

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

LIBRARY

O.A. 641 of 2013

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

1. Sukumar Banerjee,
Son of Late Bijoy Chandra Banerjee,
Residing at 1, St. Xavier Marg,
C-Zone, Durgapur – 713 205,
District : Burdwan.
2. Malay Mazumdar,
Son of Late B. N. Mazumdar,
Residing at 16/13, Ranapratap Road,
A-Zone, Durgapur – 713205,
District : Burdwan.
3. Samar Kumar Saha,
Son of Late S.K. Saha,
Residing at 21/6, Bharati, B-Zone,
Durgapur – 713205,
District : Burdwan.
4. Amal Kumar Roy,
Son of Late N.B. Roy,
Residing at 20/8, Tansen Road,
B-Zone, Durgapur – 713 205,
District : Burdwan.
5. Tushar Kanti Ghosh,
Son of Late N.K. Ghosh,
Residing at 13/9, Harshabardhan,
A-Zone, Durgapur – 713 204,
District : Burdwan.
6. Nirmal Chandra Paul,
Son of Late A. Paul,
Residing at 3C/11, Ramkrishna Extension,
A-Zone, Durgapur – 713 204,
District : Burdwan.
7. Phatik Chandra Kundu,
Son of Satya Ranjan Kunar,
Residing at 4/8, Akbar Road, A-Zone,
Durgapur – 713 204,
District : Burdwan.

8. Sushil Kumar Mondal,
Son of Late K.C. Mondal,
Residing at 8/2, Chandi Das Road,
B-Zone, Durgapur – 713 205,
District : Burdwan.

9. Ashim Sadhan Bhattacharjee,
Son of Late M.M. Bhattacharjee,
Residing at 18/18, Ashoke Avenue,
A-Zone, Durgapur – 713 204,
District : Burdwan.

10. Tapan Kumar Banerjee,
Son of Hiralal Banerjee,
Residing at Asansol Namopara,
P.O. Asansol,
District : Burdwan.

11. Gopal Chandra Sain,
Son of Late M.M. Sain,
Residing at Village & P.O. Gopalmath,
District : Burdwan.

12. Banamali Ghosh,
Son of Late K.P. Ghosh,
Residing at Village & P.O. : Gopalpur,
Via – Muchipara,
Durgapur – 713 212,
District : Burdwan.

13. Pradip Kumar Ghosh,
Son of Late P.K. Ghosh,
Residing at 12/6, Mahishkapur, Road,
B-Zone, Durgapur – 713 205,
District : Burdwan.

All the applicants are working as Contractor Labour
under DSP.

..... Applicants.

Versus

1. The Steel Authority of India Limited,
A Government of India Undertaking,
Service through its Chairman,
Having its office at "Ispat Bhawan",
5, Lodhi Road, New Delhi – 110 003
And also having its office at 6,
Ganesh Chandra Avenue,
Calcutta – 700 013.

2. Durgapur Steel Plant,
A subsidiary unit of Steel Authority of India Ltd.,
Having its registered office at Main Administrative
Building, (Ispat Bhawan), Durgapur – 713203,
District : Burdwan.
3. Managing Director,
Durgapur Steel Plant,
Steel Authority of India Ltd.
Having his office at Main Administrative
Building, (Ispat Bhawan), Durgapur – 713 203,
District : Burdwan.
4. Executive Director (Personnel & Administration),
Durgapur Steel Plant, Steel Authority of India Ltd.
Having his office at Main Administrative Building,
(Ispat Bhawan), Durgapur – 713 203,
District : Burdwan.
5. General Manager (P. & A),
Durgapur Steel Plant,
Steel Authority of India Ltd.
Having his office at Main Administrative
Building, (Ispat Bhawan), Durgapur – 713 203,
District : Burdwan.
6. Assistant General Manager (Personnel),
NW/IR, Durgapur Steel Plant,
Steel Authority of India Ltd.,
Having his office at Main Administrative
Building, (Ispat Bhawan), Durgapur – 713203,
District : Burdwan.
7. Manager, (Pers/NW),
Durgapur Steel Plant,
Steel Authority of India Ltd.
Having his office at Main Administrative
Building, (Ispat Bhawan),
Durgapur – 713203, District : Burdwan.

..... Respondents.

