

Debendranath Banerjee Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Dec. 24, 2008

Acts Referred: Constitution of India, 1950 " Article 309

West Bengal Services (appointment, probation and confirmation) Rules, 1979 " Rule 5(2)

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

Bench: Division Bench

Advocate: Bikash Ranjan Bhattacharya and Mrinal Kanti Biswas, for the Appellant; Goutam Wilson and Shyama Prasad Purakait, for the Respondent

Final Decision: Dismissed

Judgement

Tapan Mukherjee, J.

This appeal at the instance of the writ petitioner is directed against the judgment and order passed by the Learned

Single Judge in W.P. No. 4268 (W) of 1997 dismissing the writ petition.

2. The writ petitioner-appellant was appointed as Lower Division Assistant (Typist Clerk) in the year 1987 in the English Department of the

District Judge's Court, Purulia.

3. He was confirmed in that post and subsequently in 1994 he was appointed as process verification Clerk. Since then he had been discharging his

service as Lower Division Assistant. In addition to his work he used to serve as stenographer to the highest satisfaction of the authority.

4. In July 1995, due to retirement of a Stenographer the post of Stenographer fell vacant. He made appeal to the District Judge, Purulia on

19.7.1995 to absorb him in the said post of stenographer as he was working as stenographer in addition to his normal duty to the fullest

satisfaction of the District Judge, Purulia.

5. Considering his prayer the District Judge, Purulia permitted him to appear in the competitive examination for the said post along with other

candidates and thereafter, the Chairman, Selection Committee of the said Office, Purulia issued call letter asking him to appear before him on

18.9.1995 for written test, shorthand dictation, typing test and viva voce test for the post of stenographer. The concerned authority selected and

appointed the writ petitioner-appellant to the post of Stenographer. The writ petitioner joined the post on 22.9.1995 and since then he has been

discharging his duty as Stenographer. His appointment was confirmed as a Stenographer of the Judgeship with effect from 22.9.1995 under Rule

5(2) of the West Bengal Services (appointment, probation and confirmation) Rules, 1979 and by issuing letter dated 30.9.1996 the District Judge

communicated the confirmation order to the Deputy Secretary, Government of West Bengal Finance Department, Audit Branch for taking

necessary step in this regard and the concerned Deputy Secretary held that appointment of the petitioner in the said post was irregular and

suggested for reverting the petitioner to his present post of Typist Clerk with immediate effect and under his letter dated 7.2.1997 observed that

the vacancy should have been reported to P.S.C. for filling up the said post in view of the Finance Department Notification No. 9650 of

22.8.1989.

6. The District Judge issued the order of reversion of the writ petitioner to the post of Lower Division Assistant.

7. Challenging the said order of reversion and Recruitment Rules of the Stenographer issued by State Government the writ petition was filed.

8. Learned Trial Judge by the impugned order dismissed the writ petition. Being aggrieved by the said order the writ petitioner-appellant has filed

the instant appeal.

9. It is contended by the learned senior counsel Mr. Bikash Ranjan Bhattacharya on behalf of the writ petitioner-appellant that the District Judge

being Head of the office is the appointing authority and he rightly appointed the appellant rightly to the post of Stenographer and such appointment

cannot be challenged.

10. It is further contended by the learned senior counsel Mr. Bhattacharya that though in the appointment letter dated 21.9.1995 the District Judge

used the word ""promoted"" and ""appointed"" to the post of Stenographer but in fact he was appointed to the said post and use of the word

promotion"" by the District Judge is a misnomer.

11. It is further contended by the learned senior counsel Mr. Bhattacharya that Notification No. 9650(F) dated 22.8.1989 laying down the manner

of recruitment of the Stenographer on the basis of competitive examination held by the P.S.C. does not apply to the case of appointment of

Stenographer by the District Judge. As the Office of the District Judge is not the subordinate office under the Government of West Bengal and the

Stenographer does not belong to such subordinate office the District Judge being Head of the office had authority to appoint the writ petitioner as

Stenographer and in the competitive examination for the post of Stenographer the candidature of the writ petitioner was rightly considered along

with the candidates sponsored by the Employment Exchange and the writ petitioner was selected on merit and as such order of the appointment

cannot be interfered with and the petitioner cannot be reverted to the post of Lower Division Assistant.

12. Learned senior counsel Mr. Bhattacharya has further contended that the post of Stenographer is a non-P.S.C. post and as per the Notification

No. 5120(60) LW dated 17.10.1977 issued by Labour Department, Government of West Bengal the appointment should be made through

Employment Exchange and that was rightly done in the case of the petitioner.

13. Learned senior counsel Mr. Bhattacharya has also referred to the letter of the District Judge, Purulia dated 21.11.2002 in support of his

contention that the District Judge had the jurisdiction to recruit the Stenographer without referring the matter to the P.S.C. Learned Counsel for the

State has supported the order of dismissal of the writ petition by the Learned Single Judge contending that the post of Stenographer is a P.S.C.

post as per the Finance Department Notification No. 9650(F) dated 22.8.1989 and the District Judge has no authority to hold examination for

selection of the Stenographer. Selection of such post of Stenographer must be made by the P.S.C. and the District Judge will issue only

appointment letter.

14. Learned Counsel for the State has further contended that the Office of the District Judge is Subordinate Office under the Judicial Department

of the Government of West Bengal and in case of appointment of the Stenographer the said Notification No. 9650(F) dated 22.8.1989 applies

and appointment of the petitioner as Stenographer by the District Judge on the basis of the examination held by him is contrary to the mode of

appointment of Stenographer as provided in the said Notification. It has also been submitted on behalf of State respondents that appointment of

the writ petitioner-appellant as Stenographer by the District Judge cannot stand in law and he was required to be reverted to the post of L.D.

