

Item no. 09

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 27836 of 2014
with
IA No. CAN 1 of 2016 (Old No. CAN 9675 of 2016)

Gurupada Singha & anr.
vs.
Union of India & ors.

Appearance:

For the Appellants : Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Ambiya Khatun

For the Respondents : Mr. Saptangsu Basu, learned Senior Counsel
Mr. Ashok Kumar Jena

Heard on : 29.04.2022

Judgment on : 29.04.2022

Hiranmay Bhattacharyya, J.:

Though IA No. CAN 1 of 2016 (Old No. CAN 9675 of 2016) is appearing in today's list, but the same is not traceable in the record. However, Mr. Ahammed, learned counsel for the petitioner

has filed a photocopy of the said application which is taken on record and shall be treated to be a true copy of the said application.

Mr. Ahammed at the threshold submits that he is not pressing the writ petition insofar as Shyamal Kumar Maity, writ petitioner No. 2 is concerned and confines the claim in the writ petition insofar as Gurupada Singha, writ petitioner No. 1 is concerned. In view thereof, the writ petition insofar as the petitioner No. 2 is concerned, stands dismissed as not pressed.

The writ petitioner No. 1 claims that the land owned by the predecessors-in-interest of the petitioner No. 1 was acquired by the State of West Bengal for the establishment/development of Haldia Dock Complex as per the requisition of the Port Trust Authority. The writ petitioner claims that the Government of West Bengal vide Memo No. 5120(60)LW dated October 17, 1977 took a decision that in all future recruitment the authorities will be competent to give appointment to candidates hailing from families who might have been uprooted from their places of residence as a result of the land in question being acquired by the Government for development projects.

The petitioner further claims that the Calcutta Port Commissioner by a resolution No. 170 dated 27.06.1978 in a meeting resolved that the question of adopting certain broad principles for recruitment to Class-III and Class-IV posts were considered by the Trustees and it was resolved that evicted persons as also others

including the local residents for employment in the regular Haldia Establishment will be considered subject to their suitability. The petitioner claims that in terms of the said resolution the Calcutta Port Trust since being renamed as Kolkata Port Trust prepared a panel for giving appointment to the persons under the land-loosers category. The petitioner No. 1 claims that his name is appearing in the said panel.

The petitioner further claims that the Division Bench of this Court by a common judgment and order dated April 17, 1998 passed in W.P. 9387(W)/1997 (Biswa Ranjan Parua vs. Calcutta Port Trust & anr.) as well as other writ petitions after considering the issue as to whether the persons whose names are appearing in the panel have a right of appointment held that when a panel is prepared on the basis of the merit of the candidates, the employer has no other alternative but to appoint strictly in terms thereof failing which the action of the employer would attract the wrath of Articles 14 and 16 of the Constitution of India. The petitioner claims that though his name is appearing in the panel, the Port Trust Authority has acted de hors or in violation of observations made by the Division Bench of this Court in the writ petition as indicated hereinabove.

In the affidavit-in-opposition filed by the respondent nos. 2, 3, 4 and 5 it has been stated that all recruitment in general under the Haldia Dock Complex are stalled since 2001 due to Ministry's restrictions on direct recruitment and also due to initiation of various

costs curtailment measures for survival of the Board since it is facing serious financial crisis.

In the application being CAN 9675 of 2016 filed by the petitioner, the petitioner refers to a document annexed at page 13 of the said application which is a letter issued by the Assistant Manager, Haldia Dock Complex, Kolkata Port Trust directing the petitioner to appear before the service selection committee alongwith the testimonials.

Mr. Ahammed submits that the petitioner is entitled to be appointed in view of the order passed by the Division Bench of this court as referred to hereinabove. He further submits that the claim of the Port Trust Authority that the entire recruitment process has been stalled cannot be accepted as it will be evident from the letter dated May 20, 2016 that there was necessity for recruitment of persons.

Mr. Basu, learned senior counsel appearing for the respondent nos. 3 to 5 relies upon a judgment of the Hon'ble Supreme Court dated May 6, 2010 in **Civil Appeal No. 4254 of 2010 (Calcutta Port Trust & anr. vs. Haripadi Khajli & ors.)** and contends that the writ petitioner do not have any vested right to demand employment from Port Trust Authority merely because his name appears in the priority list.

Heard the learned advocates for the parties and perused the materials placed.

