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Ct. No. 04

Akd

WP.ST. 13 of 2020

Debasish Dhibar & Ors.

Vs.

The State of West Bengal & Ors.

**Mr. Sarwar Jahan,
Mr. Md. Ashraful Huq,
Mr. Maidul Islam Kayal,
Mr. Binay Shaw.**

... for the petitioners.

**Mr. Tapan Kumar Mukherjee,
Mr. Somnath naskar.**

... for the State.

**Mr. Lal Ratan Mondal,
Mr. Dilip Kumar Sadhu.**

**... for the respondent
nos. 17-19.**

A piquant situation has arisen in the instant case relating to the selection process initiated in the year 2007 for filling up the post of Group-D in Mayurakshi Canal Circle under the Directorate of Irrigation and Waterways, Government of West Bengal, when a plea has been taken by the State that the list published in the Newspaper on 24th July, 2010 containing a mistake was subsequently rectified by publishing another select list on 12th August, 2010.

The facts would unfurl that the selection process was started for filling up the Group-D post in Mayurakshi Canal Circle under the Directorate of Irrigation and Waterways, Government of West Bengal in respect of 1446 vacancies and large number of candidates, i.e. 57437 participated in the selection process. Initially invitation was restricted to the sponsored candidates from the respective Employment Exchanges, but slew of litigation started pouring in the docket of the Tribunal and the Court taking a plea that the other eligible candidates, who have not enrolled in the Employment Exchange, cannot be deprived of their right to offer their

candidature and the State and/or its instrumentality cannot defy the mandate of Article 14 and 16 of the Constitution of India.

Indubitably, the orders were passed in the said litigation directing the State authorities to permit those applicants to offer their candidature in the selection process which has been duly complied with. After completion of the selection process challenge was made thereupon by some of the applicants therein seeking Mandamus in the form of declaration that the selection process is invalid, illegal and faulty having not followed the mandate of the law laid down by the Supreme Court rendered in case of *Excise Superintendent, Malkapatnam, Krishna District, A.P. vs. K.B.N. Visweshwara Rao and others* reported in (1996) 6 SCC 216.

The matter travelled to the High Court from the Tribunal and after noticing the mandate given in the said judgement i.e. *K.B.N. Visweshwara Rao* (supra) the entire selection process was set aside, which constrained the State to move the Supreme Court by filing a Special Leave Petition being Civil Appeal Nos. 6748-6749 of 2013. The Apex Court accepted the contention of the applicants on the ground of challenge being thrown that there is a requirement of advertisement by inviting the names but interfered with the order of the High Court on the score that considering the number of vacancies advertised and the large number of candidates, who offered their candidature, it would not be proper to set aside the entire selection process and direction was passed upon the State to fill up the post available from among the select list after setting aside the order of the High Court. As and by way of precaution it was indicated in the said order that the appointees cannot claim any

seniority with retrospective effect as it might create cavil amongst the appointees in other departments at earlier point of time.

The moment selection process was upheld although undergone in violation of the judicial order of the Supreme Court in *K.B.N. Visweshwara Rao* (supra), some of the selected candidates in respect of Mayurakshi Canal Circle were taken off in the subsequent select list published by way of corrigendum/supplementary list, the writ petition being (Civil) no. 787 of 2014 was moved before the Supreme Court. By an order dated 8th September, 2014 liberty was granted to those writ petitioners to withdraw the said writ petition and approach the appropriate forum ventilating their grievance which they raised in the tribunal application.

Pursuant to the liberty having granted, the writ petitioners approached the Tribunal challenging the selection process restricted to the Mayurakshi Canal Circle by filing OA 921 of 2010 solely on the ground that the moment the Apex Court have directed appointments to be done on the basis of the select list, it can be interpreted to mean the select list published on 24th July, 2010 and not the subsequent select list published on 12th August, 2010.

It is emphasized in the said tribunal application that the identification numbers / roll numbers were published in the select list which belong to the petitioners and by way of a corrigendum / supplementary list absolutely new candidates were included and, therefore, there is every possibility of favouratism and/or nepotism having been shown by the authority. It is not in dispute that pursuant to the same and in terms of the order of the Apex Court the appointments have been made to the candidates

shown in the select list dated 12th August, 2010. The Tribunal dismissed the said application solely on the ground that the mistake has been detected and the authority have taken a decision to rectify the same; it does not accrue any right into the candidates as the mistake cannot be allowed to be perpetuated for all time to come.

However, the dispute took a diametrically opposite direction before us, when we directed the State authorities to disclose all the documents pertaining to the selection process undertaken for Mayurakshi Canal Circle. The writ petitioners were directed to inspect the aforesaid documents produced by the State and liberty was also granted to file a supplementary affidavit to disclose any discrepancy and/or illegality perceived during the inspection.

It was pointed out in the supplementary affidavit that the entire record seems to have been prepared at the later stage and the combined book of sponsored candidates from the Employment Exchange does not contain any original signature of any member of the selection committee. It is further highlighted that only one member of the selection committee signed the panel so far as it relates to the candidates who appeared in the selection test in pursuance of the order of the High Court; whereas the candidates whose candidature was sponsored by the respective Employment Exchange included a separate list having prepared contain the signature of four members.

