the issues raised in the instant case.

18. Mr. Sengupta also submits that the appellants herein most unfortunately raised a new ground before this Court in order to deny the claims of the respondents/writ petitioners on the plea of application of the aforesaid notification dated 21st August, 2002 whereas before initiation of the present proceedings, the General Manager (P&A) of the appellant company by the aforesaid written communication dated 25th June, 2004 referred to and relied on the orders passed by Bhaskar Bhattacharya, J. in another writ petition bearing W.P. No. 16235 (W) of 2002. Mr. Sengupta took serious objections to the aforesaid conduct of the appellants herein. Mr. Sengupta submits that the aforesaid notification dated 21st August, 2002 cannot have any retrospective effect.

19. On examination of the records we find that the appellants herein undisputedly relied on the orders passed by Justice Bhaskar Bhattacharya in another writ petition bearing W.P. No. 16235 (W) of 2002 while rejecting the claims of the respondents/writ petitioners as specifically mentioned in the demand notice for justice but the said appellants raised completely new grounds while opposing the prayers of the writ petitioners made in the writ petition on the plea of application of the notification dated 21st August, 2002 issued under Clause (a) of Section 3 of Act XIV of 1999. The aforesaid notification dated 21st August, 2002 or the Act XIV of 1999 did not form the basis of the judgment and order passed by Justice Bhaskar Bhattacharya in the other writ petition bearing W.P. No. 16235 (W) of 2002. The aforesaid shifting of stand of the appellants herein cannot be appreciated by this Court.

20. Although it has been specifically urged on behalf of the appellants that the aforesaid notification dated 21st August, 2002 issued under Clause (a) of Section 3 of Act XIV of 1999 would be made applicable with retrospective effect, Mr. Sengupta, learned Counsel of the respondents/writ petitioners submits that the said notification cannot have any retrospective effect. Mr. Sengupta further submits that it is well settled Rule of Construction that every statute and/or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Neither the said notification nor the parent Act makes any provision for having retrospective effect. So, according to Mr. Sengupta, the aforesaid notification dated 21st August, 2002 is prospective in nature and cannot have any retrospective effect. Mr. Sengupta referred to and relied on the decision of the Supreme Court in the case of P. Mahendran and others Vs. State of Karnataka and others, , in support of his aforesaid contentions.

21. Mr. Sengupta also submits that in the present case since the selection process started earlier, the same will not be governed by the new rules or amended rules. Mr. Sengupta placed reliance on a Division Bench judgement of this Hon"ble Court in the case of Snehansu Jas v. State of West Bengal and Ors. reported in 2001(2) CLJ 558. In paragraph 16 of the aforesaid decision, Division Bench of this Hon"ble Court considered the effect of several earlier decisions of the Hon"ble Supreme Court and observed:

16. Therefore, the ratio of these cases is that once the selection process has already started, meanwhile if the rules are amended then in that case selection process should be allowed to continue as per the unamended rules and the amended rules will not affect the selection process which has commenced under the unamended rules.

22. Mr. Anindya Mitra, learned senior Counsel of the appellants submits that preparation of panel is not completion of selection procedure. According to Mr. Mitra, even upon being placed in a panel of general category or exempted category, as the case may be, the same does not confer any vested right in the persons so empanelled in the lists. Mr. Mitra further submits that the placement

in panel is not a selection. It has also been argued on behalf of the appellants that the approval of State Government to the panel of lists prepared by the appellants in the instant case renders the said lists panel to be valid and, therefore, inclusion of names in invalid lists and panels prepared by the appellants in ignorance of the prevailing law, and not approved by the State Government, do not confer any right at all of being further considered for appointment.

23. Mr. Mitra referred to and relied on the following decisions of the Hon''ble Supreme Court in support of the above submissions:

1. Balakrushna Behera and Another Vs. Satya Prakash Dash,
2. 1993 Supp (2) SCC 600, Jai Singh Dalai and Ors. v. State of Haryana and Anr. (Paragraph 7)
3. Union of India and others Vs. K.V. Vijesh, .

