

(1993) 03 CAL CK 0041

Calcutta High Court

Case No: Civil Order No. 2766 (W) of 1992

Paresh Chandra Mahato

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: March 22, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1993) 1 ILR (Cal) 474

Hon'ble Judges: Paritosh K. Mukherjee, J

Bench: Single Bench

Advocate: R.P. Agarwala and Manik Bhowmick, for the Appellant; Indrajit Sen and Amitava Dasgupta, for State, for the Respondent

Final Decision: Dismissed

Judgement

Paritosh K. Mukherjee, J.

The present writ petition was moved on behalf of Paresh Chandra Mahato, challenging an order issued by the Superintending Engineer, National Highway Circle No. I, dated September 11, 1991.

2. By the said order, which is Annexure "G" to the writ petition, the Superintending Engineer observed as follows:

The offer of employment on compassionate ground to a son/daughter/near relation in the event of death or permanent disablement of a Government servant while in service may be made only in the cases arising on or after 17.10.75.

3. The Superintending Engineer then explained to the Counsel, had this date of effect would not have interfered, the case of appointment of Shri Paresh Chandra Mahato, the Petitioner, would have been cleared, but in the instant case since his father had retired from service on the ground of invalidity before the date of effect of the order, this office has no authority to approve appointment of him on

compassionate ground even if he has been found otherwise fit for issue of an appointment letter in his favour on the basis of interview, medical examination and Police verification. It was also admitted before the Counsel that when a candidate has no chance of being appointed on compassionate ground on account of inhibition of a Government order, in the fitness of things, such candidate should have been spared the embarrassment of appearance for an interview and medical examination.

4. This writ petition has come up for final hearing in the presence of Shri R.A. Agarwala, learned Advocate for the Petitioner, and Indrajit Sen appearing with Mr. Amitava Dasgupta, for the State.

5. The main point argued on behalf of the Petitioner is that the Respondent authorities having taken interview of the Petitioner and the Petitioner having been otherwise qualified, it was not open to the Respondent authorities to refuse appointment only on the ground that the Circular which came into force in 1975, is not operative in case of the Petitioner.

6. It is the case of the Respondents that since the Petitioner's father had applied for voluntary retirement on the basis of the ill health in the year 1973, the Petitioner is not entitled to get any appointment on the basis of the 1975 Circular.

7. Mr. R.A. Agarwala, appearing on behalf of the Petitioner, has strongly relied on the observation of the Supreme Court in the case of [Smt. Sushma Gosain and Others Vs. Union of India \(UOI\) and Others](#), wherein it has been observed that-

Application by widow for appointment Trade Test passed by applicant -Delay in appointment and ejection of application in view of ban subsequently imposed on appointment of ladies to post -Denial of appointment is patently arbitrary.

8. In the aforesaid case, the Supreme Court had allowed the appeal and reversed the judgment of the High Court and directed the Respondent No. 2 to appoint Sushama Gossain, Appellant No. 1, in the post in which she had already qualified. The Supreme Court also directed that the Appellant should be appointed in an appropriate place in New Delhi itself.

9. Mr. Indrajit Sen, appearing on behalf of the Respondents, however, relied on another judgment of the Supreme Court, consisting of five Judges Bench, in the case of [Shankarsan Dash Vs. Union of India](#), delivered by L.M. Sharma J. (as His lordship then was) wherein it was observed as follows:

It cannot be said that if a number of vacancies are not notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up

all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment List and no discrimination can be permitted.

10. After having heard elaborate submission of both the parties, I am of the view that the appointment on compassionate ground does not confer any right upon a citizen for which a writ petition can be maintained.

11. Further, this Court is of opinion that appointment on compassionate ground on the basis of the relevant Circular issued by the respective Department and Directorates only can be considered as an "instruction", and for violation of such instruction, the writ Petitioner is not entitled to approach this Court for vindicating his grievance as he has no "legal right" to challenge not giving of appointment on compassionate ground.

12. In the premises, this writ petition is liable to fail and is dismissed. There will be no order as to costs.

13. This will, however, not prevent the Petitioner to file a further representation before the Superintending Engineer concerned as the Petitioner has already qualified for the post on the basis of the Circular in respect of compassionate ground issued in the year 1975.

14. It is further observed by this Court that if the Petitioner is found qualified, other conditions including age should be considered sympathetically for giving him appointment in the suitable post.

15. Let xerox copies of this order be given to the learned Advocates of the parties on usual undertakings.