

(1990) 05 CAL CK 0033
Calcutta High Court
Case No: Civil Order No. 7457 (W) of 1989

Balaram Mohanty

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 10, 1990

Acts Referred:

- Constitution of India, 1950 - Article 226, 311, 311(2)
- Motor Vehicles Act, 1988 - Section 113, 87
- Penal Code, 1860 (IPC) - Section 120B, 320, 465, 467, 468

Citation: (1993) 2 ILR (Cal) 22

Hon'ble Judges: Paritosh K. Mukherjee, J

Bench: Single Bench

Advocate: Arun Prakash Chatterjee, Pulak Ranjan Mondal, Deb Ranjan Basil Mallick and Bandana Das, for the Appellant; D.P. Kundu and Smritikana Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Paritosh K. Mukherjee, J.

This writ petition has been moved on behalf of 12 writ Petitioners challenging an order of cancellation of appointment dated June 30, 1989, whereby, the Superintendent, Government Printing, West Bengal, West Bengal Government Press, Alipore, has passed the following Order:

Whether the following 15 persons were appointed as copy holder of W.B.G. Press, Alipore, with effect from the date on against each, on the basis of fake submission of names, purported to have been issued by Employment Exchanges, in which their respective names were fraudulently entered:

Sl.	Name of the Candidate	Date of Joining
1.	Akbar ALI mallick	3.4.89
2.	Pankaj Kumar Nath	17.3.89
3.	Subir Khamaru	25.3.89
4.	Tapas Kumar Roy	11.3.89
5.	Buddhadev Thakur	25.3.89
6.	Abul Hasem	21.3.89
7.	Biswajeet Benerjee	17.3.89
8.	Goutam Nath	25.3.89
9.	Sandip Benerjee	25.3.89
10.	Swapan Kumar Midder	28.3.89
11.	Manas Bandopadhyaya	25.3.89
12.	Pallab Benerjee	25.3.89
13.	Subhas Debnath	17.3.89
14.	Nurul Azad Purkait	1.4.89
15.	Balaram Mahanti	25.3.89

Now, therefore, the undersigned hereby cancels the orders of appointment issued by the undersigned in respect of the above-mentioned 15 persons.

The A.G.W.B. and T.O. II, Alipore, are being informed.

Sd. S. G. Sarkar,

30.6.89

Superintendent,

Government Printing,

Alipore

2. Although the said order has been passed in respect of 15 persons only 12 out of the aforesaid 15 are the joint writ Petitioners in the instant Writ petition.

3. Earlier, on November 3.0, 1989, this Court, having heard the submissions of Mr. Pulak Ranjan Mondal, learned Advocate for the Petitioner, took the view that if the very appointment of the writ Petitioner was fraudulent, it went into the root of the matter and, as such, the Petitioners were not entitled to any notice of showing cause as notice to show cause would not improve the facts and would not alter the position, and accordingly dismissed the writ petition.

4. Thereafter, on an application for recalling of the order having been filed, this Court, on December 15, 1989, in the presence of Mr. D. P. Kundu, learned Advocate for the Respondents, had recalled the order, and the writ petition has come up for hearing after completion of the affidavits.

5. Mr. Arun Prakash Chatterjee, learned Advocate appearing at the final hearing of the writ petition after placing the impugned order as aforesaid, has submitted that the said order has an evil consequence and civil consequence, as it appears from the said order that the Petitioners have been charged for fake submission of memos, purported to have been issued by the Employment Exchange in which their respective names were fraudulently entered.

6. Mr. Chatterjee has placed several authorities in support of this contention that the order of cancellation of appointment has been passed as a penal nature and, although the said order is not the "order of termination" has the effect of termination of services of the writ Petitioners, on the basis of certain charges.

7. In support of his contention he has relied upon the latest judgment of the Supreme Court in the case of B.R. Singh and Ors. v. Union of India and Ors. AIR 1990 S.C. in support of his contention that

if the management cancelled the offer of July 4, 1986, by the letter of July 25, 1986, because of his conviction under Sections 87 and 113 of the Motor Vehicles Act and his so-called outrageous behaviour with the dealing assistant on July 22, 1986, these being clearly acts of misconduct, the action of the management must be held to be penal in nature and cannot be sustained as it was taken without hearing the delinquent.

