

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 20810 of 2011

S.Sujatha

...Petitioner

-vs-

1. The Chairman,
Coal India Limited,
Coal Bhavan, No.10, Netaji Subhas Road,
Kolkata 700 001,
West Bengal.
2. The General Manager (Personnel)
Coal India Limited,
Coal Bhavan, No.10, Netaji Subhas Road,
Kolkatta - 700 001,
West Bengal.
3. The Chief Personal Manager (Recruitment),
Coal India Limited,
Coal Bhavan, No.10, Netaji Subhas Road,
Kolkata - 700 001,
West Bengal.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents to consider the petitioner's representation dated 17.07.2009 and also direct the third respondent to issue appointment order to the petitioner on the basis of announcement of selected candidates for the post of Management Trainee in various Disciplines under Special Recruitment Drive for SC / ST published through Internet during May 2006 by the respondents.

For Petitioner : Mr.T.Danasekaran

For Respondents : Mr.P.Vinod Kumar
Standing counsel

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 17.07.2009 and also direct the third respondent to issue appointment order to the petitioner on the basis of announcement of selected candidates for the post of Management Trainee in various Disciplines under Special Recruitment Drive for SC / ST published through Internet during May 2006 by the respondents.

2. The respondents Coal India Limited called for applications through notification in advertisement on 26.02.2005 for selection to various posts at the respondents organization.

3. The Management Trainee (Welfare / Personnel) is one of the posts, for which, the applications were also called for.

4. It is to be noted that, the said Recruitment Drive is a Special Recruitment Drive meant for Scheduled Castes and Schedule Tribes candidates.

5. Pursuant to the said advertisement issued by the respondents, the petitioner had made an application to the selection process for the post of Management Trainee (Welfare / Personnel).

6. The selection process consists of two stages, one is written test followed by interview. The written test was conducted sometime in November 2005, where the petitioner has cleared, in other words, she became eligible to be called for interview. Accordingly, the interview was conducted sometime in March 2006, where the petitioner also has participated and cleared. Ultimately, the final result of the selected candidates was published in May 2006.

7. While issuing such list of selected candidates, the Selection Committee of the respondents, as per the procedure in vogue, since it is a special Recruitment Drive for SC and ST, in order to testify the veracity and genuinity of the Community Certificates, they produced, i.e., invariably all the certificates signed and issued under various capacities of the Issuing Authority of the Revenue Department concerned were directed to be verified. In this regard, only after getting a report from the said Revenue Authority / Certificate Issuing Authority, the genuinity of each of the Certificates of the Community concerned would be satisfied and then only the appointment orders or posting orders would be given.

8. Accordingly, the petitioner's Community Certificate belongs for SC Community, has also been sent for such verification and report immediately after the publication of the result of the selected candidates in the year 2006. However, since no reply was received from the Revenue side, when it was followed by the respondents, they came to know that, it was originally sent to the Thasildar concerned, who in turn forwarded the same to the Collector, Kancheepuram and thereafter, since the address given by the petitioner in the Certificate, when it was verified, was not found, as the petitioner was not residing in the address which was entered in the Certificate, they could not immediately send a report and therefore, it has been forwarded to the Collector, Tiruvallur sometime in the year 2007. Thereafter, the Collector, Tiruvallur, after having verified the genuinity of the Certificate issued to the petitioner has sent a report in July 2008 to the respondents.

9. However, by that time, the time prescribed for the panel of selected candidates as per the regulation prescribed in this regard by the respondents Department since expired and it was only extended upto 31.03.2008 and the genuinity of the Community Certificate report since was received only on July 2008, well before which the extended period of the panel expired in March 2008 itself, the respondents Department could not be in a position to give appointment to the petitioner.

10. However, the petitioner not satisfied with the said reasons stated for inaction on the part of the respondents to give appointment to the petitioner, pursuant to the selection having been made in the year 2006 itself, seems to have given representation to the respondents and the same since has not been considered by the respondents, she has come out with this petition only in the year 2011 with the aforesaid prayer.

11. When this Writ Petition is taken up for final hearing, the learned counsel appearing for the petitioner by reiterating the aforesaid facts would submit that, once the petitioner has become successful in the selection process by clearing both written test as well as oral test and her name was found place in the list of selectees which was published in the year 2006 itself, appointment should have been given immediately and if the respondents wanted to verify the genuinity of the Community Certificate of the petitioner and others, that process can go on and for the said purpose, the respondents need not have waited for all these years upto 2008, as now the respondents turn around and say that the extended period of the panel of selectees was over by 31.03.2008, whereas the genuinity of the Community Certificate report since was received only in July 2008, hence, the petitioner cannot be considered for

appointment, may not be a justifiable reason and therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court to issue mandamus as prayed for.

