

Item No. 6

09.12.2020
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction

WPA No. 8466 of 2020
Haji Matiur Rahaman Mallick & Anr.
v.
The State of West Bengal & Ors.

Mr. Subhashis Pachhal
... for the petitioners.

Mr. Joytosh Majumdar, Id G.P.
Mr. Pinaki Dhole
Ms. Kakoli Samajpati
... for the State.

The petitioners pray for employment under the exempted category. The petitioner no. 1 is the land loser and the petitioner no. 2 is his daughter. The land of the petitioner no. 1 was acquired sometime in the year 2007.

According to the petitioners there was a scheme for giving appointment to one of the family members of the land loser. The petitioner no. 1 being the land loser applied for employment. An enquiry was made on October 28, 2008 and the Enquiry Officer was of the opinion that the candidate is eligible for enrolment of the name under the exempted category. The name of the petitioner no. 1 was enrolled in January 2009.

As no step was taken by the respondent authorities for providing employment to the petitioner no. 1 he approached this Court by filing a writ petition.

By an order dated June 8, 2009 the writ petition being WP No. 9047(W) of 2009 was disposed of by directing the District Magistrate to consider and dispose of the representation that would be filed by the petitioner within a stipulated period.

In compliance of the order passed by the Court the District Magistrate disposed of the representation recommending the case of the petitioner for favourable consideration. The District Magistrate was of the opinion that the case of the petitioner should be considered by condonation of the prescribed age limit on sympathetic ground, if possible, according to law.

Even though there was a specific direction by the District Magistrate, the Land & Land Reforms Department did not take any further step for providing employment to the petitioner.

The petitioner once again filed a writ petition being WP No. 6806(W) of 2010 which was disposed of by the Court on November 17, 2011 by issuing a writ of Mandamus commanding the Land & Land Reforms Department to consider the recommendation of the District Magistrate, Howrah.

By a communication dated February 10, 2012 the Joint Secretary, Land & Land Reforms Department communicated to the petitioner that employment cannot be provided to him as he already crossed the age

prescribed by the Government of West Bengal for employment.

The petitioner no. 1 being aggrieved by the aforesaid order of rejection challenged the same by filing a writ petition being WP No. 13802(W) of 2012 which is still pending for consideration before this Court.

Eight years after the aforesaid communication the daughter of the petitioner no. 1 made an application for appointment on February 4, 2020.

The petitioners in the instant writ petition pray for providing employment to the petitioner no. 2. The explanation given by the petitioner no. 1 for filing this writ petition after so many years after getting to know about the earlier rejection is that the petitioner no. 2 was a minor at that point of time and the application for employment was made only after she attained majority.

The petitioner relies upon the scheme of the Government of West Bengal wherein the provision for consideration of giving employment to the persons belonging to the family members of the land losers is mentioned.

It has been submitted that according to the Government notification only one member from an uprooted/affected family shall be eligible for consideration against vacancies reserved for the exempted categories. This beneficiary should be either

an awardee of compensation for acquisition of land or a member of the family of the awardee.

According to the petitioners, presently, only one member of the uprooted/affected family i.e. the daughter is eligible for consideration and the authority ought to consider her case for providing employment.

The petitioners further submit that the land which has been acquired was used for business purpose and since the family in question is a land loser, then at least one member of the family ought to be provided with employment.

The learned advocate representing the respondents vehemently opposes the prayer of the petitioner.

It has been submitted that the rejection of the prayer of the petitioner no. 1 was communicated to him in 2012. The daughter of the petitioner no. 1 has applied for employment only in the year 2020. The land of the petitioner was acquired in the year 2007. At a belated stage the case of the daughter cannot be taken up for consideration for the purpose of providing employment to her.

I have heard the submission made on behalf of both the parties.

The scheme for providing employment to the persons belonging to the families of the land losers

specifically lay down that a member of an uprooted/affected family shall be eligible for consideration. The petitioner no. 1 is the land loser who was eligible for consideration on the day the land was acquired. The case of the petitioner no. 1 was duly considered and rejected for being age barred. The issue of rejection of the candidature of the petitioner on the ground of being age barred has been challenged and is subjudice before the Court of law. As long as the right of the petitioner no. 1 remains alive for consideration of employment the petitioner no. 2 does not have a fresh right for consideration for providing employment. In the event, the Court is of the opinion that the rejection of the case of the petitioner no. 1 for employment on the ground of being age barred was bad in law, necessary orders will be passed therein.

In the instant case there is no scope to pass any order for consideration of the prayer of the petitioner no. 2 for employment. The scheme does not provide for consideration of the candidature of two persons for employment. The rejection of candidature of the petitioner no. 1 is pending consideration before the court and accordingly there is no scope for the petitioner no. 2 to put forward her claim for consideration for providing employment to her under the exempted category.

Moreover, there is no provision for reservation in providing employment to candidates under the exempted category. Government employment ought to be provided strictly in accordance with the scheme and the relevant rules. The scheme relied upon by the petitioner does not provide for consideration of the case of a candidate who was minor at the relevant point of time and attained majority after a considerable period.

In view of the above, no relief can be granted to the petitioners in the instant case. The writ petition being WPA No. 8466 of 2020 stands dismissed.

Urgent photostat certified copy of this order, if applied for, be made available to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)