24. Mr. Mitra further submits that in the instant case even if the Board acted contrary to the executive instructions as prevailing on the date of commencement of selection process, the said action is not arbitrary and is proper because of the statutory notification dated 21st August, 2002. It has also been submitted on behalf of the appellants that the direction for preparation of panel in accordance with the said statutory notification given by the State Government is reasonable and the appellants acted bona fide by following the Government direction. Mr. Mitra submits that even if there were no statutory rules, acting in derogation of earlier executive instructions would not be per se bad, if such action is otherwise not arbitrary or unreasonable. The following decisions are relied upon in support of the aforesaid submissions of the appellants:

1. Secretary, State of Karnataka and Others Vs. Umadevi and Others,
2. AIR2006SC2138 , K.P. Sudhakaran and Anr. v. State of Kerala and Ors. (Paragraphs 12.4 & 14)
3. The Chief Commercial Manager, South Central Railway, Secunderabad and Others Vs. G. Ratnam and Others,
4. State of A.P. and Others Vs. D. Dastagiri and Others,

25. Mr. Songupta, learned Counsel of the respondents/writ petitioners emphatically submits that at every stage of selection, a right accrues. According to Mr. Sengupta, a candidate successful in the written test acquires a right to be called for interview or personality test. Similarly, a candidate, successful in the personality test acquires a right to be empanelled and an empanelled candidate acquires a right to be considered for appointment. Mr. Sengupta further submits that in this case the right which has accrued in favour of the writ petitioners by virtue of their empanelment in the 30% exempted category list cannot be taken away and/or curtailed by the notification dated 21st August, 2002. The learned Counsel of the respondents/writ petitioners relied on the following decisions in

support of his aforesaid contentions:

1. P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others,
2. P. Mahendran and others Vs. State of Karnataka and others,
3. N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others,
4. Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others,

26. Considering the rival contentions of the respective parties we find that in the present case undisputedly, the selection process commenced under valid executive instructions which held the field at the relevant time. Under such executive instructions, the respondents/writ petitioners were entitled to be considered for appointment to the post for which selection commenced. In the absence of any statutory rules, those instructions validly governed the rights of the parties.

27. In the present case, panel was prepared under the rules prevailing at the relevant time. Therefore, the right of the respondents/writ petitioners of being considered for appointment on the basis of the aforesaid panel cannot be frustrated on the basis of the provisions of law subsequently notified which changed the basis of selection.

28. In the case of P. Mahendran and others Vs. State of Karnataka and others, , Hon''ble Supreme Court specifically held that selection process is to be completed in accordance with law as it stood at its commencement and the amended rule would not invalidate the selection already made. In the aforesaid decision, Hon''ble Supreme Court observed as follows:

5. It is well-settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the emending Rules came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject-matter....

7. In view of the above the appellants' selection and appointment could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection. The amended Rule could not be applied to invalidate the selection made by the Commission....

11. ...It is true that a candidate does not get any right to the post by merely making an application for the same, but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment rules. If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment Rules he acquires right to be considered for selection in accordance with the then existing Rules. This right cannot be affected by amendment of any Rule unless the amending Rule is retrospective in nature....

29. In the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, , Hon"ble Supreme Court observed:

11. ...Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication, if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the Rules and Orders which were in force on the date of advertisement....

30. It has been very seriously argued on behalf of the appellants that in the instant case, statutory rules came into operation immediately after issuance of the notification under Clause (a) of Section 3 of Act XIV of 1999 dated 21st August, 2002 which superseded all earlier administrative instructions and, therefore, the respondents/writ petitioners are not entitled to enjoy any right or benefit on the basis of the earlier executive instructions which stood superseded by operation of law. Mr. Mitra, learned Senior Counsel of the appellants also submits that the aforesaid notification dated 21st August, 2002 does not contain any saving Clause for exempting pending selection process and, therefore, the names of the respondents/writ petitioners herein cannot remain in the panel of the exempted category candidates after issuance of the aforesaid notification dated 21st August, 2002. The notification issued under Clause (a) of Section 3 of Act XIV of 1999 dated 21st August, 2002 is very much prospective in nature in absence of any specific provision granting retrospective effect to the same. Mr. Mitra placed reliance on the following decisions of the Supreme Court in support of his aforesaid submissions:

1. K.P. Sudhakaran and Another Vs. State of Kerala and Others,

2. Balakrushna Behera and Another Vs. Satya Prakash Dash, .

31. Speaking for the majority, in the case of Keshavan Madhava Menon Vs. The State of Bombay, , S.R. Das, J. observed:

7. ...As explained above, Article 13(1) is entirely prospective in its operation & as it was not intended to have any retrospective effect there was no necessity at all for inserting in that Article any such saving clause.

34. Therefore, in the present case, we are also of the opinion that there is no necessity to add any saving Clause since the notification dated 21st August, 2002 is not retrospective in nature.

