

10.8.2021

Ct-16

ar

**The State of West Bengal & Ors.
Vs.
Sri Suvasish Kundu & Ors.**

Mrs. Kakali Samajpaty
...For the State/Petitioners

Mr. Chittapriya Ghosh
Ms. Priyanka Saha
...For the Respondents

The present writ petition filed by the State authorities challenges a judgment and order of the West Bengal Administrative Tribunal dated 19th April, 2016 passed in O.A. No.1435 of 2014.

Shorn of unnecessary details, the facts of this case are as follows:

The respondents/original applicants who had filed the said original application before the West Bengal Administrative Tribunal had been appointed to the post of Assistant Operator (Group-C category) on compassionate grounds as the dependents of the employees who had died-in-harness or retired pre-maturely on being declared permanently incapacitated from service in terms of G.O. No.30-Emp dated 02nd April, 2008 read with G.O. No. 114-Emp dated 14th August, 2008. The appointment of the said original applicants along with a group of 28 others was made by Memo No. Estt (Cell-II)/12A-28/2009 (Pt.1) dated 25th June, 2009.

However, the 4th Pay Commission

recommended that the recruitment process of the field level technical posts upto scale 5 be modified so that they are filled up 100 per cent by promotion from the feeder posts. The said report of the Commission was accepted by the Government of West Bengal. The said recommendation of the 4th Pay Commission report was applicable to the post of Assistant Operator (Group-C category). Therefore, no direct appointment could be made to the post of Assistant Operator (Group-C category) even if the appointees fell in within the exempted categories of appointments, such as appointments on compassionate grounds.

The Water Resources Investigation and Development Department of the Government of West Bengal went about implementing the said change in the process of appointment of persons to the post of Assistant Operator (Group-C category) by issuing the G.O. No.1033Estab(Cell-I)/12A-25/2007 dated 03rd June, 2009. Pursuant to the said government order, the said department offered the respondents appointment to Group-D posts in place of the post of Assistant Operator (Group-C category), which had been offered to them earlier. The petitioners accepted the offer and even signed an undertaking which stated as follows:

“I am ready and fully agreed to accept the

offer of appointment to a Group-D post under exempted category in terms of G.O. No.1619-Estab(Cel-II)/WI/N/12A-26/2009 dated 31st August, 2009 of Water Resources Investigation & Development Department, Government of West Bengal and Memo. No. 10576/9E-17/2009 dated 12th October, 2009 and No.9781/9E-17/2009 dated 14th September 2009 of the Director of Personnel & Ex-Officio Chief Engineer, Water Resources Development Directorate, West Bengal.”

The order by which the respondents were appointed to the Group-D post bore No. 1619-Estab (Cell)/WI/N/12A-26/2009 dated 31st August, 2009. It was this order and act of the said authorities appointing the respondents to the Group-D posts instead the Group-C posts that was the subject-matter of challenge in the original application filed before the Tribunal.

The order of the Tribunal dated 19th April, 2016 which is impugned before us states that the aforesaid undertakings obtained from the respondents were practically under duress and would have to be treated as non-est, thereby having no binding effect. The order stated that the respondents, if otherwise eligible, should be open for escalation to Group-C posts for which they were originally selected. The Tribunal directed necessary action in this regard to be completed within a period of 4 months from the date of communication of the order.

The petitioners contended that the Tribunal in another original application being O.A. No.908 of 2015 has passed an order and judgment, after

hearing both sides, on 18th November, 2016. This order and judgment, which has been passed by the same bench of the Tribunal as the order impugned herein, disallowed the application of the original applicant therein on the ground that the change in appointment processes brought about by the recommendations of the 4th Pay Commission by the State authorities had shifted the process of appointment of the applicant therein to the post for which he had being originally selected. The Tribunal held that once a person had accepted a post offered to him on account of compassionate grounds, then such a person could not object to his appointment to an earlier post, following the decision of the Supreme Court in ***Umesh Kumar Nagpal v State of Haryana & Ors.***, reported in **1994 (4) SCC 138**.

In fact, the said order of the Tribunal even addressed the order impugned herein stating that the order impugned herein had been passed without assistance from the State authorities.

The petitioner contends that the order of the Tribunal dated 18th November, 2016 had been challenged by a writ petition being W.P.S.T. No.92 of 2018 before this Hon'ble Court. The writ petition was taken up for consideration by a Division Bench of this Court and was dismissed

by an order of this Court dated 10th June, 2019.

The said order of the Division Bench stated that appointment was denied to the petitioner therein on valid grounds. The denial of appointment was neither illegal nor arbitrary and it was merely the misfortune of the petitioner that prior to an offer of appointment being issued in his favour the rules underwent a change. Moreover, the right of the petitioner therein to challenge his appointment was held to have been negated by his acceptance of the offer of appointment.

