

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

WPCT 24 of 2021

Sri Subit Kumar Das
Versus
The Union of India & Ors.

For the Petitioner : *Mr. Debasis Saha.*

For the Respondent No. 3 : *Mr. Nilanjan Bhattacharya,*
Mr. Saikat Dey.

Hearing is concluded on : *15th May, 2024.*

Judgment On : **25th June, 2024.**

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred challenging an order dated 9th January, 2020 passed in the original application being OA 436 of 2016.
2. The petitioner's case is that his name was sponsored by the employment exchange as a Schedule Caste (hereinafter referred to as SC) candidate

for participation in a selection process for appointment to the post of Technician at All India Radio (hereinafter referred to as AIR), Calcutta in response to a requisition sent to the employment exchange for 4 vacancies (2 SC, 1 ST and 1 OBC). Thereafter, he was called for an interview on 15th January, 1997. The selection was limited to three candidates in SC category and his name appeared at serial no. 1 in the reserve panel. After selection and appointment of three persons, one Gautam Naskar was transferred from Kharagpur to AIR, Calcutta and given appointment under SC category without considering the petitioner's claim. Challenging such selection of the candidates, the petitioner preferred OA 989 of 1997 and in a miscellaneous application being MA 435 of 1997 preferred by the petitioner, the learned Tribunal by an order dated 25th August, 1997 directed that the appointment given to the private respondents therein would abide by the result of the OA. Thereafter, the respondents called another candidate, namely, Biswajit Mondal to appear in an interview on 15th January, 1999 and as such the petitioner preferred a miscellaneous application being MA 30 of 1999 seeking an ad interim order to restrain the respondents from preparing any fresh panel by holding such interview on 15th January, 1999 without appointing the petitioner. In course of hearing of the said MA 30/99, the learned advocate appearing for the respondents submitted that *'till filling up of post of one OBC and one ST is taken up the applicant's case would not be considered and that as soon as vacancy would arise against the SC quota the applicant would be absorbed'*. In view of such submission, no injunction was granted and it was observed that the petitioner would get

all benefits, if he succeeds in the OA. Subsequent thereto, the said OA was disposed of on contest by an order dated 9th December, 2004. In paragraph 18 of the said order it was observed as follows :

'As per the order of this Tribunal dated 15.1.99 in MA 30/99 the learned Counsel for the respondents had stated before the Tribunal that till filling up of the concerned reserved quota of one OBC and one ST is taken up the applicant's case would not be considered and that as soon as the vacancy would arise against the SC quota the applicant would be absorbed. Therefore, by this subsequent qualification of this assurance it cannot be conceded that the respondents will not be bound by the submission made by them before the Tribunal in MA 30/99. Hence, the respondents are directed to consider the case of the applicant in terms of the assurance given by them to this Tribunal as above and take steps to absorb him against available vacancy in accordance with law within three months from the date of communication of this order. If no such vacancy exists at present, he should be absorbed against the next available vacancy within a period of 6 months. The application and MAs are disposed of accordingly. Thereafter will be no order as to costs.'

3. Challenging the said order, the respondents herein preferred a writ petition being WPCT 276 of 2005. Upon contested hearing, the writ petition was disposed by an order dated 23rd February, 2009 observing *inter alia* as follows :

‘The Tribunal however, directed the Administration to consider the case of the respondent in view of the concession made by the Administration as contained in the order dated January 15, 1999. We do not find any scope of interference on that score. However, we find that the Tribunal after observing that he would be considered as and when vacancy would arise, directed consideration within a period of six months. We only observe and modify to the extent that such period of six months may not be applicable in case no vacancy arises within the stipulated period’.

4. In spite of several reminders, the respondents were reluctant to comply with the directions contained in the learned Tribunal’s order dated 9th December, 2004 and the order dated 23rd February, 2009 passed in WPCT 276 of 2005 on a purported plea that there were no vacancies. However, the respondents initiated a fresh selection process *vide* notification dated 23rd February, 2013 wherefrom it was explicit that there were five vacancies in the post of Technician under SC category in the Eastern Zone. In the said conspectus, the petitioner again preferred OA 739 of 2013 seeking direction upon the respondents to absorb him in the existing vacancy. On 19th July, 2013, the learned Tribunal passed an *interim* order as follows :

‘As the applicant is already fortified with the mandate, we direct the respondents to keep one post vacant as advertised in the notification dated 20.02.13 as contained in Annexure-A/ 7 for the

post of Technician under SC category out of East Zone till the next date of hearing of the O.A.'.