Considering the aforesaid stand having been taken the State filed a counter-affidavit dealing with the allegations made therein and interestingly took a stand that a mistake having committed in the select list published on 24th July, 2010 was duly rectified in the subsequent select list published on 12th August,

2010. The specific stand has been taken in the said affidavit that the select list dated 24th July, 2010 was published erroneously with the secret code assigned to each of the candidates; whereas the rectified/supplementary select list was published on 12th August, 2010 with the correct i.d./roll number, which would be evident from the following excerpts culled out from the counter-affidavit in the following:

“X. After completion of interview a list of selected candidates along with list of waited candidates for every category, containing secret official code no. of the candidates mentioned under Reference No., has been submitted to the Chairman of the Central Committee for the recruitment of Group-D candidates & the Director of Personnel & Ex-Officio Chief Engineer, I & W Dte. Vide Memo No. CON. 208, Dated 05.03.2009.

XI. The Roll Numbers of the selected candidates for the recruitment to the Group-D Post of the respective Circle/Office of the Chief Engineers, Irrigation & Waterways Directorate were published on 24.07.2010 in Newspapers but in this publication respective secret official code no. of selected candidates of Office of the Superintending Engineer, Mayurakshi Canal Circle, Suri, Birbhum was published wrongly.”

The interesting fact has been noticed by us in course of hearing, more particularly, on the stand having taken by the State in the counter-affidavit that the first select list dated 24th July, 2010 contained the secret code number, whereas the subsequent select list dated 12th August, 2010, after rectification of the mistake, contained the i.d./roll number of each of the

successful candidate. The pattern assigning the secret code/number and the roll number appears to us to have been made in the same fashion. The roll number of one candidate can only be assigned another candidate as a secret code. The secret codes are given in a unique pattern in order to hide the identity and/or disclosure of the name of the candidates and to ensure the fairness, transparency and equality being adopted in the selection process.

It is inconceivable and improbable that the secret code is given in a same pattern with that of the roll number and, therefore, the story of the State is to be scrupulously examined in this regard. Several documents prepared prior to the publication of the select list were also produced where the discrepancy is found not only in the name but also in the roll number. Had it been the stand of the State that there has been a typographical or ministerial mistake crept therein, which was subsequently rectified, the position would have been different.

We are not oblivious of the fact that the mistake cannot be allowed to be perpetuated eternally and, therefore, capable of being rectified or corrected by the authority; the mistake neither confers any right into a candidate nor the candidate should be permitted to reap the benefit out of the said mistake. It is also beyond cavil of doubt that the Court shall not issue Mandamus directing the respondent authorities to act upon the mistakes having committed which are capable of being rectified taking administrative recourse available in this regard. The position appears to us to be different in view of the specific stand taken by the State in the above quoted pleadings that the first list dated 24th July, 2010 was published with secret code number assigned to the successful

candidates, which was duly rectified in a subsequent publication of select list dated 12th August, 2010.

The aforesaid point was neither taken before the Supreme Court nor before the Tribunal, as it was not unearthed at such stage, which becomes patent after the production of the record, invitation to file affidavit, counter-affidavit and the stand perceived therefrom. Dispensation of justice is the hallmark of judicial system. The action of the authorities must be immuned from any violation of the statutory as well as the Constitutional rights guaranteed to the citizen of the country. Any action of the authority which violets the fundamental rights enshrined in Articles 14 and 16 of the Constitution of India cannot get the blessings of the Court nor the Court should remain a mute spectator the moment it is revealed from the pleadings filed before the Court.

Since the aforesaid point did not arise before the Tribunal nor was the centre of challenge before the Apex Court and in view of the liberty having granted to the writ petitioners to approach the appropriate forum, we do not find any impediment in our part to go into the above aspect. There is no scintilla of doubts in our mind that the story cooked up by the State in the counter-affidavit is improbable and unbelievable and it is intended to shred the illegalities and deprive the persons of their rights recognized under the Constitution of India. There is a patent disparity in both the lists and such disparity on the score of mistaken roll number and secret code is not acceptable to us and we believe that there has been a foul play behind the curtain to deprive the eligible candidates of their right to be appointed in respect of the aforesaid post.

We, therefore, set aside the order of the Tribunal, which cannot withstand on the findings recorded hereinabove.

The State is directed to appoint the candidates whose i.d. /roll number were published in the select list dated 24th July, 2010 and the entire exercise would be undertaken within eight weeks from date.

However, we hasten to add that the said appointments shall not be given retrospective effect nor any notional benefit can be attributed to the service of each of such successful candidates. So far as the candidates, who have already been appointed in terms of the list dated 12th August, 2010 are concerned, since they are not before us, we direct the State to initiate appropriate proceedings in the light of the observations made hereinabove and pass the order so warranted.

The writ petition is thus disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)