Mrs. Samajpaty, the Learned counsel representing the petitioners/State has submitted that the petitioners have accepted the order under challenge on the threat of contempt. Matters involving similar questions of law and fact have been decided by the same bench of the learned Tribunal since affirmed by the Hon'ble Division Bench in its order dated 10th June, 2019 contrary to the order impugned in this proceeding.

The learned counsel for the petitioners has relied upon decisions of the Hon'ble Supreme Court in State of UP & Ors. Vs. Raj Bahadur Singh & Anr., reported in (1998) 8 SCC 685 and Veerayee Ammal Vs. Seenii Ammal, reported in (2002)1 SCC 134 to justify the delayed challenge

to the order impugned. In the said judgments it were held that there was no time limit for filing an application under Article 226 and 227 of the Constitution of India and if circumstances of the case justify the cause the Court shall not take a strict view and dismiss the writ petition merely on the ground of delay and laches. Since the impugned order is patently erroneous and contrary to law and relevant rules for the ends of justice interference is called for.

It is also emphasized by Mrs. Samajpay in referring to the decision of the Hon'ble Supreme Court in State of Rajasthan Vs. Umrao Singh, reported in (1994)6 SCC 560 and Umesh Kumar Nagpal Vs. State of Haryana, reported in 1994 SCC (4) 138 that once compassionate appointment was given and the same was accepted, the right to such appointment stood exhausted. Moreover, the appointee cannot have a vested right to a particular post. If it is a mistake committed by the appointing authority, the appointing authority reserves the right to correct the mistake.

It is also submitted that such mistake has been noticed by the same bench of State Administrative Tribunal in a similar matter. The said bench of the Tribunal in fact had observed that the instant matter was not decided

correctly.

On such consideration the learned counsel for the petitioners has prayed for setting aside of the impugned order.

The learned counsel for the respondents submits that the writ petition should be dismissed on the ground of delay and laches. Moreover, having regard to the fact that the order impugned has been implemented, the application is barred by estoppel and acquiesce.

The question of law herein is whether the respondents were wrongly appointed to the Group-D posts despite a prior government order allowing them to be appointed to the aforesaid Group-C post. The question of law is to be answered in the negative. The State authorities have to operate in accordance with law and the rules. The relevant notifications herein, being G.O. No.30-Emp dated 02nd April, 2008 read with G.O. No. 114-Emp dated 14th August, 2008, could not allow the respondents to be appointed on their terms to the aforesaid Group-C posts as the said notifications were nullified when the recommendations of the 4th Pay Commission were accepted by the State of West Bengal. It cannot be denied and is not denied that the 4th Pay Commission recommended that posts upto scale 5 be filled up 100 per cent from

feeder posts. Thus, there could be no direct appointment even in the exempted category of appointments on compassionate grounds, like that of the respondents to the post of Assistant Operator (Group-C category).

On similar facts a Co-ordinate Bench on 10th June, 2019 cited hereinabove upheld the contention of the petitioner. That order stated, as already outlined above, that compassionate appointments being made to a post lower than the one to which a person may have been entitled due to a change in the rules and/or the legal processes of such appointment cannot be held to be bad in law. That holding squarely applies to the present case and cannot be contested as a matter of principle.

As stated by Nijjar, A.C.J., (speaking for a Division Bench of the Punjab and Haryana High Court), as His Lordship then was, in the case of ***Mohinder Singh v. State of Haryana & Ors.***, reported in **2007 (4) Punj. L.R. 563**, the representations made by an appointing authority would bind it in equity and by estoppels, subject to the requirements of the law. If the law, at the time of making the representation or thereafter, prevents the appointing authority of the State from acting on that representation, then no court of law can enforce that representation by

issuance of writs or any other relief. Moreover, appointment to the Group-C post was a mistake and contrary to rule. This was elaborately discussed by the same bench of the SAT in O.A. No.908 of 2015 and upheld by the Co-ordinate Bench.

Keeping in mind the aforesaid proposition of law and that the order was complied with in view of the pending contempt application for implementation of the said order which was subsequently found by the same bench to be erroneous in deciding the similar matter, we are of the view that consistency should be there in all matters having similar facts.

On such consideration, the order of the Tribunal is set aside. However, the financial benefit availed of by the original applicants by reason of his appointment in Group-C post shall not be recovered after the original applicant is posted in Group-D post.

This writ petition succeeds. The order of the Tribunal is modified to the extent.

WPST 49 of 2020 is thus allowed.

Urgent certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)

