

State of West Bengal and anr. Vs. Dilip Kumar Nandi and ors.

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Court : Kolkata

Decided On : Jan-17-2007

Reported in : 2007(4)CHN49

Judge : Ashim Kumar Banerjee and ;Sankar Prasad Mitra, JJ.

Appeal No. : FMA No. 764 of 2005

Appellant : State of West Bengal and anr.

Respondent : Dilip Kumar Nandi and ors.

Advocate for Def. : Anjan Bhattacharjee, Adv.

Advocate for Pet/Ap. : Soumitra Dasgupta and ;Washef Ali Mondal, Adv.

Judgement :

Ashim Kumar Banerjee, J.

1. This case has a chequered history. In 1986, the State Government decided to fill up the posts of Gram Shevak within the State. A common recruitment process was had. The candidates sat for the examination. Merit list was prepared. However, districtwise panels were prepared by the Government out of one recruitment process. This was challenged before this Court in 1989. The learned Single Judge set aside the districtwise panels and directed a central panel to be prepared therefor. At that time there had been 700 odd posts were vacant. The

State Government accepted the judgment and prepared a central panel. However, series of writ petitions thereafter were filed by empanelled candidates alleging discrimination. The matter came up before this Court again. The learned Single Judge in writ petition being No. CR 12463(W) of 93 once again directed the State to give appointment from the central panel. The said judgment was delivered on August 13, 1998 and by this time the post of Gram Shevak was abolished. The State was directed to consider the said panel for appointment in the post of Gram Panchayat Secretaries. The discrimination continued. The State Government gave appointments to various candidates from the said panel ignoring their merit. Subsequent writ petition was filed being W.P. 18620(W) of 01 when the learned Single Judge directed the Secretary, Panchayat Department to submit a report. Accordingly, a report was submitted by the Panchayat Secretary appearing at pages 64-68 of the Paper Book. After setting up the chronological events, the Secretary contended in the said report that the State Government felt it difficult to adhere to the said panel, which was prepared out of a selection process had in the year 1986, as by this time, most of the empanelled candidates reached their advance age and it would be difficult for them to accept such new appointment. Some of the candidates by this time crossed even 60 years being the age of superannuation. The Government placed the matter for legal opinion before the learned Legal Remembrancer, who gave his opinion of February 4, 2003. The opinion of the Legal Remembrancer was placed before the Hon'ble Minister-in-Charge, who directed the concerned department to ignore the candidates who crossed 50 years as on 1st January, 2003. The learned Single Judge while disposing of the said writ petition observed that there was no scope for the State Government to fix such particular cut off date. Once the Court in earlier writ petitions directed appointments to be given from the central panel, all successful candidates from the said panel, must be given appointments in accordance with their merits ignoring their present age. His Lordship allowed the writ petition directing the State to give appointments to the petitioners as they were superseded in the matter of appointment because of their advance age.

2. Being aggrieved by, and dissatisfied with, the judgment and order of His Lordship in W.P. No. 18620(W) of 01 delivered on September 15, 2001, the State preferred the instant appeal.

3. Mr. Soumitra Dasgupta, learned Counsel appearing for the appellants has contended before us that no fruitful purpose would be served by giving new appointments to the candidates who would be reaching the age of superannuation of 60 years shortly. It would unnecessarily burden the State as there would be financial implication involved therefor.

4. On the cut off date Mr. Dasgupta has tried to contend that since the opinion was had in February, 2003 the first day of the year was selected by the Hon'ble Minister-in-Charge as a cut off date. The candidates who were below 50 years as on that date were appointed accordingly as it benefited the State as they would be serving the State for about 10 years.

5. Mr. Anajan Bhattacharjee, learned Counsel for the writ petitioners/ respondents, on the other hand opposing the appeal, has contended that since the State accepted the original judgment in 1989 which directed the State to prepare a central panel the State had no other option but to give appointment strictly following the said panel in the available vacancies. He has drawn our attention to various inconsistencies which surfaced in the pleadings. According to him, there had been originally 700 and odd posts vacant, whereas the Panchayat Secretary in his report stated that there were about 294 vacancies where the appointments were given from the central panel.

6. We have considered the rival contentions of the parties. It is most unfortunate that when a selection process was had for 700 odd posts and the Court directed as far back as in 1989 to give appointment from the central panel in those vacancies, the State should have completed such process within a reasonable time. Had it been done all the successful candidates could have been absorbed by this time. Two decades have passed after such selection process was had, the State is yet to fill up those vacancies.

7. We appreciate the practical difficulty now faced by the State in considering the candidates, who, by this time, reached in their advance age as they would not be getting suitable opportunity to serve the State in the concerned posts for a considerable period. Moreover, this would unnecessarily burden the State financially. However, this situation has arisen only because of the laches on the

part of the State administration.

8. The earlier judgment was delivered in 1989. It was reiterated in 1998 when this Court directed consideration of the successful candidates in the post of Gram Panchayat Secretaries. The said judgment was delivered on August 13, 1998 and that could have been considered by the State as a cut off date in stead of January 1, 2003. We do not see any reason in support of such cut off date being fixed by the State and we are in full agreement with the learned Single Judge on this score.

9. We have reached 2007. It would not be proper for this Court now to direct appointment to be given, fixing the cut off date on 13th August, 1998. Interest of justice would subserve if we grant leave to those affected persons to sue the State for appropriate compensation.

10. We direct the State to consider all the empanelled candidates strictly in accordance with their merit by considering today's date as a cut off date and if persons are found at least having 5 years service tenure from today, they must be given appointment as early as possible. The other persons who did not cross 50 years as on the date of the judgment in CR No. 12463(W) of 1993 being 13th August, 1998 are given liberty to approach the Civil Court for appropriate compensation against the State.

11. With these observations the order of the learned Single Judge is modified.

12. The appeal is disposed of without any order as to costs.

13. The Principal Secretary, Panchayat and Rural Development must personally see that this judgment is complied with utmost expedition.

14. Urgent xerox certified copy of this order, if applied for, be given early.

Sankar Prasad Mitra, J.

15. I agree.