

(1988) 03 CAL CK 0046

Calcutta High Court

Case No: F.M.A.T. No. 1342 of 1987

Ashim Kumar Paul and Others

APPELLANT

Vs

Chairman, Standing Selection
Committee II, West Bengal State
Electricity Board and Others

RESPONDENT

Date of Decision: March 9, 1988

Citation: 92 CWN 1149

Hon'ble Judges: G.N. Ray, J

Bench: Single Bench

Advocate: Parimal Dasgupta and Niranjana Ganguly, for the Appellant; Arun Prokas Sircar and Rupen Mitra, for the Respondent

Judgement

G.N. Ray, J.

This appeal is directed against order dated 10th April, 1987 passed by the learned Trial Judge in C.O. No. 3319(W) of 1987. By the aforesaid order, the writ petition made by the appellants was dismissed by the learned Trial Judge. The aforesaid writ petition was moved by the appellants inter alia challenging the recommendations made by the respondent No. 1 viz. the Chairman, Standing Selection Committee (II) for filling up the vacancies for several posts mentioned in the writ petition. The appellants contended in the writ petition that the said Chairman Standing Selection Committee II exceeded his jurisdiction in recommending an excess number of employees than required or notified under Circular No. 1/85 dated 28.1.1985 inviting applications from eligible candidates for filling up one-third of the vacancies (non-technical class III posts) through departmental test. The said appellants also contended that the said Chairman also exceeded his jurisdiction in keeping the list of the successful candidates in force for three years. It appears that the West Bengal State Electricity Board adopted a policy to have 2/3rd of the vacancies in non-technical Class III posts to be filled up by promotees from amongst the eligible candidates of the departments recommended on seniority basis. The balance one-third of such vacancies are to be filled up

through departmental tests and in order to be eligible, a candidate must have specified continuous service in the relevant feeder posts of non-technical Class III post. The requirement for being qualified for the purpose of appearing in the departmental test including the eligibility clause has been specified. In order to implement the said policy, a notice was issued for holding the examination on the 28th of January, 1985 being Circular No. 1/85 and approximate posts for which such examination was proposed to be held were also mentioned. It is the case of the appellants that some of the appellants were eligible to sit for such examination for the purpose of promotion to some of the posts and others were not eligible in the year 1985 when the circular was issued but subsequently they have also become eligible by rendering five years' continuous services in the feeder posts. The appellants have contended that from the circular it appears that such circular was intended for the purpose of selecting candidates for accelerated promotion for the one-third quota for a particular period. It was later on decided behind their back that the successful candidates in the said examination will remain in panel which will be valid for three years and not only the vacancies for which applications were invited but other vacancies subsequently occurring would be filled up from the said panel and only after the said panel is exhausted or becomes defunct after the expiry of three years, the examination will be held for the purpose of filling up the said one-third vacancies through the selection test. The appellants have contended that such decision to fill up the posts for which the circular was not issued and to keep the said list of successful candidates in the panel valid for three years were wholly illegal and unauthorised and on that score, the decisions taken to keep the said panel valid for the three years and also the decision taken in giving promotion to persons from such panel in the vacancies arising in the mean time must be held to be illegal. The learned Trial Judge has not however allowed the said writ petition and the instant appeal has been preferred by the appellants. Mr. Dasgupta, learned Counsel appearing for the appellants has contended that the appellants and or the other employees of the West Bengal State Electricity Board may not have any absolute right to get any promotion but when a policy has been adopted by the Board to give accelerated promotion to one-third posts in the non-technical cadre on the basis of selection tests, the eligible candidates have a right to appear in such selection test, and to get a reasonable chance of being selected on the basis of the results made in the said examination. It has been contended by Mr. Dasgupta that when the Circular was issued in January, 1985 the approximate posts for which such examination was intended to be taken or invited was mentioned. The number of vacancies mentioned in the notice or circular clearly indicates that the same was for the vacancy for one year. By using the expression "approximate" against the number mentioned in the circular it cannot be reasonably contended that the vacancies will include future vacancies which may arise within a span of two or three years thereafter. The eligible candidates were never informed by any appropriate authority that the examination for selection for one third post will not be held every year but on the basis of results in the said examination, the panel will be prepared

for three years and all vacancies then prepared for three years will arise within a span of next two years will also be filled up from the said panel which will remain valid for 3 years. If such intimation is not given to the employees but an examination is proposed to be held for the purpose of filling up the vacancies then arising by mentioning the number of posts in the circular, it was not permissible on the part of the authority to change the decision at a later stage and to prepare a panel for three years and to fill up not only the vacancies for which notification was issued, but subsequent vacancies arising thereafter from the said panel. It appears from the affidavit-in-opposition that as it was felt by the Director of Personnel that the annual examination or frequent examinations were impracticable and such examination should be held after a lapse of two or three years, a recommendation was made by the Director of Personnel that on the basis of results made in the selection test, a panel should be prepared for three years and the vacancies which will occur at the time of examination and also the vacancies which will subsequently arise should be filled up from the panel to be kept valid for three years. Such recommendation appeared reasonable to the Chairman of the West Bengal State Electricity Board and he had accepted the same and on such basis the Chairman of the Selection Committee recommended the names not only for the posts initially notified but also for the posts which became vacant subsequently and as a matter of fact, promotions have been given to such posts on the basis of the names included in the said panel.

