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Calcutta High Court

Case No: W.P.S.T. 39 of 2011

Anup Kumar Das and Another		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: March 14, 2011

Citation: (2011) 2 CALLT 124

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

Bench: Division Bench

Advocate: D. Banerjee, for the Appellant;Pratik Dhar and Jayeeta Chakraborty for the Respondent Nos. 1-3 and Sumya Sarathi Basu, for the State, for the Respondent

Final Decision: Dismissed

Judgement

Pratap Kumar Ray, J.
Heard learned Advocates for the parties.

2. Assailing the order dated 7th January, 2011 passed by the West Bengal Administrative Tribunal in O.A. No. 2428 of 2006 this writ application has been filed. The Original Application before the learned Tribunal below was filed claiming retrospective effect of appointment with effect from January, 1990 though the Petitioners were appointed primarily in the post of Compositor in a Government Press with effect from the year 2002.

3. This case has a chequered history. Alleging the selection of candidates and appointment of them who secured less marks than the Petitioner, a writ application was moved registered as W.P.1160 (W) of 1988. This writ application was disposed of on 26th July, 1988 by Mohitosh Majumder, J. as His Lordship then was, quashing the appointment of the Respondent Nos. 3-5 who got less marks than the Petitioner and directed to consider the appointment of the writ Petitioner therein who is the present writ Petitioner before us by holding that the Petitioner was eligible to be appointed.

4. The said order reads such:

On a careful scrutiny of the fundamental grievance of the Petitioner and the challenge thus thrown, I am of the view that the action of the Respondents in not considering the appointments of the Petitioners, in my view are illegal. The Petitioners, in my view are eligible for being appointed but that was not done. Instead of appointing the Petitioners, Respondents Nos. 3 to 5 who secured lower marks and placed lower in the merit list were given appointments. There appointments are ex facie unauthorised and in proper and the said appointments made in favour of Respondent Nos. 3 to 5 are hereby treated as cancelled. The case of the Petitioners should be considered in the light of the directions as made hereinabove. The said consideration shall be effected within a period of four weeks from the date of communication of the order.

5. The contempt application was moved for non-compliance of the said order which was disposed of on 19th December, 1990 by Mohitosh Majumder, J. as His Lordship then was, in Civil Order No. 1160 (W) of 1988. In the contempt application, Court directed to implement the order of the Court dated 26th July, 1988 within three weeks from the date of the order.

6. The operative portion of the order reads such:

Three vacancies are still available. Three vacancies being available the Respondents are directed to take steps for the implementation of the order passed by this Court on on July 26, 1988.

Let the order passed by this Court on July 26, 1988 be implemented within three weeks from the date of the order. Let the order be communicated to the Respondents by Special Messenger at the cost of the Petitioner. Cost must be deposited on or before December 21, 1990. In default the order shall stand recalled.

7. This order was also not compiled with. Another contempt application was moved which was registered as C.R. 15208(W) of 1996. This contempt application was disposed of on 1st March, 2002 by Dilip Kumar Seth, J. as His Lordship then was, directing the Secretary, Department of Mines and Industries to look into the matter personally and find out the steps to implement the Court''s order as earlier passed. The ordering portion reads such:

In the circumstances, the Secretary, Department of Mines and Industries shall look into the matter personally and find out what steps he can take for compliance of the Court''s order and in his personal responsibility he shall ensure compliance of the order within the same period.

8. The Petitioner got appointment thereafter. He joined without any protest.

9. After four years of service the Petitioner moved original application before the learned Tribunal below raising a grievance about appointment from the year 2002. It was the grievance of the writ Petitioners before the learned Tribunal below that they should be appointed with retrospective effect from the month of January, 1990 when in first contempt application the Court directed to implement the original order dated 26th July, 1988. Learned Tribunal below has rejected this contention on the reasoning that in the writ application earlier moved in the High Court, High Court never directed to appoint within any particular date but only directed to consider their appointment by holding that they were eligible to be appointed.

10. There is no doubt about delay on the part of the Respondents to give appointment to the Petitioners though they ranked higher position than to appointees whose appointments were under challenge in the writ application. Even if, there is a mistake and fault on the part of the Respondents to give appointment in proper time whether the writ Petitioners can claim the effect of appointment with retrospective effect including notional seniority, and arrear salary etc.? Learned Tribunal has answered the question on the reasoning as already stated above. Let us now consider the legal position as to whether retrospective effect of appointment could be allowed with all benefits. The identical question was answered by the Apex Court in the case of Ramesh Kumar Vs. High Court of Delhi and Another, a judgment of three Judges Bench. The issue was appointment of a candidate in the Higher Judicial Service. In that case Court held that the bench mark fixed in absence of any rule in the oral interview though was illegal and thereby the concerned candidate was deprived of to have appointment earlier, but no relief granted to give appointment with retrospective effect. The Court directed prospective effect of appointment. Even mistake to give appointment in right time, the Apex Court with reference to the case of promotion held that no promotion from a date retrospectively could be made when the candidate did not born in the cadre. Reliance is placed in the case of Sk. Abdul Rashid and Ors. v. State of Jammu and Kashmir and Ors. reported in (2008) 1 SCC 722 where Apex Court relied earlier views passed in the case of State of Bihar v. Akhouri Sachindra Nath reported in 1991 Suppl I SCC 334 and Kaushal Kishore Singh Vs. Dy. Director of Education and Others, .

11. We are not unmindful of one judgment passed earlier by a three Judges Bench in the case of Sanjay Dhar Vs. J and K Public Service Commn. and Another, wherein regarding appointment of a candidate in the post of Civil Judge, Junior Division, the experience certificate of District Judge when wrongfully considered and appointment was not made, the Court answered the issue in favour of the Petitioner rejecting the stand of the Public Service Commission and granted relief of appointment with notional seniority, but in view of the latest position of law as earlier discussed that nobody could be given appointment with retrospective effect on the principle that he has not born in the cadre, we are not inclined to interfere with the order impugned.

12. Learned Tribunal below rightly held that there was no direction of the High Court to give appointment on a particular date, but simply a direction was passed to consider the

appointment issue. The reasoning as advanced, by Tribunal does not make out a case of judicial review.

13. The writ application accordingly, stands dismissed.

Urgent xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties on priority basis.

Mrinal Kanti Sinha, J.-I agree.