

WPCT 242 of 2023

(Union of India & Ors. Vs. Binoy Krishna
Jana & Ors.)

Mr. Souvik Nandy
Mr. Madhu Jana

..... For the petitioners

Mr. Ujjal Ray
Mr. Arpa Chakraborty

..... For the respondents

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 27th February, 2019 passed by the learned Tribunal in the original application (in short, OA), being OA 1321 of 2016 and the orders dated 26th November, 2021 passed in modification applications preferred by the respondents herein.

Records reveal that alleging irregularities in a selection process, the petitioners herein decided to cancel the appointment of the respondents and others and issued show cause notice. Such action was challenged by the respondents before the learned Tribunal and the said OA was disposed of by an order dated 27th August, 1999 setting aside an order dated 20th August, 1999 and the show cause notice dated 27th August, 1999. Challenging the said order, the authorities approached the Hon'ble High Court and the writ petition was disposed of by an order dated 28th March, 2011 modifying the order of the learned Tribunal to the extent that *'the writ petitioner will be at liberty to proceed de novo against the concerned appointees against whom vigilance report has been filed*

*pointing illegality in selection process...'. Subsequent thereto, fresh show cause notices were issued and the appointments were set aside by an order passed by the Review Committee on 24th August, 16. Challenging *inter alia* the said order, the respondents again approached the learned Tribunal and by an order dated 27th February, 2019, the OA was disposed of observing, *inter alia*, as follows:-*

'10. In our considered opinion, the Respondents have gone haywire while misinterpreting the tenor of the decision of the Hon'ble High Court in proceeding de novo against the applicants in absence of any vigilance report against them. Although show cause notices were issued to them and opportunity of hearing was also afforded, it was evidently a futile exercise undertaken by the Respondents while misdirecting themselves.

11. Therefore, for the ends of justice, and in view of the fact that the present applicants, who belong to SC and OBC categories, have already rendered 20 years of service and some of them have even earned promotion as Postman, although on provisional basis, we quash the order issued on 24.08.2016, impugned in the present O.A., and direct the authorities to allow them to continue on the basis of their selection made in 1998 as allowed to one Jayanta Kumar Pal, the applicant in O.A. No. 1091/1999.

12. Let appropriate orders be issued within two months from the date of communication of this order.'

Thereafter, the respondents preferred modification applications with a prayer to incorporate the Unreserved Category in the order dated 27th February, 2019. No objection was raised by the petitioners and such prayer was considered and allowed by orders dated 26th November, 2021 passed in the modification applications.

Mr. Nandy, learned advocate appearing for the petitioners strenuously argues that there were several irregularities in the selection process and taking advantage of such circumstances, the respondents got selected. Pointing out the illegalities and the irregularities, the petitioners issued show cause notices and granted opportunity of hearing to the respondents prior to issuance of the final order impugned in the present OA. Being oblivious of such sequence of facts, the order of termination and the show cause notice were interfered with.

He argues that the learned Tribunal failed to appreciate that there were specific allegations against the respondents in the vigilance report which disentitled them from appointment to the concerned posts. Such selection of the respondents was through a back door process and was contrary to the constitutional scheme. Mere continuance in such posts for a particular period of time did not confer any right upon the respondents to be regularized. In appreciation of such proposition of law, the learned Tribunal ought not to have interfered with the order of termination. In support of such contention reliance has been placed upon a judgment delivered by the Hon'ble Supreme Court in the case of *State of Rajasthan and Ors. Vs. Dayalal and Ors.*, reported in (2011) 2 SCC 429.

He submits that the officer who was responsible for such irregularities and illegalities was hauled up in a

disciplinary proceeding and penalized and in such circumstances, no interference was called for and the learned Tribunal erroneously exercised discretion in favour of the respondents. Such arguments, as urged, were glossed over by the learned Tribunal and no finding was returned on the same.

Drawing our attention to the vigilance report brought on record by the petitioners, Mr. Nandy submits that it would be explicit that there were grave irregularities in the selection process and the respondents taking advantage of the same, availed appointment to the concerned posts. Upon detection of such irregularities, the petitioners rightly terminated the appointment of the respondents by an order dated 24th August, 2016.

Mr. Ray, learned advocate appearing for the respondents denies and disputes the contention of Mr. Nandy and submits that irregularities in the selection process, as alleged, were due to administrative lapses in which the respondents had no role to play. The order of termination had been issued being oblivious of the specific direction of a coordinate Bench of this Court in WPCT 64 of 2002 wherein it was, *inter alia*, observed that *'the writ petitioner will be at liberty to proceed de novo against the concerned appointees against whom vigilance report has been filed pointing illegality in selection process...'*

Mr. Ray argues that the petitioners travelled beyond such direction of the Hon'ble High Court and took steps

against the respondents against whom there was no specific allegation in the vigilance report. In the said conspectus, the appointment of the respondents could not have been terminated.

He further submits that there was an inadvertent error towards insertion of Unreserved category in paragraph 11 of the order impugned and as such, on the basis of the modification applications, the Unreserved Category was included and there is no infirmity in such direction moreso when the petitioners did not raise any objection.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The respondents are serving in their respective posts for about 20 years. At this stage it would be iniquitous to interfere with such appointment moreso when no action was taken against a similarly situated incumbent, namely, Jayanta Paul. It is explicit from the records that irregularities alleged were administrative lapses on the part of the petitioners. No contemporaneous material has been brought on record to establish that there was any specific allegation of bribery, cheating, corruption, unauthorized transaction or any other illegality against the respondents. The order of a coordinate Bench of this Court in the earlier round of litigation allowed *'de novo enquiry against the concerned appointees against whom vigilance report has been filed pointing illegality in*

selection process'. There is no such allegation against the respondents in the vigilance report. The respondents were selected on the basis of merit in a selection process and as such the judgment delivered in the case of *State of Rajasthan (supra)* is clearly distinguishable on facts.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

In the said conspectus, no interference is called for in the present writ petition and the same is, accordingly, dismissed.

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

All parties shall act on the service copies of this order duly downloaded from the official website of this Court.

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