For the applicant : Mr. I.N. Mitra, Counsel

For the respondents : Mr. T.K. Banerjee, Counsel
Mr. A. Roy, Counsel

Reserved on : 04.09.2019

Date of Order : 23.12.19.

ORDER

Per : Bidisha Banerjee, Judicial Member

Ld. Counsel Mr. I.N. Mitra for the applicant and Ld. Counsel Mr. T.K. Banerjee, leading Mr. A. Roy for the respondents, were present and were heard.

2. It transpired at hearing that, in an earlier round the present applicants had preferred a Writ Petition, being WP 5379 (W) of 2008, before the Hon'ble High Court at Calcutta.

The decision rendered therein, on 5.12.91, is extracted hereunder with supplied emphasis for clarity:

"The petitioner in this application under Article 226 of the Constitution of India, prays, inter alia, for a writ in the nature of mandamus declaring that the purported action of the respondents in absorbing some of the successful candidates at the interview and the medical test and those even found to be unfit and at such medical test in preference to the petitioners being deprived of getting employment although equally placed with the other persons so absorbed was utterly illegal, unconstitutional, discriminatory and unjustified the petitioners further pray for a writ in the nature of Mandamus commanding the respondents immediately to absorb the petitioners as refractory mason helpers (unskilled) or in any service of equal status under the respondent No 4 like the successful candidates already absorbed in such service who were jointly empanelled being appointed in 1985 or subsequently."

They had therefore, as a bare perusal of the Judgement would demonstrate, sought for immediate absorption as refractory mason helpers or in any service of equal station, like successful candidates appointed in 1985, they had never prayed for such benefits to be bestowed on them with retrospectivity.

The Hon'ble Court observed as under:

"Bereft of verblage the short case of the petitioners is that although the petitioners, along with others were selected for appointment as unskilled unskilled labourers under respondent No. 4, yet no appointment was given to them whereas persons who were even declared unfit were given employment. The further case of the petitioners is that from time to time the respondent No. 4 is recruiting unskilled labour to the exclusion of the petitioners without showing any rhyme or reason and that such act amounts to hostile discrimination against the petitioners by treating equals unequally. The respondents contested this case by filing affidavits and raising various contentions. Before I enter into the merits of the case it is to be noted that this case was initially heard by this court by March 21, 1990 when Mr. Subimal Som along with Mr. Jayanta

Sinha appearing for respondent No 4, in his useful fairness, conceded that the claim of the petitioners had considerable force and as such agreed to the proposition that the petitioners would be given employment against future vacancies. On that understanding this case was disposed of on March 21, 1990 by directing the respondents concerned not to give appointment to any one from any other sources before absorbing the writ petitioners whenever vacancies would arise, if the petitioners were otherwise found suitable, strictly in accordance with seniority of does not expect such behaviour from such public authorities which, according to the Hon'ble Supreme Court should act as a 'model employer.'

Be that as it may, by the order of the learned appeal bench this court is bound to reher the matter on its intrinsic merit.

In the affidavit in opposition the respondents have principally taken the point that the case should not be entertained at all by this court on the ground of delay and laches, that the respondents are not bound to employ any one even though it chooses to select certain persons for such employment and puts them to vigorous tests including medical test and raising hopes in their mind of getting employment. The third plea taken by the respondents is that because of some embargo, or fresh appointment, the respondents cannot give any appointment to the petitioners.

So far as the second point is concerned namely that the respondents are not bound to give any appointment to any one although they select candidates for such employment, I am afraid that a public sector undertaking which is a State, should not even be permitted to take such defence because in that case licence should be given to such public sector undertaking which come under the definition of a State within the meaning seniority of the petitioners interse.

This Court placed reliance on the submission of counsel appearing for the respondents but the respondent in order to wriggle out and because of these change of its mind, preferred the appeal and appointed another counsel Mr. Jayanta Sinha remained the same both before the trial court and the learned appeal bench. To say the least such conduct of the respondents which comes under the definition of State within the meaning of Article 12 of the Constitution of India, is reprehensible and the court does not"

Thus, what was agreed upon at a particular stage of the said proceeding was a prospective rather future consideration "whenever vacancies would arise".