8. Mr. Chatterjee has further submitted that the recommendation and/or sending of the names by the Employment Exchanges were not at all very much relevant for the purpose of issuing the letter of appointment by the Respondents as it has been held in the case of Sambhu Nath Tewari v. The State of Uttar Pradesh and Ors. 1975 (2) S.L.R. 636

9. Mr. Chatterjee further places the following facts for consideration of this Court.

The Petitioners applied for the permanent vacancy in the post of copy holders in the West Bengal Government Press at 38, Gopal Nagar Road, Alipore. The Superintendent of Government Printing, West Bengal, by a letter, requested the Employment Officers of different Employment Exchanges to send names for the post of copy holders in the West Bengal Government Press. On the basis of the said requisition of the Superintendent, Government Printing, West Bengal, the Employment Officers of Salt Lake Employment Exchange, Diamond Harbour Employment Exchange, Sonarpur Employment Exchange, Howrah Employment Exchange, Dum Dum Motijhil Employment Exchange, Kidderpore Employment Exchange, Budge Budge Employment Exchange and Barrackpore Employment Exchange sent altogether the names of 129 candidates for the said posts of copy holders of the West Bengal Government Press.

10. The Petitioners' names were forwarded by the Employment Exchanges to appear in trade test along with written test for the post of copy holder at 11 a.m: on

September 18, 1988. Before the written test, the Superintendent, Government Printing, West Bengal. West Bengal Government Press, being the Respondent No. 3, verified and examined the original Employment Exchange Cards, Mark-sheets and Certificates of educational qualifications to verify qualifications and age of the Petitioners including other candidates.

11. The Respondents having been satisfied about the genuineness of documents including the Employment Exchange Cards and Certificates of University, the Respondent No. 3 allowed the Petitioners and other candidates to sit for the written test, as the Petitioners were eligible to the said post. In the list of successful candidates the names of the Petitioners had appeared along with other 23 candidates which was hung up on March 3, 1989. The Petitioners along with the other candidates were directed by the Superintendent to fill up the Police verification roll for Police verification of the candidates including the Petitioners, and the Petitioners after duly filling up their Police verification roll submitted in the office of the Superintendent, Government Printing, West Bengal, on different dates between March 4, 1989, and March 8, 1989. According to the Petitioners in the Police-verification roll there was no adverse remarks against the Petitioners and, as the Petitioners fulfilled all the preconditions, the Petitioners were declared medically fit and the Superintendent, Government Printing, West Bengal, issued letter of appointment to the Petitioners from the months of March to April, 1989, and on receiving the letter of appointment the Petitioners had joined the duties as copy holders in the office of the West Bengal Government Press, Gopal Nagar Road, Alipore, after getting such appointment. In para. 13 of the writ petition different dates of joining of the writ Petitioners have been stated by the Petitioners.

12. On June 30, 1989, the Petitioners came to know that a notice had been hung up in the notice board in the office of the West Bengal Government Press whereby it was alleged that 15 persons including 12 Petitioners herein, who were appointed as copy holders of West Bengal Government Press, Alipore, with effect from the date as mentioned in the notice board on the basis of faked memos, purported to have been issued by the Employment. Exchanges, in which their respective names were "fraudulently entered", and as such the Superintendent, Government Printing, Alipore, cancelled the order of appointment issued by him in respect of the said 15 persons which has been challenged in the instant writ petition stated as aforesaid.

13. Mr. Dipak Prakash Kundu, learned Advocate appearing with Mrs. Smritikana Mukherjee, learned Advocate for the Respondents, submitted that the impugned order being an order of cancellation of appointment and not an order of termination, this Court is not entitled to interfere with the said order of cancellation of appointment.

14. In the second place Mr. Kundu submits that the Respondents have every right to correct their mistakes if any mistake has been committed by the Respondents in issuing the letter of appointment.

15. In this connection he has relied on a decision of the Supreme Court in the case of the State of Punjab v. Jagdip Singh and Ors. AIR 1954 S.C. 521.