5. Thereafter upon exchange of affidavits, the OA 739 of 2013 was disposed of by an order dated 27th November, 2015 directing the respondents to act in terms of the learned Tribunal's order dated 9th December, 2004 and the order dated 23rd February, 2009 passed in WPCT 276 of 2005 against available SC quota vacancy, if any, has arisen in the meantime and to pass an appropriate order observing *inter alia* that '*Therefore, indebutibly the respondents would be bound by their assurance that they had given before this Tribunal in 1999, the order passed by this Tribunal in O.A. No. 987 of 1997 directing consideration against next available vacancy, and the direction of the Hon'ble High Court extending the limit of consideration beyond six months. The respondents inarguably would be bound by their assurance to consider the applicant against available SC quota vacancy*'. Pursuant to such direction, the Deputy Director General (Prasar Bharati) passed an order rejecting the petitioner's claim. Challenging the said order, the petitioner preferred OA 436 of 2016. The said OA was disposed of by the order impugned in the present writ petition observing *inter alia* as follows :

'4. Applicant has however failed to demonstrate occurrence of vacancy post 27.11.2015 where the order in O.A. 739/13 was issued, as enumerated supra.

5. Therefore the O.A. is disposed of with a direction upon the respondents to issue a speaking order indicating the number of Technician vacancies that occurred after the order on 27.11.2015,

and whether the applicant was entitled to be considered in accordance with the decision of this Tribunal.'

6. Records reveal that a co-ordinate Bench of this Court by an order dated 21st June, 2021 directed the respondents to file an affidavit disclosing the vacancies that arose in the East Zone on and from February, 2009 till date for the post of Technician specifying the date when each of such vacancy arose. Pursuant to such direction an affidavit was filed by the respondent no. 3 stating *inter alia* that no vacant post of Technician had occurred at AIR, Calcutta since 2009 till date. On behalf of the respondents an affidavit-in-opposition has also been filed stating *inter alia* that '*there are no fresh recruitment under SC quota at AIR, Calcutta till the assurance given before the Hon'ble Tribunal in MA No. 30 of 1999*'. However, a memo dated 30th June, 2021 had been annexed to the said affidavit wherefrom it would appear that there were 17 vacancies in the post of Technician under SC category but no advertisement had been published to fill up the said vacancies.
7. Mr. Saha, learned advocate appearing for the petitioner submits that from the notification dated 23rd February, 2013 it would be explicit that there were 5 vacancies in the post of Technician under SC category in the Eastern Zone. An interim order was passed by the learned Tribunal on 19th July, 2013 directing the respondents to keep one post vacant as advertised in the said notification. The said interim order continued till the disposal of the said OA by an order dated 27th November, 2015. In view thereof, the learned Tribunal in the impugned order erroneously observed that the petitioner had failed to demonstrate occurrence of

vacancy post 27th November, 2015 and relegated the issue to the respondents for further consideration primarily on two issues - one as to whether any vacancy had occurred after 27th November, 2015 and two as to whether the petitioner was entitled to be considered in accordance with the decision of the learned Tribunal.

8. He argues that the respondents had failed to demonstrate that there are no vacancies in the post of Technician under SC category in the Eastern Zone. On the contrary the memo dated 30th June, 2021, annexed to the affidavit-in-opposition reflects that there were 17 such vacancies even in the year 2020. In view thereof, the learned Tribunal ought to have directed the respondents to absorb the petitioner in any one of the vacancies instead of relegating the matter for further consideration.
9. He contends that in course of hearing before the learned Tribunal on 15th January, 1999, the learned advocate appearing for the respondents submitted that *'till the filling up of post of technician from the reserved quota viz. 1 OBC and 1 ST is taken by the respondent authorities, the applicant's case would not be considered'* and that *'as soon as vacancy would arise against the SC quota, the applicant would be absorbed'*. In view thereof, the learned Tribunal while disposing of the OA on 9th December, 2004 arrived at a categorical finding that *'it cannot be conceded that the respondents will not be bound by the submission made by them before the Tribunal in MA 30/99'* and directed the respondents to consider the case of the petitioner in terms of the assurance given by the respondents. As such, the learned Tribunal could not have relegated the matter for further consideration as to whether the petitioner was entitled

to be considered since the issue of entitlement attained finality, in view of confirmation of the observation of learned Tribunal in its earlier order dated 9th December, 2004 passed in OA 989 of 1997, in the writ petition preferred by the respondents against the order dated 9th December, 2004.

