

(2011) 03 CAL CK 0019**Calcutta High Court****Case No:** F.M.A. No's. 60 and 344 of 2010

Dibyendu Das

APPELLANT

Vs

Hon'ble High Court at Calcutta

 Samiul Haque Vs State of
West Bengal

RESPONDENT

Date of Decision: March 11, 2011**Acts Referred:**

- West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 - Section 6, 6(2)

Citation: (2011) 2 CHN 693**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J; Ashoke Kumar Dasadhikari, J**Bench:** Division Bench**Advocate:** Arunabha Ghosh and Dubjani Sahu, for the Appellant; Samiran Giri, for State, Aloke Ghosh and Amalendu Mitra, for P.S.C., for the Respondent**Final Decision:** Dismissed**Judgement**

Pranab Kr. Chattopadhyay, J.

Instant appeal has been preferred at the instance of the writ Petitioner challenging the decision of the Respondents for refusing the appointment of the Appellant herein to the post of Civil Judge (Junior Division) in spite of empanelment in the merit list published on 23rd March, 2008.

2. The writ petition filed by the Appellant herein was heard along with several other writ petitions analogously and a learned Judge of this Court by the common judgment and order dated 10th September, 2009 disposed of all the writ petitions including the writ petition filed by the Appellant herein on merits without granting any relief to the Appellant herein.

3. The Appellant herein is a law graduate and appeared in the West Bengal Judicial Service Examination, 2007 pursuant to the advertisement issued by the Public

Service Commission, West Bengal. The final result of the aforesaid examination was published by the Public Service Commission, West Bengal on 23rd March, 2008 and the Appellant herein was ranked 94th according to merit.

4. It has been alleged on behalf of the Appellant that the Respondent authorities in an illegal manner refused to appoint the said Appellant to the post of Civil Judge (Junior Division) on the plea of non-availability of vacancies. It has been submitted on behalf of the Appellant that at least 19 vacancies were not filled up by the Respondent authorities which arose due to the creation of 19 Juvenile Justice Boards in pursuance of the order passed by the Division Bench of this Court. It has also been submitted on behalf of the Appellant that the Respondent No. 1 could not fill up 13 advertised vacancies for want of successful reserved category candidates. According to the Appellant, those vacancies should have been de-reserved for accommodating the Appellant and other wait listed successful candidates. On behalf of the Appellant it has further been submitted that 26 vacancies also arose in the year 2007 due to the promotion of the judicial officers and the Respondent authorities should have considered the Appellant along with other wait-listed candidates for appointment against those vacancies.

5. The learned Counsel representing the High Court administration, however, submitted that the Appellant herein committed error in calculating the number of vacancies to the post of Civil Judge (Junior Division) in the year 2007. According to the High Court administration the declared vacancies for the general category candidates were only 75 and the Appellant secured 94th position in the merit list. Therefore, the said Appellant could not be considered for appointment to the said post of Civil Judge (Junior Division) under any circumstances.

6. Mr. Aloke Ghosh, the learned Counsel representing the High Court administration further submitted that even if 19 vacancies arose due to the creation of 19 Juvenile Justice Boards in pursuance of the order passed by the Division Bench of this Court, the said vacant posts could not be filled up by the candidates selected on the basis of the West Bengal Judicial Service Examination, 2007. Mr. Ghosh submitted that the Appellant herein should be concerned in respect of the declared vacancies only.

7. Mr. Ghosh submitted that the Division Bench of this Court passed the order on 14th March, 2008 for setting up Juvenile Justice Boards in different districts when the selection process, on the basis of West Bengal Judicial Service Examination, 2007, was completed. Therefore, according to Mr. Ghosh, the Appellant herein could not be considered for appointment against the vacant posts which were available subsequent to the publication of the advertisement issued by the Public Service Commission for holding West Bengal Judicial Service Examination, 2007.

8. The learned Counsel of the High Court administration specifically submitted before this Court that the 26 vacancies which arose in the year 2007 due to the promotion of the judicial officers were duly taken into consideration while

calculating the total number of vacancies to be filled up on the basis of the results of the West Bengal Judicial Service Examination, 2007. The said learned Counsel of the Respondent No. 1 further submitted that had the said 26 vacancies not been included in the year 2007 then the actual cadre strength would go beyond the approved limit.

9. Mr. Ghosh, the learned Counsel of the Respondent No. 1 submitted that the working strength of the Civil Judge (Junior Division) in the year 2007 was 283 and if the 96 vacancies for which the candidates were recommended for appointment on the basis of the results of the West Bengal Judicial Service Examination, 2007 and further 26 vacancies which also arose due to the promotion of the judicial officers are added with the working strength of 283 then the same will cross the approved cadre strength of 351.

10. The Hon"ble Supreme Court in the case of M.M.S and Anr. v. U.P.S.C. and Ors. specifically directed how the vacancies were to be calculated and notified by the High Court. The relevant extracts from the said judgment are set out hereunder:

Section No	Description	Date
1.	Number of vacancies to be notified by the High Court. Vacancies to be calculated including a) existing vacancies b) future vacancies that may arise within one year due to retirement. c) Future vacancies that may arise due to promotion, death or otherwise, say ten per cent of the number of posts. Advertisement inviting applications from eligible candidates	15th January
2.	Advertisement inviting applications from eligible candidates	1st February

11. In the present case the authorities also calculated the vacancies as hereunder:

The actual existing vacant post	-68
Vacancy due to promotion	-26
Vacancy due to death	-01

Vacancy due to resignation	-01
Total	96

12. The learned Counsel of the Respondent No. 1 submitted that the 26 vacancies, created in the rank of Civil Judge (Junior Division) due to the promotion of the judicial officers, were actually taken into consideration while calculating the vacancies in the rank of Civil Judge (Junior Division) during the year 2007.