Hon'ble High Court decided that,

"So far as the first point is concerned it is more or less a settled principle of law that an application under Article 226 of the Constitution of India may be thrown out at its inception or dismissed in limine because of delay but once the application is admitted and the petitioners seem to have a genuine grievance the application should not be thrown out merely on the ground of delay. These unskilled unemployed aspirants for jobs hovering along the the hunger line, suffering from looming starvation and seeing before them the dull, drab dreary barren and bleak future before them, cannot be expected to be vigilant enough to be able to afford the luxury of coming to the High Court specially when their daily existence is at stake. In the facts of this case this court is of the opinion that as the application has been admitted already and as the petitioners seem to have a just cause for grievance this application should not be dismissed in limine on the ground of delay alone specially because the cause of action namely, denial of giving appointment still continues and the cause of action may be deemed to be renewed die in diem that is from day to day till their grievance s are met."

The approach in itself was therefore a belated one. The Hon'ble Court would then proceed as under,

"So far as the second point is concerned namely that the respondents are not bound to give any appointment to any one although they select candidates for such employment I am afraid that a public sector undertaking which is a State, should not even be permitted to take meaning of Article 12 of the Constitution of India, to act in a whimsical and arbitrary manner which contravenes the provisions of Articles 14 and 16 of the Constitution of India. A passing reference may be made to the case of Preme Prakash Vs. Union of India & Ors. reported in 1984 (Supp) SCC 687 wherein it has been categorically held that once a person is declared successful, the appointing authority has a responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates. No useful purpose will be served by multiplying the number of authorities on this point. The defence that the panel stands lapsed has no legs to stand on as it is nowhere stated that the panel was for a fixed period of time and even if it was so there is no reason as to why a panel should be allowed to lapse without exhausting the same to enable the employer to appoint its favourites." So far as the third point is concerned namely, the embargo put by the Government on fresh appointments needs some consideration. It is true that the Government has its own rights to form policies in regard to the employment in, inter alia, public sector undertakings but the embargo was put long after petitioners were selected for appointment and as such the embargo has no manner of application to the petitioners who were already selected for appointment, but on an overall view in deference to the policy of the Government, this court will not inflict the petitioners on the respondent concerned right at the moment. But the court declares their right to be appointed or absorbed.

It appears that none of the three contentions made by the respondents is tenable either in law or on facts. This court has carefully avoided to go into any disputed question of fact raised by the petitioners and denied by the respondents in the supplementary affidavits and counters thereto.

Hon'ble Court directed

"In the circumstances, this application succeeds in part and is allowed in part.

The respondents are directed first to give appointment to the petitioners before giving any appointment to any others when the next vacancy will arise. Such appointments are to be given in accordance with the seniority of the petitioners and subject to their remaining physically fit at the time of such appointment.

The application is disposed of as above.

There will be no order as to costs."

Therefore, as evident from the language of the decision itself, that there was no anctionity or ambivalences that the direction was irrefutably and indubitably rendered without any element of retrospectivity.

It transpires that after such direction and in compliance thereto the applicants were absorbed w.e.f. 1992, and therefore prospectively. The applicants without protest joined and continued to serve.

3. In this O.A., applicants, thirteen (13) in numbers, have sought for the following reliefs:

"8.a) An order do issue setting aside and/or quashing the alleged reasoned order dated 27.7.2011, passed by the Assistant General Manager (Personnel), Durgapur Steel Plant, forthwith;

b) An order do issue directing the respondents to rescind, cancel and/or withdraw the alleged reasoned order dated 27.7.2011, passed by the Assistant General Manager (Personnel), Durgapur Steel Plant, forthwith;

c) An order do issue directing the respondent to pay notional benefits to consider and grant notional benefits from the period applicants were remained out of employment;

d) Leave may be granted to file this application in common cause of action u/s 4(5)(a) CAT Procedure Rule 1985."

Thus, after a long hibernation of 20 years from their absorption, they wake up to agitate the matter afresh, by filing this O.A. to seek regularisation/ absorption w.e.f. 1987 retrospectively, on par with other employees absorbed in SAIL in 1987 itself, which prayer they never made in the earlier writ of 1991, as enumerated supra.

4. Meanwhile they once again approached the Hon'ble High Court in 2008 through WP 5378(W) of 2008. It was disposed of with the following under:

"Heard the submissions of the learned Counsel appearing for both sides. I grant liberty to the petitioners to make an application before the respondent no.6, being the Assistant General Manager (Personnel) stating their grievances and the said Assistant General Manager (Personnel) will decide the same upon giving the petitioners an opportunity of hearing through their authorized representative and pass a reasoned order. The respondent no. 6 is directed to supply a copy of the reasoned order to the said representative. The consideration and disposal of the said representation is to be made by the respondent no. 6 within eight weeks from the date of making such representation.

