

(2000) 05 CAL CK 0023

Calcutta High Court

Case No: M.A.T. No. 4021 of 1999 and C.A.N. No. 9096 of 1999

Steel Authority of India Limited

APPELLANT

Vs

Susanta Kr. Ganguly and Others

RESPONDENT

Date of Decision: May 19, 2000

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 16, 2
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 - Section 4, 7

Citation: 106 CWN 938

Hon'ble Judges: S.B. Sinha, J; M.H.S. Ansari, J

Bench: Division Bench

Advocate: Partha Sarathi Biswas, Arunav Ghosh, Chhabi Chakraborty and Amitava Roy, for the Appellant; P.R. Roy, Tapas Kr. Banerjee, Sambhu Nath Dutta, Utpal Maitra, Kalyan Bandopadhyay and Mintu Goswami, for the Respondent

Judgement

S.B. Sinha, J.

These three appeals arising from a common judgment and order dated 22-9-1999 passed by a learned Single Judge of this Court in W.P. No. 11404(W) of 1997, W.P. No. 8437(W) of 1997 W.P. No. 8768 of 1997 and W.P. No. 18644(W) of 1998 depict a sordid state of affairs, prevailing in matter of grant of employment in one of the largest Public Sector Undertakings of India. The factual matrix of the case is as follows:

On 14th January, 1993, the Alloy Steel Plant (A.S.P. for short) which is a Unit of the Appellant herein notified vacancies in the posts of unskilled labourers to the Regional Employment Exchange Officer, Durgapur in terms of the provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, pursuant where to the names of the petitioners were sponsored. Such appointments were to be made in terms of the Recruitment Rules, relevant provisions whereof, inter alia,

are:

Recruitment: All recruitment from outside are made out of candidates sponsored by the Employment Exchange. When suitable candidates from Employment Exchange are not available the posts are advertised in Newspapers. Recruitment is made by means of open competition by a test (written examination or practical test) or by interview or both.

Selection Board: Selection Board consists of at least one member each from Personnel Department, one from the department in which the vacancy occurs and from another department(s). A representative of State Government is also associated in the Selection Board. Selected candidates are placed in a panel. The panel is subject to approval of the competent authority.

Appointment: Appointments should be made in the order in which names appear in the panel approved by the appointment authority. The offer of appointment should be in the prescribed form. The appointment offers will be issued after receipt of satisfactory report from Vigilance Department

Age: On first appointment every candidate should declare the date of birth by Christian era, with confirmatory documentary evidence.

Recruitment Procedure: When a particular post cannot be filled up through normal promotion channel, vacancies are notified for recruitment action. As a first step towards recruitment, inter departmental circular is issued giving the specification for the post to be filled up inviting applications from the candidates who fulfil the specification. Selection is then made on the result of the interview as well as the trade test if so stipulated.

Panel: Where the number of candidates selected are more than the number of vacancies, a panel is generally formed and it is kept valid for 6 months initially. This panel is reviewed after 6 months and is generally operated unless in the meantime, the posts have been graded or specifications have been changed.

2. The petitioners were called for interview on 24th March, 1993 whereafter a select list of 11 candidates were prepared out of 214 candidates sponsored by the Employment Exchange. Subsequently another select list of 20 candidates was prepared on 29th September, 1993 for which 419 candidates were interviewed. However, no intimation was sent to the candidates concerned about the result of the selection process. They filed the writ application on 9th May, 1997 whereafter some appointments had been made by the appellant herein from 10th to 12th May, 1997. Prior thereto, an intimation had been sent only in the year 1994 to the Employment Exchange Officer but the names of the writ petitioners had not been returned, which was done only by letter dated 17-8-1997.

