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Calcutta High Court

Case No: Writ Petition No. 1730 of 2008 and G.A. No. 1173 of 2011, W.P. No. 8192 (W) of 2010 and CAN 3864 of 2011

Minakshi Chakraborty		APPELLANT
	Vs	
Registrar General, High Court and Others Chaitali Kundu Vs High Court at Calcutta and Others		RESPONDENT

Date of Decision: Aug. 24, 2011

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Partha Sarathi Sengupta, Soumya Majumdar and Tanmoy Roy, in W.P. No. 1730 of 2008 and GA No. 1173 of 2011 and Ashish Kumar Das and B.R. Bose, in W.P. No. 8192 W of 2010 and CAN No. 3864 of 2011, for the Appellant;Alok Kumar Ghosh, for High Court Calcutta, Ashish Kumar Das and B.R. Bose for Respondent No. 4 and Amalendu Mitra, for P.S.C. West Bengal in W.P. No. 1730 of 2008 and GA No. 1173 of 2011 and Alok Kumar Ghosh, for High Court, Calcutta and Amalendu Mitra, for P.S.C., West Bengal in W.P. No. 8192 (W) of 2010 and CAN No. 3864 of 2011, for the Respondent

Final Decision: Dismissed

Judgement

Tapen Sen, J.

W.P. No. 1730 of 2008 with G.A. No. 1173 of 2011

1. The Petitioner in W.P. No. 1730 of 2008 (Ms. Minakshi Chakraborty) has prayed for cancellation of the candidature of the Petitioner in W.P. No. 8192(W) of 2010 and who, is the Respondent No. 4 in the said W.P. No. 1730 of 2008.

She has also prayed for cancellation of the letter of appointment that may have been issued in favour of Ms. Chaitali Kundu and has also made a prayer that the Registrar General, Appellate Side, be restrained from issuing any joining letter to her thereby

allowing her to join as Civil Judge (Jr. Division) upon her recruitment through the West Bengal Judicial Service Examination of 2007.

She has further prayed that as a consequence, the concerned Respondents be directed to issue appointment and joining letters to her on the post of Civil Judge (Jr. Division).Other consequential prayers have also been made including an Order that the Registrar General of this Court be directed to keep one post vacant in the General category until further Orders.

2. The Petitioner in W.P. No. 1730 of 2008, Minakshi Chakraborty (hereinafter referred to by name) has stated that she is an eligible candidate for recruitment to the post of Civil Judge (Jr. Division) on the basis of the results declared in the West Bengal Judicial Service Examination, 2007. According to her, she was granted Roll No. 0100122 and the written examinations were held on 17.7.2007. The results were published/announced on 29.9.2007. Upon completion of the viva-voce, the final Merit List was published/declared on 23.3.2008. Minakshi''s position, in the said List was 76. However, a decision was taken to fill up only 75 posts from the empanelled candidates from the General category.

3. Minakshi''s further case is that the Writ Petitioner of W.P. No. 8192 (W) of 2010, Ms. Chaitali Kundu (hereinafter referred to for the sake of brevity by name) was empanelled as a General category candidate and her position in the said Merit List was 56.

4. Minakshi has contended that the advertisement for the said examination was published in the "Ananda Bazaar Patrika" on 17.2.2007 by the West Bengal Public Service Commission vide Advertisement No. 4/2007. While inviting applications, the Public Service Commission (hereinafter referred to as the Commission) had instructed the candidates to consult the "Instructions" which were enclosed in the "Information to Candidates". They were required to fill up the forms correctly in his/her own handwriting.

5. Minakshi has relied upon Annexure P-1 (i.e. the Application Format) in support of such a contention.

She has further stated that Clause No. 16 of the Application Format consisted of a Column which required the candidates to Declare any previous employment that he/she may have held. The candidates were further instructed to solemnly Declare, vide a Declaration, that if any information was found to be false, then the candidature of such a candidate would be liable to be cancelled. It was also mentioned that candidates who were in Government Service or in service of any Local or a Statutory Body, must submit their applications with an undertaking to the effect that they have informed, in writing, their Head of Office/Department as to their applying for the examinations for judicial service.

