

01 **11.05.**
2023
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.CT 88 of 2023

Buddhadev Senapati and others
Vs.
Union of India and others.

Mr. Surojit Samanta,
Mr. Bharat Bhusan.

... for the petitioner.

Mr. Sauvik Nandy,
Mr. Subrata Santra.

... for the Union of India.

Leave is granted to the writ petitioners to add the two left out parties, who were the parties in the tribunal application, here and now.

The present writ petition is directed against a judgment and order dated 18th April 2023 whereby several contempt applications, which were taken up together, were dismissed holding that there is no willful and/or deliberate violation of the order passed by the Tribunal. Though the Tribunal was conscious that the compliance has been made belatedly but was satisfied on the unconditional apology tendered by the alleged contemnors in this regard.

At the first instance this Court invited the attention of the writ petitioners whether an application under Article 226/227 of the Constitution of India is maintainable against an order passed in a contempt jurisdiction refusing to inflict parity. The said point has been set at rest by a three Judges Bench decision of the Supreme Court in case of **T. Sudhakar Prasad vs. Government of A.P. & Ors.**, reported in (2001)1 SCC

516, wherein it is held that the power of superintendence exercised by the High Court under Article 227 of the Constitution of India is primarily a judicial superintendence and, therefore, even if there is a remedy by way of an appeal provided in the statute, it does not take away the right of the High Court in entertaining the petition.

Be that as it may, both the parties proceeded to argue the matter on merit accepting the position that the instant writ petition is maintainable and entertainable against the impugned order.

The dispute arose when a large number of persons lost their land in the acquisition proceeding having initiated in this regard and considering the plight of those persons and in order to give succor to a sudden jerk, which they faced, a Benevolent and Welfare Scheme was framed being RB No. 99 of 2010 for giving an employment in the Railways under the land losers category and the screening criteria has also been provided therein.

The parties are at variance so far on the applicability of the conditions relating to procedure postulated in paragraph 5 of the said Scheme; according to the writ petitioners, the procedure, which is consistently followed by the Railways under the aforesaid Scheme, has been diverted to a more rigorous procedure rendering several eligible persons under the said Scheme to be kept out of the said Scheme. In other words, it is sought to be contended all along that the Railways have adopted the procedure of screening the other documents and never impose any of such land losers to undergo the physical efficiency test.

In support of the aforesaid contention, it is further contended that the joint procedure order dated 3rd June 2011 does not recognize such physical efficiency test

and, therefore, a sudden imposition after the order of the Tribunal is an overreach act of the Railway Authorities tainted with malice, which can be perceived to be a contumacious act exposing the authorities to be punished under the Contempt of Courts Act.

On the other hand, the Counsel for the Railways took a stand that the said paragraph 5 has to be read in meaningful manner, which includes that even in case of a person coming under the said Scheme, he must fulfil the eligibility and the other conditions prescribed for the post against the direct recruitment quota from open market. It is further contended that the power to relax any of such conditions has been bestowed upon the General Manager of the Railways and, therefore, there is no justification in the apprehension of the writ petitioners that the physical efficiency test was never an integral part of the entire screening eligibility of the land losers.

We find that such being the core issue and was, in fact, raised in a different proceeding but appears to have been decided differently. Some of the orders passed by the Tribunal as well as this Court reveal that the direction was passed upon the Railway Authorities to proceed with the physical test as well as the medical test whereas a point has been taken that those observations or the orders being interlocutory in nature cannot be construed as the final adjudication, which would further be seen from the expressions used therein that such procedure shall be without prejudice to the rights and contentions of the parties.

At the first blush we are taken to the aforesaid orders in order to find out whether any ratio can be culled out therefrom, but subsequently the moment the Counsel for the Railways disclosed their stand, we feel that there is no necessity of going into such nuances of

the proposition of law as the Railways have shown their inclination to keep in their mind the object and purpose of Benevolent and/or Welfare Scheme provided to such land losers.

It has been clearly submitted by the Counsel appearing for the Railways, on instruction having received by a competent person present in Court, that even a land loser who does not qualify the physical efficiency test, he has not been debarred from giving an appointment under the said Scheme if the medical test indicates that he is otherwise fit to render the services attributable to the post to be offered to him.

It was all along the stand of the writ petitioners that the physical efficiency test was never introduced and it has only on the basis of the medical test the appointments have been given to more than 400 such persons.

The stand of the Railways, as it appears from the submissions made before us in this regard, that the physical efficiency test was not insisted for appointments of those persons by mistake and, therefore, a right cannot be accrued to the persons, on a mistake discerned subsequently.

Be that as it may, we do not intend to enter into the aforesaid aspect the moment the Railways have decided and conveyed to the Court unequivocally that even a person is not qualified in a physical efficiency test, he will still be considered for appointment on medical test, which is distinct and different from the physical efficiency test.

We do not think that anything more is required to be gone into in the instant writ petition. However, the Counsel for the writ petitioners have shown agony and anguish for delay in completing the entire exercise, which we appreciate to have been sufficiently taken care of by

the Railways. However, they communicated to the Court that the entire process i.e. the screening of the eligibility and other criteria till the appointment shall be completed within three months from date.

In view of the above, we direct the Railway Authorities to complete the entire process, as indicated above, within the aforesaid period of time.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)