13. There is no dispute that only 68 posts were lying vacant during the year 2007 in the rank of Civil Judge (Junior Division) and unless the aforesaid 26 posts were made available due to the promotion of the judicial officers, there was no scope to fill up 96 posts for the year 2007.

14. Mr. Arunabha Ghosh, the learned Counsel of the Petitioner however argued before this Court that the 13 vacant posts in the reserved category should be de-reserved in order to accommodate the Petitioner herein. According to the learned Counsel of the Respondent No. 1 even if the aforesaid 13 reserved category posts are de-reserved then also the Petitioner had no chance of appointment since the said Appellant secured 94th position in the select list. In any event dereservation of the 13 reserved category vacancies was not made in the instant case.

15. Mr. Aloke Ghosh, the learned Counsel of the Respondent No. 1 referred to and relied on Section 6 of the West Bengal Schedule Caste and Schedule Tribe (Reservation of Vacancies in Services and Posts) Act, 1976 and submitted that in the absence of qualified Schedule Caste and Schedule Tribe candidates, vacancies in the reserved category should remain unfilled. Section 6(2) of the aforesaid Act, however, authorises the appointing authority to refer the vacancies to the State Government for de-reservation and the State Government upon considering the request of the appointing authority may, by order, de-reserve the vacancies subject to the condition that the vacancies so de-reserved should be carried over as reserved vacancies in the subsequent year. However, de-reservation of the vacancy was not made in the instant case and the available vacancies in the reserved category were taken into consideration while calculating the vacancies in the year 2008.

16. Mr. Ghosh, also urged before this Court that the validity of the select or merit list prepared in the year 2007 stood cancelled automatically because of publication of the subsequent select or merit list for the successive years.

17. In the present case, the Petitioner has no right to claim appointment to the post of Civil Judge (Junior Division) since the said Appellant secured 94th position in the merit list. The position secured by the Appellant was absolutely beyond the zone of consideration as the total number of vacant posts available for the general category candidates were filled up by the candidates who admittedly secured higher position than the Appellant in the merit list. No allegation has been made on behalf of the Appellant that the Respondent authorities had illegally filled up any vacant post

superseding the legitimate claim of the Appellant. It has also not been alleged that the Appellant herein was victim of discrimination or any arbitrary decision of the Respondent authorities.

18. The Appellant herein failed to demonstrate that the Respondent authorities herein had acted illegally, arbitrarily, whimsically and in a discriminatory manner while filling up the vacant posts of Civil Judge (Junior Division) on the basis of the results of the West Bengal Judicial Service Examination, 2007. It has also not been urged on behalf of the Appellant that the Respondent authorities refused to fill up any vacant post meant for the general category candidates during the year 2007.

19. The Appellant also cannot compel the Respondent authorities to take necessary steps for de-reservation of the reserved category vacancy although we have already mentioned hereinbefore that the Appellant herein could not be appointed even if the 13 reserved category posts were de-reserved due to his position in the merit list. It is also not in dispute that the merit list prepared in the year 2007 cannot remain valid today in view of the preparation and publication of the subsequent merit lists on the basis of the West Bengal Judicial Service Examination for the subsequent years for filling up the subsequent vacancies in the rank of Civil Judge (Junior Division).

20. Moreover, the question of filling up the declared vacancies for 2007 in the West Bengal Judicial Service came up for consideration before the Hon'ble Supreme Court in Malik Mazhar Sultan and Anr. v. U.P. Public Service Commission and Ors. Civil Appeal No. 1867 of 2006 and on 24.07.2008 Hon'ble Supreme Court issued the following directions while disposing of the application being LA. No. 34 filed by the State of West Bengal:

I.A. No. 34 - This LA. is filed by the State of West Bengal. Notice therein was issued on May 14, 2008 by making it returnable in the first week of September, 2008. Let on the returnable date, interim application be taken on Board for further hearing.

It is stated that a select list of 96 candidates has already been prepared by the Public Service Commission and forwarded to the High Court. However, the High Court has requested the State to fill up only 80 vacancies because of paucity of Court rooms. Let all the 96 selected candidates be appointed within a period of four weeks, on completion of other necessary formalities.

21. After compliance of the aforesaid directions of the Hon'ble Supreme Court, the Petitioner cannot, in our opinion, have any further claim to be recommended for appointment to any post other than 96 posts for which a select list had been prepared by the State Public Service Commission and forwarded to the High Court.

22. For the aforementioned reasons we find no scope to interfere with the decisions of the learned Single Judge and, therefore, we affirm the order under appeal passed by the learned Single Judge and dismiss this appeal as we do not find any merit in

the same.

23. There will be, however, no order as to costs.

24. For the identical reasons the fate of the other connected appeal being F.M.A. 344 of 2010, which was heard analogously with the instant appeal, cannot be different.

25. Therefore, the said appeal also stands dismissed without awarding any cost.

26. 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.

Ashoke Kr. Dasadhikari, J.

I agree.