35. Mr. Anindya Mitra, learned Senior Counsel of the appellants relied on the decision of the Hon'ble Supreme Court in the case of K.P. Sudhakaran and Another Vs. State of Kerala and Others, and put much emphasis on the last sentence of Paragraph 14 of the aforesaid decision. The said last sentence of Paragraph 14 is quoted hereunder:

14. ...Where Statutory Rules govern the field, prior executive instructions cease to apply.

34. In our opinion, the aforesaid observation has to be read in the factual context mentioned in Paragraph 12.3 of the aforesaid judgment wherein it has been specifically noted that a proviso was inserted to Clause (a) of Rule 27 and the note to the said proviso stated that the amendment shall be deemed to have come into force with effect from 28.12.1960. (Emphasis added) Naturally, the G.Os. dated 2.1.1961 and 27.5.1971 ceased to have any effect. It is only because the amendment was given retrospective effect.

35. In the aforesaid circumstances, the aforesaid decision of the Hon'ble Supreme Court has no manner of application in the facts of the present case.

36. The other decision cited by Mr. Mitra in the case of Balakrushna Behera and Another Vs. Satya Prakash Dash, , is also not application the facts of the present case. In Paragraph 10 of the aforesaid decision, Hon'ble Supreme Court specifically records that it was concerned with the question whether the Court can direct the State Government by a writ of mandamus to appoint a person against the post which has been abolished by the State Government. In the present case, the posts are very much available and should be filled up and, therefore, the aforesaid decision is clearly distinguishable on facts.

37. The learned Single Judge, in our opinion, has rightly held that even if the notification issued on 21st August, 2002 superseded the earlier circulars/ executive instructions, the same cannot take away the benefits which stood conferred upon the writ petitioners by reason of the said circulars/executive instructions on the basis of which the said writ petitioners should be treated as exempted category candidates.

38. For the aforementioned reasons, we are of the opinion that the selection process in the instant case should be completed on the basis of the circulars/ executive instructions which held the field at the commencement of the said selection process and the notification dated 21st August, 2002 issued under Clause (a) of Section 3 of Act XIV of 1999 has no manner of application to

influence and/or disturb the selection process which has already commenced on the basis of the different circulars/executive instructions which held the field at the time of commencement of the said selection process.

39. Mr. Mitra also argued another point on behalf of the appellants that the writ petition was not maintainable as the appointees were not made party to the writ petition. The aforesaid objection, in our opinion, is devoid of any merit as the interests of the appointees will not be affected in the event any relief is granted to the writ petitioners. Furthermore, it has been clearly mentioned on behalf of the appellants in the affidavit-in-opposition filed in connection with the writ petition before the learned Single Judge that the posts to be filled up by the exempted category candidates have been kept vacant as no candidates were found in the said exempted category.

40 The relevant portion from paragraph 20 of the said affidavit-in-opposition is set out hereunder:

...As no candidates were found in the 30% exempted category as per the said Notification dated 21st August, 2002, no list was prepared in the 30% exempted category, and, the said posts were and/or have been kept vacant.

41. The writ petitioners have undisputedly claimed relief from the appellants herein and no relief has been claimed against the appointees. Therefore, the appointees are not at all necessary parties in the facts of the present case.

42. Mr. Mitra, learned Senior Counsel of the appellants has also argued that the names of the respondents/writ petitioners were included in the panel of Exempted category due to mistake of law and ignorance of the statutory notification dated 21st August, 2002 issued by the Government of West Bengal. Mr. Mitra submits that mistake of law cannot confer any right and such mistake can be corrected at any time. Mr. Mitra relied on the following decisions of the Supreme Court in support of his aforesaid contentions:

1. Chandigarh Administration and Others Vs. Naurang Singh and Others,
2. Union of India (UOI) and Another Vs. Narendra Singh,

43. There is no dispute with regard to the principles of law decided in the aforesaid decisions. However, we are not inclined to accept that the names of the respondents/writ petitioners were included in the panel of exempted category due to any mistake of law or ignorance of the statutory notification dated 21st August, 2002 as submitted on behalf of the appellants herein.

44. We have already discussed the effect of the statutory notification dated 21st August, 2002 in the matter of preparation of the panels for recruitment of 150 posts of Junior Operating Assistants and, therefore, we find no scope for detection of any mistake by the State Government in the matter of preparation of panel in the present case.

45. The alleged detection of mistake at the instance of the State Government

and rectification of the same by preparing fresh panels at the instance of the appellants herein cannot be approved by us since we have specifically held that the notification dated 21st August, 2002 cannot be made applicable where selection process had commenced before issuance of the said notification. We do not find any valid reason for cancellation of the earlier panels and preparation of fresh panels by the appellants herein.