3. The writ petitioners contend that in the meantime some of them have become over aged and they have no chance of obtaining any other employment. In the

premises aforementioned, in the writ application the following reliefs were prayed for :

a) Writ of and/or in the nature of Mandamus commanding the respondents and each one of them to absorb the petitioner permanently against the vacant post of unskilled worker in Alloy Steel Plant for which they were interviewed;

b) Writ of and/or in the nature of mandamus calling upon the respondents and each one of them to withdraw rescind and/or cancel the impugned office memos issued by the Deputy Manager PI/Rcctt. to the Sub-Regional Employment Exchange, Durgapur under Reference No. ASP : PL: R: 5 (136)/93/162 dated 29-5-97 as depicted in the letter dated 17-6-97 issued by the respondent no. 8 and to return the name of the petitioners back from the respondent no. 8 and give employment to them;

c) A writ of and/or in the nature of Prohibition prohibiting the respondents from filling all the vacancies and/or permanent vacant posts of unskilled workers against which the petitioners were interviewed in the year of 1993 upto the petitioners are absorbed.

4. The writ petitioners alleged that several outsiders have in the meantime been appointed. The defences taken by the appellants in their affidavit-in-opposition were:

1. That in the year 1984 and 1989 agreements had been entered into by and between A.S.P. Multipurpose Co-operative (M) Society Ltd., the Contract Labour Union and the ASP Contract Employees Union whereby and whereunder they were to give employment to the contract labour and pursuant thereto three persons had been absorbed as Contract Labour in 1989, four persons had been absorbed in 1991, fifteen persons had been absorbed in 1992 and thirty six persons had been absorbed in 1997.

2. That a ban had been imposed in June, 1994 for grant of further appointment and thus, the writ petitioners could not be appointed.

5. The learned trial Judge by reason of the judgment impugned in this appeal inter alia, held that if a decision had been taken to absorb the contract labourers pursuant to the agreements there was hardly any occasion for the appellant to notify the Employment Exchange about the existing vacancies and once the person were placed in the select list, their cases should also have been considered particularly when altogether 36 persons belonging to different Unions were appointed. The learned Judge further held that in view of Section 4 of the Employment Exchange (Compulsory Notification of Vacancies), Act, 1959 appointment should have been made only upon following the procedures laid down therein as also in the Recruitment Rules.

6. As regard the question of life of the panel it was held.

However, the second question calls for some explanation by the ASP since if the life of a Select List under the rules is 6 months. then the life of the first Select List expired on 24th September, 1993 and that of the second prepared on 29th September, 1993, expired on 29th March, 1994, whereas the corporate ban was imposed only on 27th June, 1994, that is, after the life of both the panels had expired. The defence taken that no appointment could be given from the Select Lists because of the imposition of such ban, therefore, fails and has to be discarded.

7. Having regard to the well settled principle of law that no candidates acquires an indefeasible right to be appointed only because they are empanelled, the learned Judge directed :

I, accordingly, dispose of these applications by directing the ASP and its authorities to consider the cases of those of the petitioners, whose names had been included in the Select Lists prepared in March, 1993 and September, 1993, for filling up the existing vacancies in the post of unskilled workers, within one month from the date of communication of this order. If any of such petitioners have crossed the age bar in the meantime, such bar of age should be condone in the peculiar facts of this case.

8. Mr. Partha Sarathi Sengupta, and Mr. Arunava Ghosh, the learned counsel appearing on behalf of the appellant, submitted that as the writ petitioners did not have any indefeasible right to be appointed no writ of mandamus could issue. The learned counsel urged that as the life of the panel had expired, no empanelled candidates could have been directed to be considered by reason of the impugned judgment. In support of the aforementioned contention reliance has been placed on [Shankarsan Dash Vs. Union of India](#), . Mr. Sengupta would urge that the reasons for non-appointment of the empanelled candidates culminating in imposition of the ban on appointment was financial constraints and, thus, the action on the part of the appellant cannot be said to be arbitrary, Our attention has been drawn to the following statements made in the stay application :

The impugned order proceeds on the basis that there are vacancies in existence in the cadre of unskilled workers and such a conclusion was reached merely on the basis of submission of the petitioners without any material in support of it. In fact, there does not exist any vacancy in the cadre of unskilled workers and in reality the appellant/petitioner is trying to reduce its strength in that category by introducing Voluntary Retirement Scheme as a matter of policy. If the impugned order is allowed to stand it will be against the policy decision of the appellant and the order is not capable of being implemented as there does not exist any vacancy in the cadre of unskilled workers.