10. He argues that a perusal of the order dated 15th January, 1999 passed by the learned Tribunal in MA 30/99 in connection with the OA 989 of 1997 would reveal that the learned advocate appearing on behalf of the respondents consciously gave the assurance in order to protect the rights of appointment of the private respondents in the earlier selection process. In view thereof, the respondents cannot now reject the petitioner's claim for absorption on a purported plea that the petitioner is age barred nor can they deny such absorption by picking up a phrase – '*in accordance with law*' from the order passed by the learned Tribunal.
11. Mr. Bhattacharya, learned advocate appearing for the respondents submits that the petitioner upon competing in the selection process did not come within the zone of consideration and was accordingly, placed in the wait list. Such empanelment in the wait list did not confer any indefeasible right towards absorption or appointment and accordingly, his claim was rightly rejected by the learned Tribunal on 9th December, 2004. Such observation of the learned Tribunal was also confirmed by the order dated 23rd February, 2009 passed in WPCT 276 of 2005. Since the petitioner was put in the waiting list, he did not get any vested right to an appointment. In the said conspectus, the assurance given on behalf of the respondents was restricted and limited to further consideration in

accordance with law and on the strength of such assurance the petitioner cannot claim direct absorption or appointment. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Sanjoy Bhattacharjee Vs. Union of India and Others*, reported in (1997) 4 SCC 283, *K. Jayamohan Vs. State of Kerala and Another*, reported in (1997) 5 SCC 170 and *Official liquidator Vs. Dayanand and Others*, reported in (2008) 10 SCC 1.

12. He further argues that mere reasonable expectation of a citizen cannot by itself be a distinct enforceable right. For legal purposes, the expectation cannot be the same as anticipation. A mere disappointment does not attract legal consequences and as such the petitioner cannot take advantage of the assurance given by a learned advocate engaged on behalf of the respondents. Such concession of the learned advocate does not bind the respondents and on the basis of the same the petitioner cannot be granted absorption or appointment *moreso* when in AIR, Calcutta there is no existing vacancy in the post of Technician.
13. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.
14. When a statement is made before this Court it is, as a matter of course, assumed that it is made sincerely and is not an effort to over-reach the Court. Numerous matters even involving momentous questions of law are very often disposed of by the Court on the basis of the statement made by the learned advocate for the parties. The statement is accepted as it is assumed without doubt, to be honest, sincere, truthful, solemn and in

the interest of justice. The statement by the advocate is not expected to be flippant, mischievous, misleading and certainly not false. [See the judgment delivered in the case of *H. P. Scheduled Tribes Employees Federation VS Himachal Pradesh S. V. K. K.*, reported in (2013) 10 SCC 308].

15. The observation of the learned Tribunal in the order impugned that the petitioner had failed to demonstrate occurrence of vacancy post on 27th November, 2015 is not sustainable inasmuch as there was a subsisting order since 19th July, 2013 directing the respondents to keep one post vacant in the Eastern Zone as advertised on 23rd February, 2013.
16. The observations made by the learned Tribunal in the orders dated 15th January, 1999, 9th December, 2004, 19th July, 2013 and 27th November, 2015 would clearly reveal that the learned advocate appearing on behalf of the respondents did not give the assurance as a matter of course. Such assurance was given primarily to protect the appointments already granted to the candidates in the reserve category on the basis of the earlier selection process and beyond the vacancies prescribed in the advertisement. In view thereof, the respondents cannot wriggle out of the rigors of such conscious assurance given by the learned advocate on instruction from the respondents, moreso when this Court in the earlier writ petition did not accept the argument that the concession made by the learned advocate would not bind the respondents. Even after such assurance, the respondents rejected the petitioner's claim on a purported plea that on the date of issuance of the impugned order dated 19th February, 2016, the petitioner had become age barred. On the date the