2. Mr. Arun Prokas Sircar, learned Counsel for the Respondents has submitted, that the decision taken by the Chairman of the Board is only reasonable and at the time when the examination was held, some of the writ petitioners then eligible did not choose to appear and others were not even eligible to appear at the examination. On the basis of the result of the examination, such posts have been filled up and as such no exception should be taken against the decision of the concerned authority. Mr. Sarkar, learned Counsel has also submitted that the persons who have been given promotion in the said one-third quota in the non-technical cadre on the basis of their results in the selection test, are also not parties to the writ proceeding and no decision should be made adversely affecting them without giving them an opportunity of being heard.

3. After taking into consideration the facts and circumstances disclosed in the writ petition and the affidavits filed by the parties and hearing the learned Counsels for the respective parties, it appears to us that the West Bengal State Electricity Board had taken a decision to the effect that one third posts in the non-technical cadre will be filled up from the eligible candidates holding the feeder posts for continuous five years provided they became successful in the selection test held for the said purpose. In the said decision/policy no indication has been given how such examination will be held or when such examination will be held and whether the persons qualified in such examination will remain empanelled for a particular year or for some years. It can, therefore, reasonably be contended that for the purpose

of implementing the decision of the West Bengal State Electricity Board for filling up one third posts through selection tests, procedures for holding such examination and for empanelment may be made but we are of the view that the concerned authorities are under an obligation to enlighten the employees as to how the empanelment is proposed to be made and they are also under an obligation to inform before the examination that the successful candidates will be empanelled for three years if it was decided to keep the panel valid for three years. It appears that the appellants are justified in their contentions that when the notification was issued for holding the examination for the purpose of filling up the said posts, the notification had indicated that the said examination was meant for the purpose of filling up the posts then lying vacant. By using the expression "approximately" it cannot be held that the posts which were not then vacant was also intended to be filled up. In our view, some of the writ petitioners who were eligible to sit for the examination can reasonably contend that it was not made known to them that the examination was really intended to fill up the posts which will subsequently become vacant and such examination is intended to be held every three years and the panel to be prepared from the successful candidates is to remain valid for three years. Some of them might have intended to appear in the said examination if such fact was made known to them. That apart, it also appears to us that in order to implement the decision of the Board, the Chairman of the Board should not have taken a decision after the said examination that the panel should be prepared for filling up the subsequent vacancies and the same should remain valid for three years without any reference to the Board. It appears to us that such decision is a major policy decision touching the interest of a large number of employees and since the same had been taken for the purpose of implementing a policy decision of the Board, the recommendation of the Chairman for holding the examination for selection once in every three years and to keep the panel valid for three years should have been placed before the Board for ratification. In any event, such decision cannot be taken after the examination was held thereby depriving a large number of employees who chose not to appear for the limited posts for which the examination was proposed to be held.

4. In the aforesaid circumstances, we dispose of this appeal by directing that the Respondents will not treat the said panel valid for three years. The promotion given to the successful candidates on the basis of the said selection test should be limited to the posts for which the notification was given. As in the mean time, other posts have fallen vacant and some posts are likely to fall vacant before another selection test is held, the persons who have qualified in the selection test held earlier may be given adhoc promotion if they had not been given promotion as yet but such promotion already given to other candidates to the posts not notified in the circular and/or other ad-hoc promotions to be given to some other successful candidates from the panel should be treated as only ad-hoc promotions for running the administration. The Respondents will hold a selection test for filling up the vacancies

not notified in the Circular No. 1/85 dated 28th January, 1985 pertaining to the posts mentioned in the writ petition and also the subsequent circular issued for the said purpose. It is intended that such selection test will be held only periodically and the panel from the successful candidates in such selection test will remain valid for a specified period, such decision should be placed before the Board and the Board's decision should be made known to all employees before the examination is held.

5. It is made clear that in future examination, all the eligible candidates including the candidates who had already qualified in the earlier test and who have already been empanelled excepting the candidates absorbed against the posts notified in the said circular on the basis of the tenth position in the test should also be entitled to appear and on the basis of the results in such examination to be held, the vacancies not mentioned in the said Circular No. 1/85 and also the vacancies arising thereafter will be filled up and if any of the candidates who may be holding promoted posts on the footing of adhoc promotion in terms of the directions given in this order are not found eligible on the basis of merit positions in future examination, such candidates will have to step down for making room to others who may be found eligible for promotion on the basis of merit position in the selection test to be held in future. Since no other examination has been held, it is only desirable that such examination should be held as early as possible so that the eligible candidates can get an opportunity to appear in the Selection test and to get the accelerated promotion in terms of the decision of the Board.

The appeal is accordingly disposed of.

There will be no order as to costs.

K.M. Yusuf, J.

I agree.