105 CWN 804

Calcutta High Court

Case No: C.o. 7785 (W) of 1992

Abdul Hai and Others		APPELLANT
	Vs	
The Board of Trustees, Calcutta Port Trust and Others		RESPONDENT

Date of Decision: May 11, 2001

Citation: 105 CWN 804

Hon'ble Judges: Ashim Kr. Banerjee, J

Bench: Single Bench

Advocate: Balai Chandra Roy, Jayanti Mukherjee and Kingshuk Chatterjee, for the Appellant;Hirak Mitra, L.K. Pal and Amar Nath Sen, for the Respondent

Judgement

Ashim Kr. Banerjee, J.

Writ petitioners and the added respondents are registered card holders of local employment exchange. The Port Trust Authority declared 30 vacancies of unskilled labour and informed the concerned employment exchange to send names for the said vacancies. Accordingly, employment exchange sent names at 1:20 ratio. However, the writ petitioners and the added respondents were not sponsored by the employment exchange. Subsequently, the Port Trust Authority decided to fill up 125 posts and accordingly informed the local employment exchange and at the same time, asked the local employment exchange not to send any further name and filled up those 125 posts out of the list so sponsored by the employment exchange Initially for 30 posts. The grievance of the writ petitioners and the added respondents are that had there been no such direction on the part of the Port Trust authority, their names could have been sponsored by the employment exchange and they could compete for the said 125 posts and in effect they were debarred from coming within the zone of consideration. Reliance was placed by the writ petitioners and the added petitioners on a circular issued by the Directorate of Labour, State of West Bengal dated 6-6-1990 wherein the ratio 1:20 has been directed to be complied with by all the employment exchanges. According to the writ petitioners and the added petitioner, the local employment exchange should have

followed such instructions of the Government. The employment exchange, despite service, has not entered appearance in this matter nor any affidavit in opposition has been filed denying the allegations. Mr. Hirak Mitra, Id. Advocate appearing for the Port Trust authorities submits that since the Port Trust authority is supervised under the administrative control of the Union of India through its Ministry of Surface Transport (Ports Wing) such circular of the Labour Directorate, Government of West Bengal is not applicable in the instant case. According to Mr. Mitra, the recruitment rules of the Port Trust provide for appointment through employment exchange. Accordingly the employment exchange was asked to sponsor the names with regard to the initial 30 vacancies. The employment exchange following the circular of the Labour Directorate, Government of West Bengal sent names at the ratio of 1:20. According to Mr. Mitra, it is not incumbent upon the Calcutta Port Trust to consider all those persons in the said 30 vacancies. Since the Port Trust wanted to fill up further 95 vacancies, the employment exchange was duly notified. However, since the Port Trust authority was having list of 700 persons, the Port Trust thought it fit to fill up those 125 posts out of the list so sponsored by the employment exchange and asked the employment exchange not to send any further names. According to Mr. Mitra the entire recruitment procedure has been followed in accordance with rules prescribed therefor and there has been no violation on the part of the Port Trust Authority. It is true that the circular of Labour Department, Government of West Bengal may not be applicable in the case of recruitment in Calcutta Port Trust. The said circular, however, has been issued to the concerned employment exchange and the State Government, in my view, is within its power to direct the employment exchange to follow the 1:20 ratio. In the instant case since the employment exchange was asked not to send the names to the Port Trust authorities, the employment exchange could not send any further names. The matter has to be, in my view, looked at form a quite different angle. The Calcutta Port Trust was to recruit from the persons to be sponsored by the local employment exchange in accordance with the recruitment rules. The subsequent letters to the employment exchange by asking not to send any further names, in my view, is a violation of the concerned rule in its true spirit. In my view, since the rules provide for appointment through employment exchange, it presupposes that the names which would be sent by the employment exchange should come within the zone of consideration. The Calcutta Port Trust authority by asking the employment exchange not to send any further names is an act which is completely violative of the said recruitment rules.

2. In my view the Port Trust authority should not have asked the employment exchange not to send any further names. The first list sent by the employment Exchange was against 30 posts and not 125 posts. From the available records it appears that the Port Trust authority to avoid further names have adopted this means by declaring vacancies initially with regard to 30 posts and immediately deciding to fill up the further 95 posts and thereby stalling employment exchange from sending any further name. This is an act which, in my view, has violated fundamental rights of those persons whose names could have been sent for consideration by the local employment exchange. I am told that all the 125 posts have already been filled up long before and those persons are working. Mr.

Mitra Id. Advocate appearing for the Port Trust authority today submits that there is no vacancy either in Calcutta Port or in Haldia Port and any direction by this Court with regard to further appointment will complicate the issue. In my view, since I have held that the Port Trust authority has violated the recruitment rules, the logical consequences should follow and thereby the entire recruitment process is liable to be quashed. However, those 125 persons who have already got their appointment are not before me and if i quash the recruitment process that would adversely affect those 125 persons. In such event I direct the Port Trust authority to prepare a list of the writ petitioners and the added petitioners, wherever any vacancy arise, the Port Trust authority must give preference to those persons if they are found suitable and appropriate for any such posts and they must be considered on priority basis over any further new persons to be sponsored by the local employment exchange juniors to the writ petitioners and the added petitioners irrespective of age bar. I further grant liberty to the writ petitioners and the added petitioners to sue the Port Trust authority for damage caused to them in an civil action if they are so entitled to in law.

The writ petition is thus disposed of with no order as to costs,Xerox certified copy, if applied for, be supplied on usual undertakings.