assurance was given i.e., on 15th January, 1999, the petitioner was well within the prescribed age limit towards appointment in the concerned post. As a model employer, the State must conduct itself with high probity and candour and ensure that its employees do not succumb to the procedural rigmarole particularly when the claim pertains to the life and livelihood of the petitioner. The public authorities must honour their promises and cannot arbitrarily retract moreso when an individual had relied on such assurances. In the present case the petitioner appeared in the interview on 15th of January, 1997, the assurance towards absorption was given on 15th January, 1999 and since then he had been the victim of a procrastinated litigation from the year 1997 till date.

17. 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. The judgments upon which reliance has been placed on behalf of the respondents are distinguishable on facts. None of the said judgments are pertaining to the issue of assurance granted.
18. In course of hearing, it could not be disputed on behalf of the respondents that there are existing vacancies in the post of Technician in the Eastern Zone. Such fact would further be evident from the memo dated 30th June, 2021, annexed to the affidavit-in-opposition. The statements made in the affidavit filed on behalf of the respondent no. 3 are pertaining to vacancies at AIR, Calcutta. The said centre is only a part of the Eastern Zone. Furthermore, the learned Tribunal itself by an order dated 19th July, 2013 passed in OA 739 of 2013 directed the

respondents to keep one post vacant, as advertised on 20th February, 2013 and the said interim order continued till the disposal of the OA on 27th November, 2015 and as such by the order dated 19th of February, 2016 the petitioner's claim could not have rejected on a purported plea of lack of vacancies at AIR, Calcutta moreso when the notification dated 23rd February, 2013 was not restricted only to vacancies at AIR, Calcutta. There were 5 existing vacancies in the Eastern Zone of which the centre at AIR, Calcutta was a part.

19. The petitioner's claim was rejected by the Deputy Director General *vide* order dated 19th of February, 2016 in a most illegal and *mala fide* manner on the basis of the grounds which were not even specifically highlighted in the reply filed on behalf of the respondents in OA 739 of 2013. The orders passed by the learned Tribunal on 15th January, 1999 and 9th December 2004 in OA 989 of 1997, the order dated 23rd February, 2009 passed in WPCT 276 of 2005 and the orders dated 19th July, 2013 and 27th November, 2015 passed by the learned Tribunal in OA 739 of 2013 need to be considered together and not in isolation. A particular phrase cannot be taken up and highlighted. In paragraph 18 of the order dated 9th December 2004 passed in OA 989 of 1997, the learned Tribunal directed consideration of the petitioner's case in terms of the assurance given and steps were directed to be taken to absorb the petitioner in accordance with law. Taking advantage of the phrase - '*in accordance with law*' and about 17 years after such assurance was granted, the respondents could not have rejected the petitioner's claim on the purported ground that on the said date (19th February, 2016), the

petitioner was age barred. It is really perplexing that in spite of the earlier orders passed by the learned Tribunal and the order passed in the writ petition, the respondents took a decision on 19th February, 2016 to reject the petitioner's claim. The act indubitably shows total lack of prudence. The respondents are required to understand that the basic governance consists in the act of taking considered, well vigilant, appropriate and legal decisions. It is the sacrosanct duty of the respondents to follow the law and the pronouncements of the Court and not to take recourse to such subterfuges. Such infirmity ought to have been interfered with by the learned Tribunal instead of relegating the matter to the respondents for further consideration.

20. For the reasons stated above, the order dated 9th January, 2020 passed by the learned Tribunal in O.A. 436 of 2016 is set aside and quashed. The respondents are, accordingly, directed to absorb the petitioner to the post of Technician in any vacancy under SC category in the Eastern Zone within a period of four weeks from the date of communication of this order.
21. It is made clear that as by the order dated 19th July, 2013 passed in OA 739 of 2013, the learned Tribunal directed the respondents to keep one post, as advertised in the notification dated 23rd February, 2013, the petitioner's absorption shall be given effect to on and from 19th July, 2013 on notional basis till the date of absorption on the basis of the order passed in the present writ petition.
22. With the above observations and directions, the writ petition being WPCT 24 of 2021 is disposed of.

23. There shall, however, be no order as to costs.
24. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)