According to Minakshi, Chaitali Kundu had been working as an Assistant Controller, Women''s Correctional Home, Purulia, since 11.4.2005.

She has further stated that in reply to her application under the Right to Information Act, 2005, the State Public Information Officer and the Deputy Secretary, Public Service Commission, Government of West Bengal informed, by letter dated 21.8.2008 (Annexure P-3), that Chaitali Kundu had mentioned nothing qua her employment in the application for the West Bengal Judicial Service Examination, 2007. It was also mentioned in the said letter that another candidate being Protyai Chowdhury (Roll No. 0100028) had also not mentioned anything with regard to his employment in the said application.

6. It appears that Minakshi thereafter filed a further application under the Right to Information Act, 2005 before the Prisons Directorate, Writers" Building and by their letter dated 22nd August, 2008 (Annexure P-4), it was informed that Chaitali Kundu had joined as an Assistant Controller of the aforesaid Correctional Home on 11.4.2005 and that she was on leave since 23.4.2008.

Minakshi has therefore submitted that the two Memos aforesaid (Annexure P-3 and P-4), which were issued under the Right to Information Act, 2005 establish that Chaitali Kundu had not furnished the required information and as a consequence thereof, she was guilty of suppression of fact making her candidature liable for cancellation. According to her, she deliberately practised fraud on the authority and acted contrary to the norms laid down by the authorities. She has also contended that if, therefore, Chaitali"s candidature is cancelled, then she would be the first candidate to be considered for appointment as her rank is Serial No. 76 in the General category Merit List and appointment was decided to be given to 76 posts only and therefore, with the cancellation of Chaitali"s candidature, she would more one rung higher in the ladder thereby placing her at Sl. No. 75.

7. An affidavit on opposition has been filed by Chaitali Kundu in W.P. No. 1730 of 2008. She has stated that the Writ Petition, in its present form, is not maintainable since the position of Minakshi in the Merit List is itself beyond the zone of consideration, having been placed at Serial No. 76. She has further stated that Minakshi has No. cause of action as on date, because Chaitali has not yet joined on any post pursuant to the publication of the Select List and therefore, the Writ Petition, being premature, should be dismissed.

8. Chaitali Kundu has further stated that she has not given any false Declaration nor has she wilfully suppressed material facts. She has also denied that she has played fraud on any of the parties. In Paragraph- 5 of her Affidavit-in-opposition, she has stated that "at the most my application form could be termed as incomplete on account of my bonafide mistake and / or inadvertent omission, for which my candidature cannot be cancelled by any of the Respondent authorities"(SIC)

In reply to Minakshi"s statements made in Paragraphs- 7 to 10 of the Writ Petition, she has not made any comments but has stated that the Respondent No. 3 (Public Service Commission) had, on a number of previous occasions, recommended, through their final Select List, candidates who were in full time employment on the date of the

Advertisement. She has given the names of five candidates who had also mentioned nothing with regard to their employment in their Application Forms of the 2007 examination although, they were in service on the date of publication of the Advertisement. She has therefore stated that she being similarly placed as that of the other five candidates named in Paragraph-6 of her Affidavit-in-opposition, she should be treated equally and the authorities should be estopped from taking any action prejudicial to her interests.

9. An Affidavit-in-opposition has also been filed on behalf of the West Bengal Public Commission (Respondent No. 3). In the said Affidavit, it has inter alia been stated in Paragraphs- 7(iv) and 8 that the Respondent No. 4 (Chaitali Kundu) has "indulged herself in material irregularity" by suppressing material information regarding her employment status and had therefore misled the commission as well as the Selection Committee and as such, steps are being taken for cancellation of her candidature. These statements are quoted below:

