

(2000) 09 CAL CK 0002

Calcutta High Court

Case No: Writ Petition No. 14726 (W) of 2000

Shyam Sundir Koley

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Sept. 6, 2000

Citation: (2001) 1 ILR (Cal) 169

Hon'ble Judges: Dilip Kumar Seth, J

Bench: Single Bench

Advocate: Jamini Kanta Ghosh, for the Appellant; Bharatt Mutsuddi and Sibani Bhagat for State, for the Respondent

Judgement

Dilip Kumar Seth, J.

The Petitioners are tax collectors in the Panchayat. In the meantime, The West Bengal Panchayat (Gram Panchayat Miscellaneous Accounts and Audit) Rules, 1990 have come into force. By reason of Rule 33 of the said Rules the Petitioners appear to be governed by the said Rules as soon as the same had come into effect. The said Rules provide as follows:

33. Collecting Sarkars (1) If considered necessary and expedient, Gram Panchayats may, at its, meeting resolve to engage for a specified period, not exceeding two years at a time, not more than two persons to work on commission basis, as Collecting Sarkar for collection of rates, taxes and fees assessed by the Gram Panchayat. The Gram Panchayat shall also determine at the meeting the rate of commission payable to Collecting Sarkar subject to the maximum limit fixed by the Government from time to time, and also the amount of security deposit to be pledged by the Collecting Sarkar, subject to the minimum as may be fixed by the Government from time to time.

(2) On deposit of the security as fixed by the Gram Panchayat, the Collecting Sarkar shall be given a receipt book as prescribed in Form 4. Each individual collection shall be made against each individual receipt and as soon as the Collecting Sarkar has Rs.

50 or more, in hand he shall make over the amount to the Secretary/the Pradhan for crediting to the Gram Panchayat Fund.

(3) Gram Panchayat may take disciplinary action against a Collecting Sarkar by earlier termination of contract (and forfeiting his security deposit in the case of misappropriation of money) on charges of incompetence, negligence of duty or any other irregularity committed by him.

Before taking such disciplinary action, the Gram Panchayat shall frame a charge against him, give him a copy thereof requesting him to submit his explanation within a specified time and also give him opportunity of personal hearing and shall record in writing the evidence given by him, or by his witness, if any.

2. The above provision clearly indicates that engagement of the Petitioners are on contract basis and subject to the provisions contained therein. Thus such appointment does not confer any right on the Petitioners to be regularized or being absorbed in the Panchayat as was held by the Division Bench in M.A.T. 4027 of 1999 Biplab Kumar Das Mahapatra and Ors. v. State of West Bengal and Ors. Unreported judgment disposed of on April 27, 2000 disposed of on April 27, 2000. Therefore the Petitioners cannot claim any right with regard thereto.

3. In the present case the Petitioners claim that by reason of their such engagement they are claiming a right to participate in the selection which is going to be held on September 10, 2000 in terms of the provisions contained in the West Bengal Regulation of Recruitment in State Government Establishment and Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999. By reason of the said provision of recruitment in the Panchayat, in the absence of any specific rule governing the recruitment, the recruitments are to be governed by the said Act. The Act also prescribes that all appointments or recruitments are to be made from amongst the persons as may be sponsored by the employment exchange. Thus in order to participate in the recruitment a person is eligible only if his name is sponsored through employment exchange.

4. It has been repeatedly held by the Apex Court that there can not be any appointment do here the recruitment process. In State of Himachal Pradesh v. Suresh Kumar Verma 1996 (2) S.L.R. 321 the Apex Court had held that the judicial process can not be utilized to support a mode of recruitment de horse the rules. In State of Haryana and others Vs. Piara Singh and others etc. etc., the Apex Court had deprecated back door entry. Thus in. order to seek appointment one has to come through the recruitment process. Since the recruitment process prescribe sponsoring through employment exchange, unless one is sponsored through employment exchange he can not be said to have come through the recruitment process in accordance with the rules.

5. Thus the Petitioners can not claim any right to participate in the selection unless their names are sponsored through employment exchange.

6. Having regard to the facts that the Petitioners are working as tax collectors or collecting sarkars for a very long period, namely, since 1979 or 1981, as the case may be, this Court on a sympathetic consideration permits relaxation of age in the matter of opportunity to participate in the selection so far as each of the Petitioners are concerned. However, their names are said to be registered in the employment exchange. Therefore, the names of the Petitioners shall be sponsored by the employment exchange having regard to their engagement for such a long time. The Petitioners will be permitted to appear in the interview, but however, the selection shall be made according to merit provided the Petitioners are duly qualified and suitable and eligible for the purpose other than the question of age. In case every thing is equal then the selecting authority may consider the question of giving priority to the Petitioners.

7. This writ petition is thus disposed of. There will be no order as to costs.

8. The Petitioners are given liberty to communicate the gist of this order to the employment exchange and the employment exchange may act on the same and sponsor the names of the Petitioners before September 10. 2000.