6. In the said case it appears that the Supreme Court had considered the effect of irregular order of confirmation and in considering that the Supreme Court observed as follows:

The question then is as to the effect of void order of confirmation. When an order is void on the ground that the authority which made it had no power to make it, it cannot give rise to any legal rights, and as suggested by the learned Advocate-General, any person could have challenged the status of the Respondents as Tahasildars by instituting proceedings for the issue of a writ of quo warranto under Article 226 of the Constitution.

We have already held that the Respondents could not be validly confirmed as Tahasildars by the Financial Commissioner of Pepsu. Therefore, even though upon their allocation to the State of Punjab as from November 1, 1956, they were shown as confirmed Tahasildars, they could not in law be regarded as holding that status. Legally their status was only that of officiating Tahasildars. The notification in question in effect recognises only this as their status and cannot be said to have the effect of reducing them in rank by reason merely of correcting an earlier error. Article 311(2) does not, therefore, come into the picture at all.

17. In this context he has also referred to another decision of the Supreme Court in the case of [S. Pratap Singh Vs. The State of Punjab](#), on the proposition that if there is any fraud and or corruption leaving aside mala fide the matter may not be examined by the Court and should not vitiate the administrative order.

18. In the said judgment, their Lordships of the Supreme Court had applied the decision of Lord Denning in the case of *Lazarus Estates Ltd. v. Beasley* (1956) 1 All E.R. 341 (345) wherein it was observed:

No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud.

19. After placing this judgment Mr. Kundu submits that this Court Having already passed a reasoned decision on November 30, 1989, without the assistance of the Respondents, may maintain the earlier decision and may not interfere with the impugned order as a fraud has been alleged by the Respondents.

20. According to Mr. Kundu, as there is no stigma attached to the writ Petitioners in the impugned order, this Court may not interfere with the said order and he has strenuously argued that no Court should lend its aid to a man who founds his cause of action upon an immoral or illegal act following the decision of the Supreme Court in the case of [Kedar Nath Motani and Others Vs. Prahlad Rai and Others](#), wherein the Supreme Court has followed the decision of Lord Mansfield in *Holman v. Johnson* (1775) 1 Cowp 341 (343); 98 E.R. 1120 (1121) in the following words:

The principle of public policy is this: *ex dolo malo non oritur action*. No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If from the Plaintiff's own stating or, otherwise, the cause of action appears to arise *ex turpi cause*, or the transgression of a positive law of this country, there the Court says he has no right to be assisted.

21. Mr. Kundu further submitted that as the impugned order is one of cancellation of the appointment and not the termination of service, as suggested by the writ Petitioners, this Court may not interfere following the decision in the case of [M. Ramanatha Pillai Vs. The State of Kerala and Another](#), : 1974 (1) S.L.R. 225: 1974 (1) S.C.R. 515 (520) relating to abolition of post. In para. 36 of the said judgment, the Supreme Court observed as follows:

The abolition of post may have the consequence of termination of service of a Government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post.

22. He has also placed the authority about the scope of interference with an order which have civil consequences and evil consequences as held in the case of [Ram Gopal Chaturvedi Vs. State of Madhya Pradesh](#), . In the said case the Supreme Court having considered the earlier decision in the case of [State of Orissa Vs. Dr. \(Miss\) Binapani Dei and Others](#), and also *Ridge v. Baldwin* 1964 S.C. 40 held that in the said case the impugned order did not deprive the Appellant of any vested right to any office. The Appellant was a temporary Government servant and had no right to hold the office/post. The State Government had the right to terminate his services under r. 12 without issuing any notice to the Appellant to show cause against the proposed action.

23. It has been also held that the impugned order did not involve the element of punishment nor did it deprive the Appellant of any vested right to the post.

24. On the point of applying the principles of *audi alterem partem*, Mr. Kundu has relied on the decision of the Supreme Court in the case of [Union of India and Another Vs. Tulsiram Patel and Others](#), In para. 101 of the said judgment the Supreme. Court observed as follows:

Not only therefore, can the principles of natural justice be modified, but in exceptional cases they can even be excluded. There are well-defined exceptions to the "*nemo iudex in causa sua*" rule as also to the *audi alteram partem* rule.... So far as the *audi alteram partem* rule is concerned, both in England and in India, it is well-established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded.