46. Mr. Mitra although argued before this Court that appointment should be made as per law prevailing at the time of appointment, the same, however, cannot take away the right already accrued in favour of the selected candidates. Since the statutory notification issued on 21st August, 2002 was not retrospective in nature, the same could not adversely affect the rights of the respondents/writ petitioners who were already empanelled in the exempted category and awaiting appointment to the posts of Junior Operating Assistants.

47. Mr. Mitra also urged that Court cannot direct appointment and the direction issued by the learned Single Judge in this regard cannot be sustained in the eye of law.

48. We are unable to agree with the aforesaid contentions of Mr. Mitra since the application of law would depend upon the facts in each case.

49. In the present case, it is not in dispute that the respondents/writ petitioners herein were empanelled in the exempted category and subsequently, the appellants herein cancelled the same illegally upon placing reliance on the notification dated 21st August, 2002 without realising that the said notification could not be made applicable with retrospective effect. Admittedly, the posts earmarked for the 30% exempted category are still lying vacant as no candidates were found in the said exempted category after removal of the names of the respondents/writ petitioners in an illegal manner on the basis of wrongful application of the notification dated 21st August, 2002 although 70% unreserved category posts have already been filled up.

50. It is true that the appellants herein being the employers are entitled to take appropriate decision regarding filling up the vacant posts and Court cannot direct appointment under normal circumstances but in the instant case, we find that the appellants herein could not fill up the 30% exempted category posts after removal of the names of the respondents/writ petitioners illegally from the panel prepared for the said exempted category candidates as no other candidates were found in the said panel.

51. Since we have already held that the names of the respondents/writ petitioners should remain in the panel of the exempted category candidates as originally prepared by the appellants herein, there would be no difficulty now for filling up the posts earmarked for 30% exempted category.

52. After initiating the selection process, employer/employers may ultimately refuse to fill up the vacant posts and abandon the selection process but cannot

take an arbitrary decision to fill up only the unreserved posts leaving the reserved posts vacant in spite of availability of the eligible candidates.

53. The learned Single Judge did not direct the appellants to appoint any individual candidate. The appellants took specific stand before the learned Single Judge that the vacant posts reserved for 30% exempted category candidates could not be filled up due to non-availability of any candidate in the panel of the exempted category after removing the names of the respondents/writ petitioners from the said panel in view of the aforesaid notification dated 21st August, 2002.

54. The learned Single Judge ultimately held that the names of the respondents/writ petitioners should not have been removed from the panel of exempted category candidates prepared earlier by the appellants pursuant to the aforesaid notification dated 21st August, 2002 and arrived at the conclusion that the said writ petitioners cannot be deprived of the benefits which they are entitled to claim in terms of the Government circulars/executive instructions which occupied the field when there was no statutory notification.

55. In the aforesaid circumstances, learned Single Judge directed the appellants herein to allow the benefit of the circulars to the writ petitioners and also issued ancillary direction granting consequential relief to the said writ petitioners by directing the appellants to appoint them to the posts in question on the basis of the panel prepared by the said appellants for the exempted category candidates upon taking note of the fact that the names of the respondents/writ petitioners were included in the panel prepared for the exempted category candidates by the appellants herein on the basis of the written test held on 9th December, 2001 and the subsequent interview/personality test and further taking into consideration that the said writ petitioners were all declared qualified by the appellants and admittedly placed in the panel of exempted category for appointment to the vacant posts in question reserved for the exempted category candidates.

56. We do not find any illegality and/or irregularity in the aforesaid direction of the learned Single Judge.

57. In the aforesaid circumstances, the learned Single Judge has rightly granted consequential relief to the respondents/writ petitioners by issuing direction for filling up the exempted category posts by the candidates who have already been empanelled in the said category by the appellants herein.

58. For the reasons discussed hereinbefore, we find no reason to interfere with the decision of the learned Single Judge and we affirm the judgment and order under appeal passed by the said learned Single Judge.

59. In the result, this appeal is dismissed as there is no merit.

60. In view of the disposal of the appeal no further order is required to be passed in the connected stay application and the same is also disposed of accordingly.

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

62. 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.

Tapan Mukherjee, J.

I agree.

Later:

63. After pronouncement of the judgment, Mr. Bhaskar Mitra, learned Counsel representing the appellants prays for stay of the operation of the said judgment and order. We find no reason to grant such stay.

64. Accordingly, the prayer for stay is refused.