12. Per contra, Mr.P.Vinod Kumar, learned Standing counsel appearing for the respondents, by relying upon the various documents filed in the typedset of papers as well as the averments made in the counter affidavit would submit that, as per the procedure which was in vogue since it is a Special Recruitment Drive for SC and ST vacancies, even though selection was over and selection list was published in May 2006, immediately, the respondents had sent the Community Certificate of each of the candidates including the petitioner to Revenue Department / issuing Authority to verify the genuinity of the Certificates concerned. Though several attempts have been made by the respondents by sending communications and reminder after remainder at frequent interval in the years 2006, 2007 and 2008, the Revenue Authorities did not respond or they were not able to send a report about the genuinity of the Certificate till March 2008.

13. In this context, the learned Standing counsel appearing for the respondents would further contend that, the panel of selectees will have a life of one year initially as per the procedure or rule and subsequently, it can be extended for further period and accordingly, it was extended only upto 31.03.2008 and thereafter, it has never been extended. Therefore, the panel of selectees since got lapsed, from that panel, no appointment can be given.

14. In support of the said submissions, the learned Standing counsel appearing for the respondents has relied upon the relevant regulations called "Common Coal Cadre", where, he has specifically relied regulation 3.13, which reads thus:

"3.13. The Selection Committee may recommend higher initial starting pay, normally not exceeding 5 advance increments in deserving cases. On the basis of the marks awarded or grading given by the Selection Committee, a final select list in order of merit will be prepared by Coal India Headquarters. On the recommendations of the Selection Committee, a panel of candidates for filling the posts will be drawn up and on approval by the Chairman, Coal India Limited, the panel will be valid for one year unless extended specifically by the Chairman, Coal India or any Competent Authority, after which the panel lapses."

15. By relying upon this regulation, he would further submit that, even though, selection list was published in the year 2006, the panel of such selectees would have a life time of one year, unless it is extended. Subsequently, it has been, in fact extended up to 31.03.2008 and thereafter, it was not extended. Therefore, by 31.03.2008, the panel of selectees got lapsed and therefore, the petitioner's candidature, for whom the genuinity report of the Community Certificate since has been received only in July 2008, could not be considered for appointment, he contended.

16. He also raised an issue that even though, everything was closed or over by 2008 itself, the petitioner has belatedly approached this Court in the year 2011, therefore, on the ground of laches also, this Writ Petition is liable to be rejected, he contended.

17. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

18. First of all, it is a Special Recruitment Drive meant for SC and ST candidates, where, in respect of each post, how many vacancies in SC category and how many vacancies in ST category were available was clearly demarcated explicitly and given in the advertisement of the respondents inviting applications from the eligible candidates.

19. According to which, post called "Management Trainee" is concerned, wherein the petitioner applied for that post (Welfare and Personnel), there are 27 vacancies given for SC and 9 vacancies for ST. Accordingly, for the said post, the petitioner had made application and he participated in the selection process of both written test as well as oral test, where, admittedly, she had become successful, pursuant to which, selection was made and a list of selectees were published by the respondents in May 2006. सत्यमेव जयते

20. Thereafter, if at all, the respondents, as per the procedure in vogue, wanted to verify the genuinity of the Community Certificates of each of the selectees, for which, the Community Certificate has been sent for various Issuing Authorities / Revenue Department concerned, it is their routine procedure, for which, this Court feels that, the issuance of orders of appointment need not have been delayed.

21. Whenever a communal reservation has been made and based on such communal reservation, if selection process is completed and selection list is provided, where the candidates are selected in particular communal category, it cannot be expected

that, in respect of all candidates, the Community Certificates would be sent for verification.

22. Assuming that, in order to ensure the claim of every candidate on community concerned, if the employer wants to verify the Certificate, they can very well send it for verification to Issuing Authority and for that purpose, even after completing the selection process and publishing the list of selectees, the employer need not wait any further for making appointment.

23. If the logic, as projected by the respondents is accepted by this Court, no public appointment for the communal category can be made, despite the selection is completed and selection list is published.

24. The law is well settled in this regard that, once the candidate is selected from the communal category and appointed, either at the time of appointment or afterwards, if the employer feels or receives, any information about the genuinity of the community Certificate of the candidate concerned, certainly the employer can send it for verification. Once such verification has been sent, it is for the Revenue Authority or the Certificate Issuing Authority to verify the same and send a report. If any such report is given and based on such report, if the Community Certificate Issuing Authority comes to the conclusion that, the Certificates are ingenuine, that Certificate should have been canceled by such Issuing Authority or Canceling Authority in the manner known to law.

25. Unless such community certificate is canceled in the manner known to law, the law can very well presume that, the candidate belongs to that Community only on the strength of the Community Certificate.

26. However, in this case itself, all the Community Certificates have been sent for verification as to their genuinity to the concerned authorities. This move on the part of the respondents, first of all is not required. Assuming that, it is a routine process that every Community Certificate will have to be sent for verification, the respondents need not wait for giving appointment and posting orders to the selected candidates.