25. On the basis of the aforesaid submissions, therefore, this Court has to consider whether the impugned order of cancellation dated June 30, 1989, has cast a stigma upon the writ Petitioners as by the said order the Superintendent of the Government Printing Press, Alipore, on the basis of the fake submission of memos, purported to have been issued by Employment Exchanges in which their respective names were fraudulently entered and, therefore, cancels the order of appointment of the writ Petitioners being the afore-mentioned 15 persons.

26. It is, therefore, useful for this Court to refer to the relevant submissions from the affidavit-in-opposition which are as follows:

(a) Superintendent, West Bengal Government Press, Alipore, in Memo. No. 513-514/2163 dated Mfcy 10, 1988, informed the Employment Officer, Regional Employment Exchange, Purta-Bhaban, Salt Lake, Calcutta, and the Employment Officer, Sub-Regional Employment Exchange, Kidderpore, 93/1 Karl Marx Sarani, Calcutta, that 12 vacancies in the post of Copy Holder have fallen vacant including two posts for scheduled caste and one post for scheduled tribe in the said Press and requested them to sponsor candidates accordingly.

(b) The Regional Employment Officer, Salt Lake, Calcutta, brought it to the notice of the State Employment Co-ordination Officer, Calcutta, and the said Officer in his turn informed the following Employment Exchanges to sponsor names of suitable candidates for the post of Copy Holder: (i) Regional Employment Exchange, Calcutta, (ii) Barrackpore Employment Exchange, (iii) Dum Dum Employment Exchange, (iv) Barasat Employment Exchange, (v) Budge Budge Employment. Exchange, (vi) Diamond Harbour Employment Exchange, (vii) Sonarpur Employment Exchange, (viii) Howrah Employment Exchange, (ix) Basir-hat Employment Exchange, (x) Bongaon Employment Exchange and (xi) Kidderpore Employment Exchange.

(c) Out of the aforesaid 11 Exchanges, Barasat, Basirhat and Bongaon Exchanges could not submit the names of any eligible candidate. The rest Employment Exchanges sponsored the following number of candidates:

Regional Employment Exchange,

style="font-size:8.0pt;font-family:Verdana">35	
Dum Dum	10
Sonarpur	33
Biudge Budge	11
Barrackpore	7
DiamondHarbour	7
Kidderpore	15
Howarh	9
	127

Out of the aforesaid 127 names, 18 candidates sponsored by Sonarpur Employment Exchange could not be considered for interview as the same were received by the West Bengal Government Press after the tests were over.

Thus there remained 109 candidates. Another three lists containing the names of 20 persons (including the names of 12 writ Petitioners and three other persons mentioned in para. 5 of the said affidavit whose names were cancelled) were also received from the Employment Exchanges of Sonarpur, Diamond Harbour and Howrah before the test were held.

(d) By memo, dated September 5, 1988, the said 129 candidates were called by the Superintendent, West Bengal Government Press, for a trade test and a written test on September 18, 1988. A departmental candidate was also called for the said tests on the same date. The said tests were held on September 18, 1988, and a " list of 23 successful candidates including the writ Petitioners was prepared and duly approved. On March 2, 1989, the list of the said successful candidates, was walled up in the notice board and Police verification forms and medical examination forms were issued to the 20 candidates of the said list including the writ Petitioners. On receipt of satisfactory report of antecedents and medical examination, order of appointment were issued to 17 persons including the writ Petitioners and they joined the post on different dates from March 3 to April 1989.

(e) There was a newspaper report in the Daily "Bartaman" dated May 24, 1989, and also dated June 14, 1989, where it was stated that the selection was made from such candidates who appeared for posts misrepresenting them as Employment Exchange sponsored candidates. On the basis of the,, said two reports in the "Bartaman" the Director of Employment, West Bengal, held an enquiry in the matter and informed the Government that out of 17 candidates appointed the names of the two candidates from the Regional Employment Exchange, Calcutta, and Dum Dum Exchanges were genuinely sponsored, while the names of other 15 candidates including the writ Petitioners were not at all sponsored by the three Exchanges, viz., Sonarpur, Diamond Harbour and Howrah.