9. It was urged that even if it be held that the appellant had committed an illegality in appointing the unskilled labourers who are the members of the Union, the learned trial Judge ought to have taken into consideration the comparative hardship

in respect thereof inasmuch as whereas the writ petitioners had no legal right to be appointed, the contract labourer had an enforceable right under the agreements which were entered into in the years 1984 and 1989. In any event contends Mr. Sengupta illegality committed by the appellant, if any, would not colthe the writ petitioners" with any right to be appointed inasmuch as Article 14 of the Constitution of India is a positive concept.

10. Mr. P.K. Roy, Mr. Kalyan Bandopadhyay and Mr. Banerjee, the learned counsel appearing on behalf of the respondents, on the other hand, submitted that the action on the part of the appellant is arbitrary. According to the learned counsel, the appellant not only did not inform about their fate despite the purported expiry of the panel but had also failed to comply with the statutory duty as contained in sub-rule (3) of Rule 5 of Employment Exchange (Compulsory Notification of Vacancies) Rules, 1960, in terms whereof the employer is required to furnish to the concerned Employment Exchange the result within 15 days from the date of selection. The learned counsel would urge that although the writ petitioners did not have any right to be appointed but they had at least a right to be considered for appointment which had not been denied to them but even outsiders had been granted employment. Great stress was laid on the fact that when the writ petitions were filed in May, 1997 the appellant had made recruitments, immediately upon receipt of notice of motion, from 10th May, 1997 to 12th May, 1997. Reliance has been placed upon in Steel Authority of India Ltd. vs. Deb Narayan Chatterjee & Ors., reported in 1999(1) CHN 588.

11. There cannot be any doubt whatsoever that only because a candidate has been empanelled, the same by itself would not entitle him to be appointed. However, keeping in view the fact that the appellant is a State within the meaning of Article 12 of the Constitution of India, it is bound to comply with the provisions of Articles 14 and 16 thereof. In terms of the aforementioned provisions although a candidate has no right of appointment but he has right to be considered therefor. Parliament with a view to bring about fairness in the matter of recruitment enacted Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. All employers are not only bound to comply with the provisions of the Act and the Rules framed thereunder and non-compliance thereof lead to a penal consequence, the same must be complied with. There cannot be any doubt whetsoever that an authority within the meaning of Article 12 of the Constitution of India must give effect to its own policy decision adopted for the purpose of recruitment of workmen.

12. Such policy decision although does not have the force of a statute, the letter and spirit thereof must be given effect to. In the instant case, admittedly no decision had been taken by the appellant during the purported life time of the panel. Despite repeated queries by the court, the learned counsel had failed to point out that any positive decision has been taken not to appoint any person from the select list. The fact that there existed 58 vacancies at the relevant point of time is not in dispute. It

is also not in dispute that it is only for the purpose of filling up of such a large number of vacancies, names of more than six hundred persons had been sponsored by the Employment Exchange and they were interviewed. Having prepared a Select List, was it fair or reasonable for the appellant to sit tight over the matter for a period of more than 3 years and then to inform the Employment Exchange that the selected candidates are not to be appointed? It was not. The court can take judicial notice of the fact that unless and until the employer returns the names of the candidates who had been sponsored by the Employment Exchange, their names are not sponsored again in respect of any other vacancy. It is in that situation Rule 5(3) of the said Rules should be held to be mandatory, and the employer must inform the Employment Exchange about the selection made within 15 days. Non-compliance of the said provision results in a penal consequence as contained in Section 7 read with Rule 8 and, thus, the same is mandatory in nature.

13. It is trite that all actions of the State must pass the test of reasonableness in all spheres including grant of employment. It is not expected that State as a model employer would notify vacancies, hold interview, prepare select lists, and, thus, spending a huge amount would sit tight over the matter for a number of years and then come out with the plea that either the panel has lapsed or it is not necessary to recruit any person from the select list or from amongst the selected candidates. Such a plea is being taken by Public Sector undertakings in numerous cases. One of such instances can be found from the reported decision of a Division Bench of this court in *Steel Authority of India Ltd. vs. Deb Narayan Chatterjee*, reported in 1999(1) CHN 588.

