

04.10.2023
Item No.06
Court No.11
Avijit Mitra

WPCT 174 of 2023

In re: An application under Article 226 of the
Constitution of India;
And

Union of India & ors.
- Versus -
Prasanna Kumar Das

Mr. Sauvik Nandy,
Mr. Subrata Santra
For the petitioners
Mr. S.K. Mohapatra,
Mr. Sudipta Ghosh
For the respondent

The present writ petition has been preferred challenging an order dated 13th June, 2023 passed in an original application being O.A. 350/01242/2018.

Shorn of unnecessary details, the facts are that the respondent's father submitted an application dated 27th October, 2005 for appointment of his son, namely, Prasanna Kumar Das (in short, Prasanna) as a substitute in a Group-D post in response to a general invitation by the respondent no.2. Prasanna emerged to be successful in the selection process and his name was incorporated at serial no.121 in the panel pertaining to Graduates. However, in view of a typographical error, his name was incorporated as '*Prasanta Kumar Das*' in place and stead of '*Prasanna Kumar Das*'. Accordingly, in response to a notice

dated 2nd November, 2005, calling for documents for verification, Prasanna supplied the relevant certificates along with a representation dated 9th November, 2005 for correction of his name in the panel. As no steps were taken by the respondents, Prasanna preferred an original application being OA No.340 of 2012, however, the same was dismissed. Aggrieved thereby, Prasanna preferred a writ petition being WPCT 143 of 2016 but by an order dated 17th June, 2016, the writ petition was dismissed observing *inter alia* that Prasanna had failed to take necessary steps for correction of his name in the panel of the year 2005. Aggrieved thereby, Prasanna preferred a Special Leave Petition which was disposed of by an order dated 7th May, 2018, directing Prasanna to submit a representation before the railway authorities for consideration. Pursuant thereto, a representation was duly submitted on 28th August, 2016, but the same was rejected by the Chairman, Railway Recruitment Cell (in short, RRC) on 26th July, 2018. Aggrieved thereby, Prasanna preferred the original application being OA No. 350/01242/2018 which was dismissed on 1st October, 2021. Challenging the same Prasanna preferred a writ petition being WPCT 89 of 2021 which was disposed of by an order dated 18th February, 2022 setting aside the order of the Chairman, RRC dated 26th July, 2018 and the matter was remanded to the learned Tribunal

for reconsideration. Pursuant to such direction the learned Tribunal reconsidered the matter and passed the order impugned in the present writ petition.

Mr. Nandy, learned advocate appearing for the writ petitioners/respondents in the original application submits that the engagement of substitute in the railways was practice of the bygone era and such engagement of substitute is now made only in emergent situations. In view of regular recruitments, the engagement of substitutes is no more warranted. Such argument as advanced was glossed over by the learned Tribunal and no finding was returned on the said issue.

He further submits that in a matter pertaining to engagement of substitutes the Hon'ble High Court in a writ petition being WPCT 470 of 2013 has deprecated the practice of engagement of substitutes and has injuncted the railway authorities from appointing the applicants in the original application as substitutes. The said order was also not taken into consideration by the learned Tribunal while passing the impugned order.

Mr. Nandy further argues that Prasanna did not file any application for correction of his name in the panel within the stipulated period in the year 2005. The issue was agitated by Prasanna belatedly in the year 2012. The inclusion of a name of an incumbent

in a panel also does not create any indefeasible right in his favour to be appointed. The said issues, as argued, were also not taken into consideration by the learned Tribunal. In support of the arguments reliance has been placed upon the judgments delivered in the cases of *Union of India and others Vs. Kali Dass Batish & anr.* reported in (2006) 1 SCC 779; *State of U.P. and others Vs. Rajkumar Sharma and others* reported in (2006) 3 SCC 330 and *Union of India and others Vs. Kishorilal Bablani* reported in (1999) 1 SCC 729.

Per contra, Mr. Mahapatra, learned advocate appearing for the respondent/applicant in the original application submits that while the passing the order dated 26th July, 2018 impugned in the original application, the Chairman, RRC traversed beyond the contours of the order passed by the Hon'ble Supreme Court dated 7th May, 2018 and as such the said order was rightly set aside by a Coordinate Bench of this Court in the earlier writ petition being WPCT 89 of 2021. The said order had not been challenged by the writ petitioners. In the said conspectus and as proper representation was submitted by Prasanna for rectification of his name in the panel, the learned Tribunal directed the writ petitioners to offer appointment to Prasanna.

He further argues that in view of the order passed by the Hon'ble Supreme Court, the writ petitioners are estopped from rejecting Prasanna's claim on a purported ground that engagement of substitutes was a practice of the bygone era.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The argument of Mr. Nandy that Prasanna did not submit any application for rectification of his name in the panel within the period stipulated is not acceptable to this Court inasmuch as the documents annexed at pages 37 to 58 of the writ petition clearly reveal that such rectification was submitted to the respondent no.4 on 9th November, 2005 together with all documents as called for by the notice dated 2nd November, 2005 duly attested by the railway authorities. The reply given to Prasanna's application under the Right to Information Act, as annexed at page 72 of the writ petition, also reveals that the writ petitioners duly received the bio-data and documents of Prasanna. He also cannot be penalised for the typographical error of his name in the panel. The learned Tribunal rightly observed that such '*wrong mentioning of the name in the short list was not on any false representation or false declaration*'.

The next argument of Mr. Nandy that the engagement of substitutes in the railways was a practice of the bygone era and that such engagement is no more warranted cannot be accepted as a ground for rejection of Prasanna's claim inasmuch as the Hon'ble Supreme Court had restricted such consideration only on the issue as to '*whether the petitioner had made an application in time or not*'.

The order passed by a Coordinate Bench of this Court in the writ petition being WPCT 470 of 2013 was an interim order passed upon a *prima facie* satisfaction that the substitutes were being engaged at random without following any procedure. The learned Tribunal duly considered the said order and found the same to be distinguishable.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. There is no dispute as regards the proposition of law as laid down in the judgments in the cases of *Kali Dass Batish & anr. (supra)*, *Rajkumar Sharma and others (supra)* and *Kishorilal Bablani (supra)*, upon which reliance has been placed by Mr. Nandy, however, the same are distinguishable on facts.

Upon dealing with the factual issues, the learned tribunal arrived at specific findings and we do not find any error in the same.

Accordingly, the writ petition, being WPCT 174 of 2023 is dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)