

AD. 1.
September 29, 2021.
MNS.

HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

(Through Video Conference)

WP. ST 170 of 2013
with
IA NO: CAN 2 of 2020

Sri Bimal Krishna Sarkar and others
Vs.
State of West Bengal and others

Mr. Soumya Majumder,
Mr. Tarun Kumar Das

... for the petitioners.

Mr. Tapan Kumar Mukherjee,
Mr. Pinaki Dhole,
Mr. Avishek Prasad,
Mr. Somnath Naskar

...for the State-respondents.

Mr. Vivekananda Bose,
Ms. Deblina Chattaraj

...for the respondent nos. 11 to 17.

At the outset, it is pointed out by learned counsel for the private respondent nos. 11 to 17 that the erstwhile Advocate, who had been engaged by his clients, has not been traceable for quite sometime now. Although a fresh Vakalatnama has been filed by the learned Advocate-on-record, who is assisting learned counsel for the said private respondents, 'no objection certificate' could not be taken from the erstwhile Advocate.

In view of such submission, that the previous Advocate is not traceable, we grant the learned Advocate-on-record at

present appearing for the private respondent nos. 11 to 17, leave under Order III Rule 4(2) of the Code of Civil Procedure, the principles of which applicable in the absence of any specific Writ Rules in that regard, deeming the signatures of her clients in the Vakalatnama, empowering her to appear, as the requisite consent in writing.

Learned counsel appearing for the petitioners contends that the appointment of the private respondents is tainted by illegality on two scores. First, the enrolment of the private respondents with the Employment Exchange is vitiated in view of such enrolment being *de hors* the law regarding entitlement as far as the age of the said private respondents at the relevant point is concerned.

Learned counsel relies on a Vigilance Report annexed to the writ petition, which indicates that it was categorically found in the report that some of the private respondents had been enrolled in the Employment Exchange while they were still under-age, which vitiated their previous appointment as Census Enumerators.

On the basis of such erroneous enrolment, it is submitted, the said private respondents were also appointed for census work previously. However, since the present selection process started in the year 2000, the initial enrolment of the private respondents with the Employment Exchange ought to be treated as invalid in view of the vigilance report, consequently rendered the appointments to their present posts illegal.

Learned counsel further submits that a second type-writing test was taken in this particular case, on the pretext that some of the previous typewriters on which the examination was held were defective. Such a process is unknown to law, it is submitted, since the petitioners, who were next in line for appointment, automatically became eligible for the job of Lower Division Clerks and/or *Amins* at the point of time when the private respondents failed in the first type-writing examination.

Learned senior counsel for the State contends that the petitioners do not have any *locus standi* to file the present writ petition in view of the absence of the pleadings that the petitioners belonged to the Exempted Category, in view of the fact that all the appointments of the private respondents-in-question were on the premise that they belonged to the Exempted Category.

Learned senior counsel next places reliance on the judgment in the case of *State of Orissa and another Vs. Mamata Mohanty reported at (2011) 3 SCC 436*, wherein it was reiterated that there has to be a relevant pleading for a relief to be granted to the petitioners.

It is further submitted on behalf of the State that the date of appointment to the present posts was the relevant date and not the date of their enrolment with the Employment Exchange.

Learned counsel appearing for the private respondent nos. 11 to 17 adopts the contentions of the State with regard to the lack of *locus standi* of the writ petitioners, since the writ petitioners have not claimed to belong to the Exempted Category.

That apart, it is contended, no fraud was committed at any point of time by the said private respondents, since the private respondents had all along been truthful before the authorities and had disclosed their correct dates of birth. The vigilance report, at the worst, might hit at the enrolment of the private respondents with the Employment Exchange, but does not tantamount to fraud, even as per the aspersions of the writ petitioners.

Learned counsel for the private respondent nos. 11 to 17 next cites a judgment reported at (2012) 2 Cal LJ 454 (*Uttam Kumar Mondal Vs. State of West Bengal and others*) in support of the proposition that there is no rule, regulation, government order, circular or notification which extends the application of the rules for appointments to government jobs to appointment of Census Enumerators. As such, the petitioners, it is argued, cannot rely upon alleged irregular appointments of the private respondents as Census Enumerators previously, to justify their pleading that the appointments presently at stake were also vitiated by the same logic.

The co-ordinate Bench, in the said report, had also laid down the law that an empanelled person has a right to be appointed as per his turn in the panel and cannot be superseded by others without lawful justification. It was held that while it is the prerogative of the employer to decide whether to make appointments or not; appointments cannot be made ignoring the panel of selected candidates.

As such, it is obvious that the ratio laid down in the said case is applicable to the present case as well, since no

irregularity, as such, could be brought on record regarding the present appointments of the private respondents, since they were otherwise eligible for the present posts under the Exempted Category.

The irregularity, if at all, in the appointment of the private respondents as Census Enumerators, cannot be a relevant factor for the present appointments.

No case of fraud has also been made out by the petitioners, since it has not been pleaded in particular or proved that the private respondents deliberately suppressed their dates of birth at any point of time. Even the Vigilance Report does not say so but alleges illegality in the enrolment of the private respondents with the Employment Exchange, on the basis that they were allegedly under-age at that juncture, which is not germane in the present case.

As regards the second typing test being held, it was well within the authority and the discretion of the employer to hold such a second typing test, more so, since the typewriters used in the previous test, where the private respondents could not succeed, were apparently faulty and, as such, the ends of justice demanded that a second chance be given to the private respondents.

In such view of the matter, we do not find any illegality or irregularity in the appointment of the private respondents. That apart, the petitioners having not pleaded that they belonged to the Exempted Category, do not have the *locus standi* to challenge the appointment of the private respondents, since the petitioners do not stand to benefit in any way even if such

appointments of the private respondents, all of whom belong to the Exempted Category, were set aside.

Accordingly, WP.ST 170 of 2013 is dismissed on contest, without any order as to cost.

IA NO: CAN 2 of 2020 is disposed of accordingly.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Jay Sengupta, J.)