

# SUPREME COURT OF INDIA

Buddhadeb Ruidas

Vs.

State of W.B.

C.A.Nos.6748-6749 of 2013

(H.L.Dattu and Dipak Misra JJ.)

13.08.2013

## JUDGMENT

### **DIPAK MISRA, J.**

1. Leave granted in all the special leave petitions.
2. Regard being had to the similitude of the seminal issue that arises for consideration in all these appeals they were heard together and are disposed of by a common judgment. For the sake of clarity and convenience we shall state the facts from Civil Appeal arising out of SLP (C) Nos. 6177-6178 of 2012) wherein the challenge is to the judgment and order dated 11.11.2011 in WPST Nos. 269 and 275 of 2011 passed by the High Court of Calcutta.
3. The factual score as depicted is that the Deputy Secretary (Rev.), Irrigation and Waterways Directorate of the Government of West Bengal vide memo No. 773-IE dated 29.6.2006 directed the Director of Personnel and Ex-Officio Chief Engineer, Irrigation and Waterways, to issue instructions to the Superintending Engineers of different circles to call for names of eligible candidates for recruitment to 1446 group 'D' posts under the irrigation and Waterways Directorate, Government of West Bengal. In pursuance of the said direction the departmental authorities in accordance with Section 4 of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 (for brevity 'the Act') requisitioned names from many an employment exchange. At this juncture, many aspirants approached the West Bengal Administrative Tribunal (for short 'the tribunal') which permitted the applicants therein to participate in the selection

process. Eventually, 57,437 candidates took part in the selection process. It is apt to note here that 24520 candidates were sponsored by the employment exchange. After following due procedure a select list of the selected candidates was prepared and the same was published on 24.7.2010.

4. As the facts would unfurl, the respondents 4 and 5 preferred O.A. No. 454 of 2010 before the tribunal assailing the process of selection. The tribunal by its order dated 26.8.2010 declined to pass an interim order which was challenged before the High Court in WPST No. 542 of 2010 wherein the High Court passed an order that if any panel had already been prepared, no effect should be given to such a panel and no appointment from the said panel should be given till disposal of the original application before the tribunal. Thereafter, the tribunal by its judgment dated 30.8.2011, after hearing the applicants and some of the selectees who were impleaded as parties and the State of West Bengal, came to hold that as the Department had not advertised the posts in the newspapers and the entire recruitment process had taken place by calling names from the employment exchange and hence, the selection was vitiated. Be it noted, similar orders were passed by the tribunal at the instance of other applicants in other original applications and all the aggrieved parties approached the High Court in different writ petitions. The High Court on different dates disposing of the writ petitions has concurred with the view expressed by the tribunal by opining that the plea of limitation raised before the tribunal was sans substance and the restricted selection by calling for names from the employment exchange invites the frown of Articles 14 and 16 of the Constitution and, accordingly, dismissed the writ petitions. Being aggrieved by the aforesaid orders, the present appeals have been preferred by way of special leave.

5. We have heard Mr. L. Nageswara Rao, learned senior counsel, and Mr. Chanchal Kumar Ganguli, learned counsel for the appellants and Mr. Kalyan K. Bandopadhyay, learned senior counsel for the State. Despite notice, no one has appeared for the contesting respondents.

6. On a perusal of the orders passed by the tribunal and the High Court it is evincible that on a singular ground, namely, there was no advertisement for direct recruitment the select list was quashed. For arriving at the said conclusion reliance has been placed on the authority in *Excise Superintendent, Malkapatnam, Krishna District, A.P. V. K.B.N. Visweshwara Rao and others*[1]. The principle laid down in the aforementioned authority has been reiterated in *Union Public Service Commission v. Girish Jayanti Lal Vaghela and others*[2], *National Fertilizers Ltd. and others v. Somvir Singh*[3], *Nagendra Chandra and others v. State of Jharkhand*

and others[4], State of Bihar v. Upendra Narayan Singh and others[5] and State of Orissa and Anr. v. Mamata Mohanty[6].