Assistant under the relevant provisions of the Government order and he has been rightly reverted to the post of Lower Division Assistant.

15. It is further contended by the learned Counsel for the State that the post of Stenographer is included in Schedule "B" of the said Finance

Department Notification No. 9650(F). It is undisputed that the petitioner was selected by the District Judge, Purulia and he was appointed for the

post of Stenographer. In the order of appointment the word ""promotion"" has been used but in fact the writ petitioner was not promoted to the said

post. To the contrary, he was appointed on the basis of the competitive examination in which the writ petitioner and other candidates sponsored by

the Employment Exchange appeared. The use of said word "promotion" is superfluous.

16. The Notification No. 9650(F) dated 22.8.1989 embodies the Rules regulating the recruitment to the posts of English Stenographer (Basic

Grade) in the Secretariat Departments, Directorates and other Sub-ordinate offices under the Government of West Bengal. The said Rules were

made by the Governor in exercise of the power conferred by the proviso to Article 309 of the Constitution of India. It is provided in the Rules that

appointments to the posts of English Stenographer (Basic Grade) in Schedule "A" and Schedule "B" shall be made on the result of an open

competitive examination to be held by the Public Service Commission, West Bengal. The Appointing Authority in respect of Schedule "A" posts

has been shown to be the Deputy Secretary, Finance Department, Government of West Bengal and the Appointing Authority in respect of

Schedule "B" post has been shown to be the Deputy Secretary of a Department, Head of a Directorate and Head of an Office.

17. The said Rules make the appointments of the Stenographers to Schedule "A" and Schedule "B" posts compulsory on the basis of an open

competitive examination to be held by the P.S.C., West Bengal. In other words, the post of a Stenographer is a P.S.C. post. The selection is to be

made by the P.S.C. on the basis of competitive examination and the appointment is to be made by the Appointing Authority as provided in the said

Rules. The Schedule "A" does not contemplate the Stenographers in the establishment of the District Judge but Schedule "B" Clause (c) relates to

all other posts of Stenographers not included in Schedule "A". The posts of Stenographers of the District Judge fall within Clause (c) of Schedule

"B" and Office of the District Judge certainly falls within the expression "other subordinate offices under the Government of West Bengal". The

staffs of the District Judge are surely the Government servants. There is nothing to show that there are Rules prescribing method of recruitment of

the regular Stenographer in the District Judge's Office by the District Judge and not by the P.S.C. So the said Rules of 1989 are to be followed in

the matter of recruitment of Stenographers and the matter of recruitment of Stenographers is to be left to P.S.C. and after selection of

Stenographers by the P.S.C. on the basis of results of an open competitive examination appointment is to be given by the District Judge as Head of

the Office.

18. In this case, in view of the said Rules the District Judge had no authority to appoint the Stenographer by holding examination. He should have

written to the P.S.C. for selection of the Stenographer and then he should have made necessary appointment. As recruitment of the writ petitioner-

appellant is not made in terms of the said Rules so, the said appointment of the writ petitioner is patently illegal and the same cannot stand in law

and the reversion of the writ petitioner to the post of Lower Division Clerk is quite justified and there is nothing to interfere with such order of

reversion.

19. The Labour Department Notification No. 5120(60) LW dated 17.10.1977 relied by learned senior counsel for the appellant applies in the

case of compulsory recruitment in all non-P.S.C. vacancies in the State Government establishments, State Government undertakings, Quasi-

Government establishments and Local bodies and it does not apply to P.S.C. vacancies.

20. It will not be off the point to refer to the Notification No. 675-F dated 15.1.1996 which gives protection to the Stenographers recruited

otherwise than through Public Service Commission, West Bengal upto 31.12.1990 and whose recruitment process started before 12.8.1989. As

the writ petitioner was appointed on 21.9.1995 so the said Notification also does not protect the writ petitioner-appellant.

21. Last but not the least is the letter dated 21.11.2002 of the District Judge, Purulia, referred by learned senior counsel for the appellant. The said

letter relates to appointment of the Steno-Typist for the Fast Track Courts and does not relate to the regular appointment of Stenographers for the

Court or Office of the District Judge. In the said letter, the District Judge, Purulia has mentioned that Governor has been pleased to give special

jurisdiction to the District and Sessions Judge for recruitment of Steno-Typist issuing the Notification No. 10408(17)J/1B-126/J/1B-126/01 dated

27.11.2001 and the High Court has directed the District Judge to appoint the Steno-Typist. The Steno-Typists in that case were to be recruited

for the Fast Track Courts. The letter dated 27.11.2001 provides that Steno-Typist may be appointed in the Fast Track Courts on contract basis in

place of Stenographer since the Stenographer is recruited through Public Service Commission of West Bengal. It is thus clear from the said letter

that the Stenographer was to be recruited through Public Service Commission, West Bengal and Steno-Typist not the Stenographer can be

recruited for the Fast Track Court on contract basis. So the letter of the District Judge and the concerned letter 27.11.2001 of the Judicial

Department do not help the writ petitioner-appellant in any way to defend the appointment of the writ petitioner to the post of Stenographer by the

District Judge.

22. In the result, the appeal fails and the writ petition merits dismissal. The appeal, is, therefore dismissed.

23. The order of dismissal of the writ petition passed by the Learned Single Judge stands affirmed. We make no order as to costs.

24. Urgent xerox certified copy, if applied for, be given to the parties as expeditiously as possible.

Tapan Mukherjee, J.

25. I agree.