27. The reason being that, there are vacancies earmarked for SC and ST candidates, therefore, the Special Recruitment Drive was undertaken by the respondents and in that process, after full fledged selection was over, the selection list was issued, thus the next natural corollary would be to give appointment orders and posting orders to the selected candidates depending upon the vacancies in various situations.

28. Here, if we look at the reasons given by the respondents especially in the context of the panel expiry is concerned, the learned Standing counsel appearing for the respondents has relied upon the regulation 3.13 as quoted herein above.

29. No doubt, there is a regulation in 3.13, where if a panel is issued, the life of the panel is one year and it can be extended and once it is extended, within which period if the panel is not acted upon or any person has not been taken from the panel and utilized for appointment or engagement, immediately the panel gets lapsed, hence, no right can be accrued on the persons whose name found in the panel.

30. However, the said regulation, in the considered opinion of this Court would not at all apply to the present case, the reason being that, the post, for which, the selection was made is Management Trainee (Welfare and Personnel) and after selection process, results were published not only for this post but all other posts. In respect of this issue is concerned, if we looked at the selection list, only 27 candidates were selected for the said post, namely Management Trainee (Welfare and Personnel) in SC category and 9 candidates were selected in ST category. Therefore, exactly, what was the vacancies available in the respondents Department, for which, the Special Recruitment Drive was undertaken, only in order to give appointment and posting for those vacant posts alone, the candidates were selected. Not even a single candidate more than the vacancies have been selected and published. Therefore, the list of selected candidates can never be construed as a panel.

31. If at all the panel is prepared, by keeping it pending for some years, from which, based on the seniority, candidates can be picked up and be utilized or be engaged by the employer, in such case it can be restricted to the exact number of vacancies that are available and for the said purpose the life time of the panel can be fixed.

32. Here the vacancies for SC category for the said post is 27, for which only 27 candidates were selected including the petitioner. Therefore, the arguments advanced by the learned Standing counsel appearing for the respondents by relying upon regulation 3.13 that the panel of selectees since got lapsed on 31.03.2008, therefore, beyond which, it cannot be operated or acted upon, has no substance and therefore, this Court is inclined to outrightly reject the said contention raised by the learned Standing counsel appearing for the respondents.

33. Insofar as the plea raised by the respondents with regard to the delay is concerned, it is not the delay on the part of the petitioner, in fact it is a delay caused by the

respondents as the selection was made only in 2006, following which, the order of appointment should have been issued to the selected candidates pending verification of the genuinity of the Community Certificate, however the respondents have delayed the process in the name of verifying the certificates, thereby the Revenue Authorities one after another, seems to have taken longer time till July 2008, for which the petitioner cannot be blamed.

34. Even after July 2008, since no fruitful result has come to the petitioner, though several attempts in this regard were made by giving representation also and having waited for some reasonable time, he approached this Court. Hence, this Court feels that, there is absolutely no delay on the part of the petitioner, therefore, the ground of laches raised by the petitioner cannot be accepted.

35. Moreover, if a Writ Petition under Article 226 is entertained and admitted and rule nisi was issued, after several years, when it is taken up for final hearing, the plea of laches can never be raised and the same cannot be accepted.

36. Therefore, the said plea of delay / laches raised by the respondents counsel has also to be rejected, accordingly, it is rejected.

37. In view of the aforesaid discussions, since the petitioner having been selected through the duly conducted selection process and his name was found in the selection list and it was published in the year 2006 and the Community Certificate which was produced by him at the time of making the application, since has been found to be a genuine one, for which, the report has also come in July 2008, the reasons stated by the respondents for not giving appointment order to the petitioner is totally unjustifiable. Therefore, this Court is inclined to issue a direction by way of mandamus as prayed for.

38. In the result, this Court is inclined to dispose of this Writ Petition with the following directions:

"(i) There shall be a direction to the respondents to issue appointment order to the petitioner immediately for the post of Management Trainee (Welfare and Personnel).

(ii) If at all, the respondents raised the plea that, as of now, there is no vacancy in that post, a supernumerary post can be created, where appointment can be given to the petitioner. However, it is made clear that, the petitioner though had been selected in 2006 since not so far been appointed, she shall not

claim any retrospective appointment or benefits and if at all she is appointed, from the date she joined in the duty alone she would be entitled for the pay and other benefits.

(iii) The needful as indicated above shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order."

39. Accordingly, this Writ Petition is ordered. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Coal India Limited,
Coal Bhavan, No.10, Netaji Subhas Road,
Kolkata 700 001, West Bengal.
2. The General Manager (Personnel)
Coal India Limited,
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3. The Chief Personal Manager (Recruitment),
Coal India Limited,
Coal Bhavan, No.10, Netaji Subhas Road,
Kolkata - 700 001, West Bengal.

+1cc to Mr.P.Vinodkumar, Advocate, S.R.No.13677

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.14025

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