

(2014) 03 CAL CK 0064

Calcutta High Court

Case No: Writ Petition No. 11753 (W) of 1997

Sheika Tamijuddin

APPELLANT

Vs

Chairman

RESPONDENT

Date of Decision: March 20, 2014

Citation: (2014) 3 CHN 212

Hon'ble Judges: Arindam Sinha, J

Bench: Single Bench

Advocate: Moinak Bakshi, Advocate for the Appellant; Ranjay De, Advocate for the Respondent

Judgement

Arindam Sinha, J.

Nine writ petitioners claimed consideration for appointment under the exempted category of land losers before the respondent power generating and distribution authorities by way of writ petition registered as Civil Rule 13758 (W) of 1980. The said writ petition was allowed by order dated 24th June, 1991. By the said order the individual cases of the petitioners was directed to be considered on the basis of the terms of agreement made by the West Bengal Power Development Corporation Limited. The said petitioners thereafter moved an application for contempt alleging violation of the directions made in the said order dated 24th June, 1991. By order dated 17th April, 1996 this Court found that the cases of four petitioners were rejected on the ground that they were sons and brothers in law of land losers. This Court held that after considering all aspects of the matter it appeared that the effect of the aforesaid judgment (dated 24th June, 1991) was not to give employment to each of the petitioners straight away but that the cases of each of the petitioners should be considered for employment with strict adherence to the aforesaid terms. This Court went on to find that in the matter of consideration and scrutiny made by the respondent authorities the same cannot be said to have been in violation of the said judgment and order. This Court further held that the respondents were given liberty to make objective scrutiny of the claims and after making such scrutiny if it is

found that claim for employment is not tenable and such claim is refused, it cannot be said that there has been willful and deliberate violation of the said judgment and order. The order made in the contempt application was carried in appeal and by order dated 21st April, 1997 it was held that the appeal was not maintainable and the same was dismissed.

2. It appears that of the said nine writ petitioners two of them got appointment. The remaining seven have again come up by this writ petition praying for a mandamus commanding the respondents to give them appointment. The case of the petitioners, as appears from the writ petition, is that the respondent authorities issued appointment letters in favour of the son-in-law of a land loser named Haripada Bhunia. For that purpose the writ petitioners relied on a copy of a document being annexure "N" to the writ petition at page 91 thereof.

3. Mr. Bakshi, learned advocate appearing on behalf of the petitioners sought to demonstrate to this Court that serial No. 10 in the list of persons given appointment by Office Order dated 20th June, 1975 (copy of which is annexure "N" to the writ petition) is the name of the son-in-law of the said land loser of Sri Haripada Bhunia. He further submits that this list relates to appointments given to the same exempted category as serial Nos. 32 and 83 are the names of persons who are sons of land losers. According to him since the respondent authorities have considered a nominee of a land loser who is his son-in-law, the petitioners were also entitled to such consideration and that they have been discriminated against. Mr. Bakshi, further submits that it would appear from the minutes of the meeting of the Local Advisory Committee for Kolaghat Thermal Power Project held on 20th November, 1979 (being annexure "F" to the writ petition) it was decided that the basis of preparing a panel would be that actual homestead evictees, land losers and nominees of land losers would be given preference in that order. He submits that there is no definition or qualification made by the respondent authorities as to who could be the nominee of a land loser and hence a son-in-law or a brother-in-law of a land loser should be duly considered.

4. This Court had called for a supplementary affidavit from the appearing respondent Nos. 3, 4 and 5 since the allegations to the effect recorded above had not been specifically dealt with in the opposition filed. The said respondents in their supplementary affidavit have disputed the allegation of the petitioners that the person whose name was appearing as serial No. 10 in annexure "N" had been given appointment by virtue of being son-in-law of a land loser. They have alleged that as per their records the said person was engaged as a general candidate and such would appear from the said annexure "N" itself as being an ad hoc appointment on the basis of the Mazdoors Master Roll Establishment as opposed to land loser/evictee category as would be specified in the appointment letter itself.

5. Mr. Ranjay De, learned advocate appears on behalf of the said respondents and submits that the matter is closed. He relies upon an unreported decision rendered

by this Court in W.P. 22169 (W) of 2010 (Arun Kumar Manna & Ors. vs. The State of West Bengal & Ors.) delivered on 19th September, 2013 whereby claim for appointment in exempted category was turned down both on the ground of delay as well as on merits. In that judgment several authorities were considered to the effect that after land has been acquired, compensation was due to the land losers and any concession over and above the same, if shown by the government, does not confer any legal right upon them. Mr. De further submits that the same petitioners had come up in contempt where it had been specifically found that there was no contempt committed in scrutinising their cases and the consequent refusal upon such scrutiny to give them appointment. In the circumstance, according to Mr. De, the writ petition itself is not maintainable.

6. The case in the writ petition if taken to have arisen upon discovery of an appointment given to the son-in-law of a land loser, the same, as it appears, was given on the basis of the Master Roll and not on the ground of land loser/evictee or nominee thereof under W.B.P.D.C.L. as is mentioned in the appointment letters issued by the respondent authorities copy of one of which appears at page 22 of the supplementary affidavit filed on behalf of the appearing respondents. In the circumstances, the case of the petitioners becomes a disputed question of fact which cannot ordinarily be gone into in writ jurisdiction. Even otherwise the prayer of the petitioners had been directed to be considered, they had taken out contempt application which returned the finding that the scrutiny was duly made and in view of the clear finding that the over and above concession does not confer any right, this Court is unable to make any order in this application.

7. The writ petition is, therefore, dismissed. There will be no order as to costs. Urgent certified photocopy of this order, if applied for, will be made available to the parties subject to compliance with all requisite formalities.