

11.11.2022
Sl. No.902(ML)
srm

W.P.A. No. 23064 of 2014
Babar Ali Molla
Versus
The State of West Bengal & ors.

Mr. Sajal Kanti Bhattacharyya,
Mrs. Purabi Sinha,
Mr. Sarthak Burman

....for the Petitioner.

None appears on behalf of the respondents.

The petitioner is aggrieved by the inaction on the part of the Naopara-1 Gram Panchayat, District-Nadia in granting him appointment as a Tax Collector. The petitioner appeared at a interview pursuant to a selection process, which was advertised in 2013 *vide* Memo No.143(2/2012-2013/2453/2012). The petitioner contends that he duly appeared before the selection committee on February 26, 2013 along with his testimonials. The selection committee published a list of marks obtained by the candidates at the interview. The petitioner secured the highest marks. The proposal for appointment was sent to the Block Development Officer, Krishnanagar-II Development Block, Nadia, by the then Pradhan of Naopara-1 Gram Panchayat. The Block Development Officer did not take any steps.

The writ petition was thereafter filed seeking necessary directions upon the authorities to grant appointment to the petitioner in the post of Tax Collector.

No interim order was passed. Directions for filing affidavits had been issued.

The original affidavit-in-opposition filed by the Pradhan, is not on record. A copy of the same, as supplied to the petitioner, is taken on record and treated to be the original. Affidavit-in-reply filed by the petitioner is also taken on record.

In the affidavit-in-opposition filed by the then Pradhan of the said gram panchayat dated November 27, 2014, it has been categorically stated that the selection committee was not properly constituted. According to the government circulars, the members of the selection committee would be the Pradhan, the Upa-Pradhan, Secretary, Executive Officer and the leader of the opposition of the gram panchayat. The interview in which the petitioner had appeared, the leader of the opposition of the gram panchayat was not a part of the selection committee. No intimation had also been sent to the leader of the opposition about the selection. Rather, the Nirman Sahayak was wrongly included as a member of the selection committee.

The newly elected members of the gram panchayat in early 2014 decided to cancel the selection process and go for a fresh selection by issuing a fresh advertisement. The petitioner was also intimated about such decision upon his query under the Right to Information Act. The Executive Officer, Krishnanagar-II Panchayat Samiti was further intimated by the Pradhan on February 7, 2014 about the need for issuance of a fresh advertisement. The newly constituted gram panchayat in 2014 had taken a decision to cancel the earlier interview which was held in violation of the government circulars and rules, with regard to the constitution of the selection committee.

The specific allegation is that due to political rivalry between the majority members of the gram panchayat and the leader of the opposition, the selection committee was illegally constituted by keeping the leader of the opposition in the dark. It appears that the selection was never approved by the Block Development Officer. The selection did not attain any finality. The selection committee was not properly constituted.

In the affidavit-in-reply, the petitioner has not been able to show that the contention of the Pradhan of the gram panchayat in his affidavit-in-opposition was incorrect.

It is not the case of the petitioner that the selection committee had been properly constituted. The alleged selection, which was carried out on the basis of the irregular constitution of the selection committee, was pending approval of the Block Development Officer, when the writ petition was filed.

Admittedly, mere selection at an interview does not give a vested right upon the petitioner to be granted appointment. Every recruitment process must adhere to the government circulars, rules and regulations. If the selection committee was constituted illegally or improperly, the selection process becomes vitiated. Moreover, selection was subject to the final approval/decision of the Block Development Officer. Such approval was never given.

An employer has the right to cancel a selection process for *bona fide* reasons. In this case, an illegality in the constitution of the selection committee was detected before the panel could be finalized. The selection process was cancelled and it was also decided that a fresh selection process would be initiated.

Reference is made to the decision in *Sachin Kumar & ors. vs. Delhi Subordinate Service Election Board & ors.*, reported in (2021) 4 SCC 631, The Hon'ble Apex Court held

that the recruiting authority was entitled to take a bona fide decision on the basis of the materials before it that the entire selection process stood vitiated and a fresh selection process should be initiated. Reference is also made to the decision in *All India Railway Recruitment Board v. K. Shyam Kumar*, reported in (2010) 6 SCC 614, the Hon'ble Apex Court went on to add that the recruitment to public posts must command public interest. When the entire process is found to be flawed, it may be cancelled. Cancellation may undoubtedly cause hardship to a few, but such hardship would not be sufficient ground to refrain from nullifying the ultimate process when the nature of the wrong done cuts through the entire process so as to seriously impinge upon the legitimacy of the Board of Selection.

In the matter of *Raj Kumar & ors. vs. Shakti Raj & ors.*, reported in (1997) 9 SCC 527, the Hon'ble Apex Court observed that when the government had committed glaring illegalities in the procedure and in the method of selection, the principle of estoppel by conduct or acquiescence had no application.

In this case, the selection committee was not constituted as per the rules. A list of the successful candidates was prepared on the basis of a selection held by

an irregularly constituted selection committee. The selection was not approved and more than 10 years have passed. Such selection process was cancelled as per the affidavit-in-opposition filed by the Pradhan. The petitioner does not have a vested right to be appointed. In the decision of *Commissioner of Police & anr. vs. Umesh Kumar* reported in (2020) 10 SCC 448, the Hon'ble Apex Court held as follows:-

“19. The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative. In *Punjab SEB v. Malkiat Singh* [*Punjab SEB v. Malkiat Singh*, (2005) 9 SCC 22 : 2006 SCC (L&S) 235] , this Court held that the mere inclusion of candidates in a selection list does not confer upon them a vested right to appointment. The Court held : (SCC p. 26, para 4)

“4. ... the High Court [*Malkiat Singh v. Punjab SEB*, 1999 SCC OnLine P&H 75 : ILR (1999) 2 P&H 329] committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in *Shankarsan Dash v. Union of India* [*Shankarsan Dash v. Union of India*, (1991) 3 SCC 47 : 1991 SCC (L&S) 800] which reads : (SCC pp. 50-51)

‘7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed

which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha* [*State of Haryana v. Subash Chander Marwaha*, (1974) 3 SCC 220 : 1973 SCC (L&S) 488] , *Neelima Shangla v. State of Haryana* [*Neelima Shangla v. State of Haryana*, (1986) 4 SCC 268 : 1986 SCC (L&S) 759] or *Jatinder Kumar v. State of Punjab* [*Jatinder Kumar v. State of Punjab*, (1985) 1 SCC 122 : 1985 SCC (L&S) 174] .”

(emphasis in original)

20. In the present case, after the name of the respondents appeared in the results declared on 17-7-2015, the process of recruitment was put in abeyance since the results were challenged before the Tribunal. The process of revising the results during the course of the recruitment was necessitated to align it in accordance with law. An Expert Committee was specifically appointed following the institution of proceedings before the Tribunal. The report of the Expert Committee established errors in the answer-key, and thereafter a conscious decision was taken, after evaluating the report, to revise the results on 1-2-2016. In the fresh list which was drawn up, both the respondents have admittedly failed to fulfil the cut-off for the OBC category to which they belong. As the learned ASG submitted before the Court, as many as 228 candidates are ranked above Umesh Kumar on merit while 265 candidates stand above Satyendra Singh. The

submission of Mr Khurshid that these are the only two candidates before this Court would not entitle them to a direction contrary to law since they had no vested right to appointment.”

Under such circumstances the unapproved selection process which was held in 2013, cannot be kept alive for almost ten years. As such, the writ petition does not call for interference by this Court. No mandatory directions can be passed in favour of the petitioner.

Accordingly, the writ petition is dismissed.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)