(f) Accordingly, on the basis of the opinion of the Director of Employment, West Bengal, it was a big fraud necessitating further enquiry into the matter by the relevant Police authorities and on" receipt of the report of the Director of Employment, West Bengal, through the Labour Department, it was decided by the Government, Commerce and Industries Department, that the orders of appointment of the said 15 candidates (including the writ Petitioners) may be cancelled forthwith by the Superintendent and, after such cancellation, F.I.R. may be lodged simultaneously against the said 15 candidates including the writ Petitioners.

(g) Accordingly, the Superintendent, West Bengal Government Press, by memo, dated June 30, 1989, cancelled the order of appointment issued" in respect of the 15 persons including the writ Petitioners.

27. In the affidavit it was further stated that after the cancellation of the order of appointment a Police case against the said 15 persons has been started in Alipore P.S. bearing case No. 155 dated June 30, 1989, under Sections 120B/465/467/468/471/320 I.P.C. Moreover, the Vigilance Commission, West Bengal, and the Commissioner of Police, Calcutta, have been requested to make a thorough enquiry into the matter and to submit a report to the Government of West Bengal.

28. It was further stated, in the affidavit that as on enquiry it was found that the names of the said 15 persons including the writ Petitioners were not at all sent by the said Employment Exchanges, the very basis of the selection and appointment failed and as the appointments were obtained on the submission of fake -memos, as revealed afterwards, the Said appointments were treated to be void ab initio and the orders of appointment were cancelled by the Superintendent, West Bengal Government Press.

29. On the basis of the averments made in the writ petition and on the basis of the facts disclosed in paras. 8, 9, 11 and 12 of the affidavit-in-opposition affirmed on behalf of the Respondents by the Assistant Secretary, Department of Commerce and Industries, and not by the Superintendent of. Government Printing Press, being Respondent No. 3, it appears before this Court that the Respondents have proceeded against the writ Petitioners ex parte without giving any opportunity to press and/or reconcile their cases "by unilaterally passing the order of cancellation of appointment dated June 30, 1989.

30. At the final hearing of the writ petition, Mr. Kundu, appearing on behalf of the State, has produced the entire records including the report of the Director of Directorate of Employment, Labour Department, Government of West Bengal, Labour Department, Government of West Bengal, addressed to S-hri D. JC. Ghosh, Secretary, Government of West Bengal, Labour Department, dated June 16, 1989, pointing out irregular recruitment of 15 copy holders by the West Bengal Government Press on the basis of non-existent memos, fraudulently prepared forging the seal and signature of Sonarpur, Diamond Harbour and Howrah Employment Exchanges, and also the F.I.R. lodged by the Superintendent of West Bengal Government Press dated June 30, 1989, wherefrom it appears before this Court that the Respondents had sufficient materials at their disposal to proceed with the cancellation of the appointment if there is any fraud practised by the writ Petitioners by forging the seal and signature of the relevant Employment Exchanges, viz., Sonarpur, Diamond Harbour and Howrah. But the unilateral action of the Respondents by cancelling the letter of appointment (as it was done in the instant case) cannot be justified as undoubtedly by aforesaid action of the writ Petitioners, who are 12 in number, have been condemned unheard and the writ Petitioners are directed to face consequential criminal trial, which may not be interfered in the present writ proceeding.

31. In the result, I am of the view, the impugned order passed by the Superintendent, West Bengal Government Press, dated June 30, 1989, cannot be sustained in law and is, accordingly, set aside.

32. But in the facts and circumstances of the present case, in view of the initiation of the criminal proceeding on the basis of the F.I.R. lodged by the Superintendent, Government Printing Press, on June 30, 1989,. the Petitioners will not be entitled to join the posts until the Petitioners are absolved from the charges in the criminal case and in accordance with law.

33. In the event the Petitioners are exonerated from the charges in the criminal case, the Respondents will be duty bound to take back the Petitioners in accordance with law and to pay all arrear salaries in accordance with law.

34. This will not prevent the present Respondents from initiating departmental proceeding against the writ Petitioners as regards cancellation of their appointments as, according to the Respondents, the appointments have been obtained by practising fraud.

35. In case no departmental proceeding is initiated within a period of two months from the date of passing of this judgment, the Respondents shall allow the writ Petitioners to join the respective posts irrespective of the fact of pendency of criminal case and in accordance with law.

36. The writ petition is allowed in part to the extent indicated as above.

37. All interim orders are vacated.

38. There will be no order for costs.