7(iv) Moreover it is made known to the Petitioner vide one letter dated 21.8.2008, annexed as P-3 to the application filed by the Petitioner that the Respondent No. 4 and another candidate had mentioned nothing on the application form at the time of filling in the same in regard to their continuation of previous avocation. As a result Smt. Chaitali Kundu (Respondent No. 4) was recommended for appointment in accordance with her merit position in the select list. Needless to say that recommendation of Smt. Kundu, the Respondent No. 4 herein was suppression of material information. It is pertinent to mention that on the misrepresentation of Respondent No. 4, the Commission, the Respondent No. 3 herein is taking appropriate steps for wrongful gain on the part of the Respondent No. 4 as above. It is further pertinent to mention that the Respondent No. 3 is the selecting authority of the candidates in terms of statement made in para 7, sub para 3 of this application, as such necessary steps and action will be taken by Respondent No. 2, appointing authority, and they will be communicated in connection with violation of terms and conditions of "Information to candidates" as directed in the application form as well as - "Declaration" by the W.B. Judicial Service Examination, 2007 by the candidate. The Respondent authority once again denies the contention save and except of what are official records.

8. With reference to contention in para No. 22 of the said application, I deny all the allegations made by the Petitioner in this para vehemently. It is pointed out that after receipt of representation from the Petitioner the Commission, Respondent No. 3, made a reference to the Inspector General of Correctional Service, West Bengal, to verify the genuineness of allegation of the Petitioner and the said office in their corresponding letter No. 2605/RTI-8/08 dated 16.10.2008 and letter No. 2838/RTI-8/08 dated 2-12-2008 communicated that Respondent No. 4 viz. Smt. Chaitali Kundu was on employment under Prisons Directorate, Govt. of West Bengal, on the date of advertisement dated 17.2.2007 issued by Public Service Commission, West Bengal, for W.B. Judicial Service Examination, 2007 and the Commission in equally alert to unearth the misdeeds of

Respondent No. 4 in the said examination as such the allegation made by the Petitioner that the Respondent No. 3 failed in its duty is blatantly wrong and motivated.

However, on scrutiny it is found that Respondent No. 4 has indulged herself in material irregularity by suppressing material information regarding her employment status and thereby mislead the Commission and the Selection Committee. As such appropriate steps are being taken by the Commission towards cancellation of candidature of Respondent No. 4. The Respondent authority further denies the contentions under reply save and except the matter of official record and save what are stated in this reply.

(Quoted)

10. The High Court has also filed an Affidavit-in-opposition though its Registrar General. They have stated that the High Court administration gives posting to those who are appointed in Judicial Service and that the allegation made by Minakshi with regard to the fraud played by Chaitali Kundu on the Public Service Commission and its duty to deal with such candidates can be dealt with by the said Public Service Commission and the State Government.

The High Court has further stated that two cases were filed on the issue of eligibility of candidates who were in service on the date of the Advertisement. The Selection Committee took a decision that candidates in service on the date of the Advertisement were ineligible. Both the cases were allowed and the High Court preferred two Appeals which are pending. The Registrar General has further stated, in Paragraph-8, that he has a limited role to play in the matter and that he has No. right or authority to cancel the empanelment of any candidate but on receipt of Minakshi"s representation, No. posting was given to Chaitali Kundu although, she has, in the meantime, received the letter of appointment.

11. The Respondent No. 2 (Secretary Judicial Department) has also filed an affidavit wherein he has attempted to convey that the State of West Bengal is not empowered, under the existing law, to cancel the empanelment of any of the candidates whose names have been sent for appointment by the Public Service Commission nor can they recruit any person on the basis of an independent enquiry in the absence of any recommendation by the Public Service Commission and it is for the High Court on its administrative side, to take steps.

12. It is thus clear that both the Public Service Commission as also the High Court, have expressed their inability to take action. In the background of such a situation this Court has to now consider as to whether the empanelment of Chaitali Kundu can be validated.

13. Chaitali Kundu has also filed G.A. No. 1173 of 2011 for Addition of Parties. She has prayed that the persons named in Paragraph-6 (i) to (iv) of the said Application be added as Respondent Nos. 5 to 8.

14. This Affidavit appears to be a sequel to her statement made in Paragraph-6 of the Affidavit-in-opposition wherein, while naming these five persons, she had stated that they were also in full time employment on the date of the Advertisement of the said examination and therefore, she stands on an equal footing.