7. There cannot be any dispute with regard to the aforesaid proposition of law. However, Mr. Nageshwar Rao, learned senior counsel, and Mr. Chanchal Kumar Ganguli, learned counsel for the appellants would submit that the obtaining factual matrix exposit a different scenario altogether. They would submit that Section 4 of the Act lays down a different process and that being the legislation operating in the field, it was obligatory on the part of the tribunal and the High Court to accept the stand put forth by the affected parties. They would further contend that when more than 57000 candidates participated in the selection process, it should not have been treated to be a selection restricted to the candidates sponsored by the employment exchange.

8. The learned counsel for the State supporting the stand of the appellants submitted that the functionaries of the State followed the mandate of Section 4 and that is how names were called from the employment exchange and thereafter, at the district level wide publicity was given and also on the basis of the order passed by the tribunal several thousand candidates appeared and regard being had to the totality of circumstances, it should have been treated as a fair selection and the High Court should not have concurred with the view expressed by the tribunal in quashing the panel, for the candidates were selected in respect of group 'D' posts and they come from absolutely poverty-stricken background. The learned senior counsel would further apprise us that vide memorandum No. 101-EMP dated 25.7.2008 the State Government has already directed that henceforth all appointing authorities in the State Government establishment and the establishments of Public Undertakings Statutory Bodies, Government companies and local authorities shall, in addition to obtaining names from the employment exchange, give wide publicity to fill up vacancies in newspapers having wider circulation and display the vacancies on the offices' notice boards in such a manner as to ensure reasonable opportunity of response from the eligible candidates for due consideration of their candidature in the recruitment process. However, he would contend that keeping in view the statutory provision, names were called from employment exchange and when large number of candidates had appeared in the selection process, it was not appropriate on the part of the tribunal and the High Court to set aside the same on at the behest of two applicants.

9. At this stage we may profitably refer to Section 4 of the Act which reads as under: -

“4. Vacancies to be filled up by persons sponsored by employment exchange. - After the commencement of this Act, all vacancies in the posts in any Government establishment or establishment of any public undertaking, statutory body, Government company or local authority shall be filled up by such persons as may be sponsored by an employment exchange.”

10. Section 6 of the Act reads as follows: -

“6. Employment exchange to submit list of registrants to appointing authority – The employment exchange shall, on receipt of the requisition under section 5, submit to the appointing authority a list of registrants, other than the registrants who belong to the exempted category, in order of seniority determined on the basis of the length of the period of registration in that employment exchange and in accordance with such principle of rotation as the Director of Employment may prescribe from time to time, and also in conformity with the qualification, age, experience or other requirement, if any, as stated in the requisition.”

11. We have referred to the aforesaid provisions only to appreciate the statutory scheme. The Act provides that the persons are to be selected from the candidates sponsored by the employment exchange. It is admitted by the learned counsel for the State that on the basis of the statutory command names were called for from the employment exchange. As stated earlier, he would clarify that though the names were called for from the employment exchange, the process of selection was not restricted to only the sponsored candidates. In essence, the submission of the learned counsel for the appellants and the learned counsel for the State that when thousands of candidates had appeared, though not sponsored by the employment exchange, the panel prepared after following due procedure should not have been quashed.

12. There can be no scintilla of doubt that there was requirement of advertisement for inviting the names. However, as we perceive, the present case projects a totally different picture. The number of posts available was 1446 in the group ‘D’ category. For the said posts more than 57000 candidates competed. On a query being made, the learned counsel for the State would admit that the vacancies have not been filled up because of pendency of litigation. Regard being had to the special features of the case, we are inclined to set aside the order of the High Court and that of the tribunal and we so do. We further direct the State Government to fill up the posts available from among the select list. We may hasten to clarify that if any one whose name features in the select list has been appointed in any other

department or statutory organization or Government company, he cannot claim an appointment in the Department of Irrigation and Waterways. We further direct the respondent-State and its functionaries to adjust respondents 1 and 2 and extend them the benefit of appointment. The appointees cannot claim any seniority with retrospective effect as that might create cavil amongst the appointees in other departments at earlier point of time. The aforesaid exercise shall be completed within a period of eight weeks from today.

13. The appeals are disposed of in above terms. However, there is no order as to costs.

[1] (1996) 6 SCC 216

[2] (2006) 2 SCC 482

[3] (2006) 5 SCC 493

[4] (2008) 1 SCC 798

[5] (2009) 5 SCC 65

[6] (2011) 3 SCC 436