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21.06.2023
D.Hira
Court No. 12

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.C.T. 106 of 2023

**Chandana Bhowmik Khanra & Ors.
-versus
Union of India & Ors.**

**Mr. Subhankar Sen,
Mr. Lord Chatterjee.
... for the petitioners**

**Mr. Sauvik Nandy,
Mr. Subrata Santra.
...For the respondent/UOI**

The petitioners are land losers who agreed for acquisition of their land for Nandigram Deshapran Project and Arambag Bowaichandi Railway Project on the assurance given that one person of their family will be given employment by the respondent railway authorities. When the respondents failed to honour their assurance and failed to give appointment to any one of the family members of land losers, they approached the Tribunal by filing original applications and obtained orders.

This Court also passed various orders for relaxation of age for considering the persons from the family of the land losers for appointment in the railways. This Court by order dated 8.2.2019 in WPCT No.74 of 2016 passed the following orders:-

“21. It is evident from the materials-on-record that even land losers, who were 47 years old, have been offered appointment. The respondent no.1 was 46 years

old on the date he approached the tribunal for the first time. When his claim was rejected by the first order dated July 15, 2014, age-bar was not cited as a ground therefor. What we find is that there were absence of certain documents/papers for which the claim of the respondent no.1 could not be put up before the screening committee for screening. If indeed that was the reason for regretting his prayer, the petitioners ought to have asked the respondent no.1 to supply the documents, which were not there in the file, instead of closing his right to claim appointment. We, therefore, propose to pass the following further directions to close the breach:

- (i) within a period of seven days from date of receipt of a copy of this judgment and order, the Chief Personnel Officer shall intimate the respondent no.1, which of the documents are required from his end for ensuring placement of his claim before the screening committee;*
- (ii) within a month of receipt of such intimation, the respondent no.1 shall produce the necessary documents/papers before the Chief Personnel Officer and upon receipt of such documents/papers the claim of the respondent no.1 shall be placed before the screening committee for an appropriate decision;*
- (iii) bearing in mind the fact that other land losers have been offered appointment even upon attaining 47 years of age, we hope and trust that the screening committee shall not cite age-bar as a ground for not considering the claim of the respondent*

no.1 and if a power of relaxation is indeed available to consider invocation of such power if the merits of the case so warrants; and

(iv) the entire exercise shall be completed as early as possible but not beyond June 30, 2019.”

The petitioners herein and others filed separate Original Applications before the Tribunal. The Tribunal, considering the judgement dated 8.2.2019 referred to above passed in WPCT 74 of 2016, by order dated 16.3.2020 passed the following order:-

“10. In view of the direction of the Hon’ble High Court supra, and our revelations as indicated above, we feel it appropriate in the interest of justice, to direct the respondents to undertake an identical exercise as directed by the Hon’ble High Court in WPCT 74 of 2016 and issue appropriate order in regard to the present applicants within 4 months.”

The petitioners herein and others filed various contempt petitions before the Tribunal alleging non-compliance of the order of the Tribunal dated 16.3.2020. The Tribunal by orders dated 18.4.2023 and 9.5.2023 dismissed the contempt petitions holding that the respondents have substantially complied with the order dated 16.3.2020. Against the said orders the petitioners have filed the present writ petitions.

We have heard Mr. Subhankar Sen, learned Counsel for the petitioners and Mr. Sauvik Nandy, learned Counsel for the respondent railway authorities.

The grievance of the petitioners before the Tribunal in the contempt petition is that the respondents have failed to grant age relaxation for the petitioners and also introduced a new condition of Physical Efficiency Test (PET). They further contended that there is no provision for PET at any point of time before the 2019 circular issued by the railways. They also contended that the Tribunal failed to consider the grievances of the petitioners and erroneously dismissed the contempt petitions on the ground that the respondents have substantially complied with the order dated 16.3.2020.

Learned Counsel appearing for the petitioners referred to the Physical Efficiency Test which land losers are compelled to undergo and contended that for other land losers, PET was not applied. Learned Counsel for the petitioners also submitted that earlier the very same Tribunal by the interim order dated 27.9.2022 charged the respondents for non-compliance of the order dated 16.3.2020. Again the said order the writ petitions filed in WPCT Nos.105, 106 and 107 of 2020 were dismissed by this Court confirming the order passed by the Tribunal framing charge against the respondents. The said order has become final and the respondents have not filed any appeal before the Hon'ble Apex Court.

Subsequently, the Tribunal erroneously dismissed the contempt petitions on the ground that the respondents have substantially complied with the order of this Court.

It is the contention of the learned Counsel appearing for the petitioners that this Court clarified that the Physical Efficiency Test and age bar were not criteria for granting appointment to the persons from the family of the land losers.

It is the contention of the learned Counsel appearing for the petitioners that the appointment to the land losers is not a recruitment through regular process. The petitioners are discriminated by compelling them to undergo PET.

A plain reading of the order dated 16.3.2020 reveals that the Tribunal following the judgment of this Court dated 8.2.2019 passed in WPCT 74 of 2016 directed the respondents to undertake an identical exercise as directed by this Court in WPCT 74 of 2016 and issued order in this regard to the petitioners.

According to the learned Counsel for the petitioners, the respondents have not followed the direction given by this Court and did not exercise the identical process in complying with the claim of the petitioners.

On the other hand, it is the contention of the learned Counsel appearing for the respondents that the respondents are taking steps to comply with the order dated 16.3.2020 passed by the Tribunal in OA 75 of 2017, OA 1824 of 2016, OA 1822 of 2016 and OA 1192 of 2016 and requested four months time for complying with the order as directed by this Court in WPCT 74 of 2016 and they will follow the very same procedure for the petitioners also.

In view of the same, orders of the Tribunal dismissing the contempt petitions are set aside.

The respondents are directed to comply with the order dated 16.3.2020 by adopting identical process as adopted for the petitioner in WPCT 74 of 2016 while

considering the claim of the petitioners and pass orders within four months from today. If the respondents fail to comply with the order, it is open to the petitioners to mention before the Tribunal for reopening the contempt petitions for not complying with the order passed by the Tribunal dated 16.3.2020 or to approach this Court.

With the aforesaid direction, W.P.C.T. 106 of 2023 is allowed.

There will be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Ms. V.M. Velumani, J.)

(Rai Chattopadhyay, J.)