14. The purported ban was imposed in June, 1994. The Select List, as noticed hereinbefore, was prepared in March, 1993 and September, 1993. Thus, the decision to fill up the vacancies or not to fill up should have been taken into consideration much prior thereto. Clause "6" of the Recruitment Rules does not state that the life of the panel must end on the expiry of six months. It confers a right upon the employer to review the panel. The circumstances in which the panel should be reviewed have been laid down therein i.e. when the posts have been graded or specifications have been changed. The same depends on the condition that the number of persons selected had exceeded the number of vacancies. The said Rule suggests that the panel is prepared only for the purpose of filling up vacancies which might not exist at the relevant time but arise in near future. The said Rule by necessary implication envisages that the vacancies should be filled up forthwith. In any event a Division Bench of this court in *Deb Narayan Chatterjee (supra)* has interpreted the said provision to mean that the life of the panel does not expire by efflux of time. We need not express our final opinion in the matter.

15. At the time when the vacancies were notified the appellant must be held to be aware of the number of vacancies which was existing at the relevant point of time and were required to be filled up upon compliance of Recruitment Rules, as also the

provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and the Rule framed thereunder.

16. Thus, the plea taken in the affidavit-in-opposition to the effect that the vacancies were filled up in terms of the agreement entered into by and between A.S.P. Multipurpose Co-operative (M) Society Ltd., the Contract Labour Union and the ASP Contract Employees Union appeared to have been raised by way of afterthought- If the appellant intended to give effect to the agreements entered by them in the years 1984 and 1989, such vacancies must have been separate and distinct once wherewith, the vacancies notified to the Employment Exchange could not have any co-relation.

17. Furthermore, if the ban on employment issued by the appellant herein had to be followed, it ought to have been followed as a matter of general policy. Nothing has been placed before us that even in the year 1997 the said ban was lifted. On the other hand, as noticed hereinbefore, the appellant has now come out with the plea that the appellant intends to reduce the staff strength wherefor. a Scheme of Voluntary Retirement has been introduced.

18. We fail to see any justification in the action of the appellant in not considering the cases of the select candidates before the ban was imposed or before introduction of the Voluntary Retirement Scheme.

19. In Shankarsan Das (supra), the Apex Court has held that although the State has no legal duty to fill any of the vacancies but the same does not mean that the State has the licence of acting in an arbitrary manner. It has been stated "the decision not to fill up the vacancies has to be taken bona fide for appropriate reasons."

20. It is also trite that no person should unnecessarily suffer owing to inaction on the part of the employer by contending that the life of the panel has expired and there was somebody else. See [Purushottam Vs. Chairman, M.S.E.B. and Another](#), . The Apex Court held:

In view of the rival submissions the question that arises for consideration is whether a duly selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr. Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which decision to the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the appellant to be appointed against the post of which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on

the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature.

The action on the part of the appellant herein does not appear to be bona fide, far less for appropriate reasons inasmuch as neither any reason has been stated in the affidavit-in-opposition nor any decision in that regard has been produced before this court.

21. However, the writ court is not only a court of law but also a court of equity. While granting relief to the writ petitioners, the court has to keep in mind the larger public interest. For the said purpose it can also take notice of subsequent events. Having regard to the fact that now a ban has been imposed and Voluntary Retirement Scheme has been introduced, we are of the opinion that although the select candidates should not at this juncture be thrust upon the appellant but they should be sufficiently and adequately compensated as the appellant is guilty of playing with the life and career of the candidates by acting in such arbitrary manner. By reason of such acts of omissions and commissions on the part of the appellant the fundamental rights of the selected candidates have been violated and they are entitled to be compensated in term of the doctrine of "Constitutional Tort".

22. We, therefore, substitute the order passed by the learned trial Judge by directing that each of the selected candidate is entitled to damages of Rest. 10,000/- payable by the appellant herein. Such damages should be paid to the concerned selected persons from amongst the writ petitioners within eight weeks from dates. The appellant also should bear the costs of the litigation through whose Counsels fee is assessed at 200 Gms, consolidated. Prayer for stay is considered and refused.

Urgent xerox certified copy of this judgment may be given on priority basis.

M.H.S. Ansari, J.

I agree.