15. However, and at this juncture itself, this Court would like to reject this Application in as much as whether those five were on service on the date of the Advertisement or not, is a question of fact which can best be decided by the Commission itself. In the instant Writ Petition, there are No. such materials to establish as to whether they had also suppressed material facts at the time of filing their Applications. This is the crucial issue in this case. Consequently, G.A. No. 1173 of 2011 is rejected.

16. Having considered the facts and circumstances involved in this case, this Court has No. hesitation in allowing Minakshi''s Writ Petition because it is now established beyond doubt that Chaitali Kundu suppressed an absolutely relevant fact and therefore will be deemed to have submitted a defective Application which cannot be considered to be a proper Application at all. Even the Public Service Commission, in their Affidavit-in-opposition, have clearly stated that Chaitali Kundu misled them and as a result thereof, the Selection Committee was also misled and therefore, steps were being taken by the Commission towards cancellation of her candidature.

17. The only defence put up by Chaitali in her own Affidavit-in opposition is that, "at best her application form could be termed as incomplete on account of her bonafide mistake and/or inadvertent omission." Such a plea, in the opinion of this Court, is fit to be rejected because the same is not at all tenable as she never informed the Commission that she had filled in and submitted an "incomplete form" which contained "bonafide mistakes and/or inadvertent omissions". The Hon''ble Supreme Court in the case of A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, has held that the purpose for which an information is called for is for the employer to decide and judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide whether to supply it or not. The plea of inadvertence, in such cases, according to the Hon''ble Supreme Court has been held to be untenable because similar to this case, there was nothing to show there that at any point of time, the concerned candidate had informed the Commission that there was a bonafide mistake in filling in the form or that there was inadvertence on his part.

18. Mr. Alok Ghosh learned Counsel appearing for the High Court has submitted that Minakshi has No. legal right because even if Chaitali''s appointment is cancelled, she cannot, as a matter of right, say that she has to be appointed because she is a mere empanelled candidate. Such a submission has to be rejected in the background of the facts involved in this case. The simple facts are that the Application form mandated every candidate to disclose certain facts. Chaitali Kundu did not do so and deliberately suppressed them and even the Public Service Commission, in their Affidavit, has stated that Chaitali misled the Selection Committee. Under such circumstances, the very

empanelment of Chaitali Kundu becomes illegal, irregular and void. Her empanelment therefore must be set aside. Consequently, the only other candidate just below her, is Minakshi. There is No. justification therefore on the part of Mr. Alok Kr. Ghosh to say that she does not have any right. The Hon''ble Supreme Court has further held, in the case of R.S. Mittal Vs. Union of India (UOI), that although a person in the select panel has No. vested right to be appointed to the post for which he has been selected, but, the appointing authority cannot ignore the select panel on its own whims and decline to make the appointment. Their Lordships have further held that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him keeping in view his position on the Merit List, then ordinarily, there is No. justification to decline to appoint such a person who is in the select panel. In the instant case, this Court has already held that the inclusion of Chaitali Kundu in the panel was illegal. Therefore, the moment she exits, a vacancy is automatically created and therefore, there is No. justifiable reason as to why appointment to Minakshi cannot be given.

19. For the foregoing reasons, this Court is of the considered view that Minakshi''s Writ being W.P. No. 1730 of 2008 must succeed and it is accordingly allowed to do so. Since the High Court has itself stated that posting was not given to Chaitali Kundu (as stated in Paragraph-8 of its Affidavit-in opposition), her position should now go Minakshi. Her Writ Petition is accordingly Allowed directing the Respondents to take necessary steps so that the next candidate in waiting, being Minakshi Chakraborty, is given the appointment.

W.P. No. 8192 (W) of 2010 with CAN 3864 of 2011 (for Addition of Parties)

As a consequence, W.P. No. 1730 of 2008 is allowed and for the same reasons as aforesaid, the other Writ Petition filed by Chaitali Kundu praying that the Registrar (Judicial Services) of the High Court be directed to issue posting Orders in her favour, is Dismissed. Consequently, CAN 3864 of 2011 is also Dismissed.

No Order as to costs.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and conditions.