The Hon'ble Supreme Court of India in **Civil Appeal No. 4254 of 2010 in the case of Calcutta Port Trust and Anr. vs. Haripadi Khajli & ors.** passed an order on May 6, 2010. The relevant portion of the said judgment reads as under:

"5. It would thus be seen that merely on the ground of being a legal heir of landloser in an acquisition for development project, or merely by being included in the priority list, a person will not become entitled to be appointed automatically. On the other hand, the Scheme shows that a member of a project affected family only be entitled for being placed in the priority list maintained by the Project Employment Exchange on the basis of recommendations of the Selection Committee. If and when vacancies arise, they could be filled by appointing persons from such priority list. But if there are no vacancies, there is no question of employment merely because a person is in the priority list. In this case, the name of the first respondent has been placed in the priority list and the Port Trust has already informed him on 5.11.1999 that his candidature will be considered alongwith other eligible candidates in due course, that is as and when vacancies arise. Nothing more was required to be done.

6. By a letter dated 15.05.2001, the Port Trust informed the Project Employment Exchange that in view of the manpower rationalization and restructuring, it will not be able to employ anyone from the list of recommended candidates and therefore, the candidates may be considered for vacancies in other organizations. The scheme contemplates appointment only when there are vacancies. The Resolution of the Port Trust passed in April, 2000 shows the severe financial crisis through which the Port Trust was passing and the several measures adopted by it to deal with the situation including a ban on recruitment. As noticed above, the Port Trust does not have any Scheme for straightway offering appointments to the family members of landlosers. What is sought to be invoked is the

Scheme of the State Government which merely enables the name of family members of landlosers being put up in the priority list, for being considered for appointment. There is therefore no vested right in the first respondent to demand employment from the Port Trust.

7. The assumption of High Court that merely because the Screening Committee recommended the name of the first respondent for inclusion in the priority list, he should be appointed is erroneous. Therefore, the direction by the High Court to the Port Trust to approach the central government seeking approval/sanction for appointing first respondent in an appropriate post is misconceived. If and when any vacancies occur, the Port Trust will consider the recommendation of the Project Employment Exchange as per priority list and may offer employment.

8. We are, therefore, of the view that the High Court was not justified in directing the Port Trust to offer employment to the first respondent within any specified time frame. We allow this appeal and set aside the impugned order of the High Court. We, however, make it clear that as mentioned in the letter dated 5.11.1999, the case of the first respondent shall be considered for employment as and when vacancies arise and first respondent's turn as per priority list, comes up for consideration."

The Hon'ble Supreme Court after taking note of the Circular dated 17.10.1977 issued by the Government of West Bengal observed that the Port Trust does not have any scheme for straightway offering appointments to the family members of landlosers. The Hon'ble Supreme Court further held that there is no vested right in the person whose name has been enlisted in the priority list to demand employment from the Port Trust.

The Division Bench of this Hon'ble Court in *Biswas Ranjan Parua* (supra) held that when a panel is prepared on the basis of the merit of the candidate, the employer has no other alternative but to appoint strictly in terms thereof. The said decision is contrary to the decision of the Hon'ble Supreme Court in **Haripada Khajli** (supra) and as such the same cannot be treated to be a binding precedent.

The decision of the Hon'ble Supreme Court in **Haripada Khajli** (supra) squarely applies to the facts of the instant case.

It is not in dispute that the name of the petitioner No. 1 is appearing in the priority list for being considered for appointment to the vacancies that may be available in Group IV categories. Mere empanelment in the priority list does not give any right to such empanelled candidate to be appointed as held in **Haripada Khajli** (supra). Merely because of the fact that the respondent was directed to appear before the service selection committee alongwith all testimonials, it does not necessarily mean that the authorities have initiated steps for filling up any available vacancy as contended by the petitioner. From the letter dated May 20, 2016, it appears that the petitioner No. 1 was directed to appear before the Committee for the purpose of recruitment of Class IV category of posts under special recruitment drive for persons with disability (PWD) under Haldia Dock Complex, Kolkata Port Trust. It is not the case of the petitioner that anyone whose rank is below the rank of the petitioner in the priority list or any person with disability below his rank has been

given appointment by the Port Trust Authority. The petitioner failed to make out any case of discrimination against him.

In view thereof, this court is of the view that the instant writ petition is devoid of any merit and the same is, accordingly, **dismissed** without, however, any order as to costs. Consequently, the connected application being CAN 9675 of 2016 stands disposed of.

It is however, made clear that if and when vacancy arises, the claim of the petitioner for appointment may be considered in accordance with law. However, this observation shall not be construed to have conferred any right to the petitioner for being considered for appointment in preference to other persons by jumping the queue.

Urgent certified photostat copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)

Amitava (AR. CT.)