

**(2009) 06 CAL CK 0016**

**Calcutta High Court**

**Case No:** W.P.S.T. No. 440 of 2009

Jiaur Rahaman

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision:** June 29, 2009

**Citation:** (2009) 3 CALLT 699

**Hon'ble Judges:** Pratap Kumar Ray, J; Mrinal Kanti Sinha, J

**Bench:** Division Bench

**Advocate:** M. Lahiri and Mr. Abdul Hamid Shaikah, for the Appellant; Sujit Kr. Mitra and Mr. Subrata Banerjee for the State, for the Respondent

**Final Decision:** Allowed

### **Judgement**

Pratap Kumar Ray, J.

Heard the learned Advocates appearing for the parties.

2. Assailing the order dated 28th April, 2009 passed in O.A. No. 609 of 2009 by the West Bengal Administrative Tribunal, this application has been filed.

3. By the impugned order, the learned Tribunal rejected the writ application whereby and whereunder the applicant has prayed for consideration of his application as was pending, seeking alternative job, in terms of the direction given by the Inspector General of Police (A), West Bengal communicating it under Memo No. 1095/RO dated 1st November, 2008 to the applicant. The memo dated 1st November, 2008 reads such-

Memo No. 1870 SPL/EMP/SPL/EMP-81/07 dt. 15.09.08 of West Bengal Police Directorate Writers" Buildings, Kolkata-1

To

The Superintendent of Police,

Nadia.

Sub: Employment under Exempted category in terms  
of Labour Deptt's Notification No. 30 EMP  
dt. 2.4.2008.

Ref: Your memo No. 894/RO dt. 31.8.08.

As per physical measurement of the candidate in respect Jiaur Rahaman, S/o. Lt. C/498 Md. Moniruddin S.K. the chest expansion is 2 (two) CMs. Which is not permissible as per G.O. No. 225 PL dt. 07.01.1992 for the post of Constable. The candidate also failed in physical efficiency tests. So, the candidate is not eligible for appointment as Constable under exempted category. The candidate may be applied for other eligible post. Candidate may also be suitable informed.

Sd/- A.K. Gupta

Inspr. Genl. of Police (A)

West Bengal.

Memo No. 1095/R.O. dt. 01.11.08.

Copy to:

Jiaur Rahaman, S/O. Lt. C/498 Md. Moniruddin Sk. of Vill. Gholla, P.O. Milki, P.S. Rejinagar, Dist. Murshidabad, West Bengal, for information....

4. It appears from the memo that the financial crisis of the family due to death of petitioner's father has been considered as genuine despite the fact that the mother of the petitioner was getting family pension to the tune of Rs. 4,312/- per month and terminal benefits also were released in favour of the family. The rejection of application seeking appointment under exempted category as filed by the writ petitioner/applicant was not on the ground that the family had no financial crisis due to death of sole bread earner as the widow was receiving family pension and received terminal benefits due to death of the employee. But the rejection of the application was on the ground that the applicant failed in physical efficiency test for the post of Constable for which he applied. It appears from the said memo further that Inspector General of Police (A), West Bengal advised the petitioner/applicant to apply for other eligible post. Hence, it appears, that the concerned respondent authorities in terms of the circular letter for appointment of a candidate under exempted category never refused the applicant on the ground that the family had no economic crisis. But before the Tribunal when the application for other job is pending as per direction of the authority, the respondent authorities urged different point that the family had no financial crisis by referring the monthly family pension as was being received by the widow of the deceased family and the terminal benefits as already released. It is a settled way proposition of law that the administrative body in the form of an affidavit cannot take any new ground in the

litigation stage until and unless that point was specifically taken in their impugned decision. Reliance may be placed to the judgment passed in the case *Mohinder Singh Gill v. Chief Election Commissioner*, reported in AIR 1978 SC 857, a judgment of Constitution Bench which has been followed in the case [S.N. Chandrashekhar and Another Vs. State of Karnataka and Others](#). Mohinder Singh Gill (supra) was followed in the case *Chandra Singh & Ors. v. State of Raj as than & Anr.* reported in (2003) 6 SCC 544. The same view has been reiterated in the case [Bangalore Development Authority and Others Vs. R. Hanumaiah and Others](#).

5. Having regard to such, it is now a settled legal proposition that validity of an order to be judged by reason so mentioned and cannot be supplemented by a fresh reason on the shape of an affidavit or otherwise when it is challenged before the Court of Law.

6. In the instant case, the rejection of candidature of the writ petitioner was not done on the ground that the family had no financial crisis. Accepting that the family had a financial crisis, the respondent authorities asked the writ petitioner to appear in an interview for employment under exempted category applying the Labour Department Notification No. 30 EMP dated 2nd April, 2008 and rejected his candidature as he failed in physical efficiency test for the post of Constable. The respondent authorities further directed the writ petitioner to apply for other eligible post for consideration of his candidature under exempted category. Hence, it appears that the petitioner was eligible to be appointed under exempted category and this issue was answered in favour of the writ petitioner by the respondents in their decision by inviting the petitioner to appear in the physical measurement test and by assuring the petitioner for consideration of his case further in other eligible post. Once it is done, the respondents had no scope to submit by an affidavit before the Tribunal to this effect that the family was not in financial crisis to provide a job to one of the dependents under exempted category. In that score, the Tribunal also was wrong to decide the question in that angle having regard to the judgment passed by the Constitution Bench in the case *Mohinder Singh Gill* (supra).

7. In that view of the matter, the impugned judgment of the Tribunal is not legally sustainable. It is accordingly set aside and quashed.

8. The writ petitioner approached the Tribunal on the grievance that his application as filed subsequently in terms of the direction under Memo No. 1095/RO dated 1st November, 2008 as already quoted above was not considered and the same was kept pending. The Tribunal ought to have directed the respondent, the Inspector General of Police (A), West Bengal to expedite the consideration of the candidature of the applicant for employment under exempted category in terms of their communication dated 1st November, 2008. But without doing such, the Tribunal rejected the application on other ground which was not at all the ground fallen by the State Authorities earlier in their decision as already discussed.

9. Considering that, the Inspector General of Police (A), West Bengal is directed to decide the issue by considering the candidature of the writ petitioner for other eligible post for which he applied on 20th February, 2009 in terms of the Memo No. 1095/RO dated 1st November, 2008 as aforesaid within four weeks from the date of communication of this order and a reasoned decision to be communicated to the petitioner within two weeks from the date of taking decision. It is made clear that financial crisis issue as earlier decided, cannot be re-opened to reject the application.

10. The writ application is accordingly allowed.

Let xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.

Mrinal Kanti Sinha, J.

11. I agree.