The petitioners are to make such representation within two weeks from date. In case such representation is not made within the aforesaid period, then the respondent no. 6 would be under no obligation to consider any such representation filed beyond the date fixed by this Court.

I make it clear that I have not gone into the merits of the case."

Pursuant to such direction rendered not on merits of their claim for regularisation retrospectively, the order dated 27.7.2011, that was issued to them have been impugned in the present O.A.

5. In their representation dated 19.5.2011, they had submitted as under, as evident from the speaking order that -

"Although having joined DSP in the year 1992 they requested to provide the notional service benefits at par with the candidates who had been selected from the same panel in the year 1987.

- (i) *They stated that after of appointment to the concerned post was not given to the petitioners in accordance to the order of merit as despite securing higher marks in interview compared to the other candidates (Who had been provided with appointment offer), they had not been offered appointment to the same post. It was only after an order passed by the Hon'ble High Court, they were allowed to join in the year 1992.*
- (ii) *(iii). Had they joined DSP along with the comparable candidates, they ought not to have suffered the loss of notional service benefits.*
- (iii) *(iv) They also requested for some out of court settlement failing which they will again move to court for this purpose."*

The Respondents SAIL offered the following comments on their claim as reproduced hereunder verbatim for clarity:

"Pursuant to an order dated 05.12.1991, passed by the Hon'ble Justice Kalyan may Ganguli in Civil Order No. 2851(W) of 1991 (Sukumar Banerjee & Ors vs SAIL/DSP & Ors) 13 petitioners joined DSP in the year 1992. The operative portion of the said order is as follows :-

Quote:

"The Respondents are directed first to give appointment to the petitioners before giving any appointment to any others when the next vacancy will arise. Such appointments are to be given in accordance with the seniority of the petitioners and subject to their remaining physically fit at the time of such appointment.

The application is disposed of.

There will be no order as to costs."

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"The petitioners were given appointments strictly in terms of the said order.

The Hon'ble Court did not direct SAIL/ DSP to give appointment to the 13 petitioners with retrospective effect from 1987. On the contrary the Hon'ble Court directed SAIL. DSP to give appointment to the petitioners before giving any appointment to any others when the next vacancy will arise. The Hon'ble Court had used the term "when the next vacancy will arise." The Hon'ble Court also directed SAIL/ DSP that "Such appointments are to be

given in accordance with the seniority of the petitioners". The Hon'ble Court had used the term "Such appointments are to be given". The Hon'ble Court clearly directed that appointments are to be given with effect from a future date only. The prayers of the writ petitioners that they should be absorbed with effect from 1987 were rejected by the Hon'ble Court.

(d) Therefore, the question of giving retrospective effect in connection with the notional service benefit to the above mentioned 13 petitioners does not and cannot arise at all. Accordingly, the service benefits admissible to the above mentioned 13 petitioners were given only from their actual date of joining in DSP. The writ petitioners could have approached the same Hon'ble Court for clarification of the said order immediately after their joining in DSP but they chose not to do so. They have accepted the said order.

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XXX

XXX

Further that the petitioners cannot claim service benefits for a particular period for which they had not worked. Since the petitioners did not render any service in DSP from 1987 till 1992 they cannot ask for any service benefits for the said period."

6. Although Ld. Counsel for the applicant would forcefully articulate that the present applicants have a right to seek regularisation w.e.f. '87 instead of '92 when they were finally absorbed, as they have scored more marks than those appointed in '87, Ld. Counsel for the respondents would vehemently oppose the plea on the grounds inter alia that:

(i) The present applicants could not have agitated in 2013 a stale matter, which stood settled way back in 1991, with a direction of the Hon'ble High Court that first to give appointment to the petitioners before giving any any appointment to any other when the next vacancy will arise, and such appointments are to be given in accordance with the seniority of the petitioners and subject to their remaining physically fit at the time of such appointment. Ld. Counsel would contend that the decision rendered in 1991 was consciously meant to be prospective with no element of retrospectively being pronounced.

(ii) The applicants having accepted their appointment in 1992, in terms of the order dated 5.12.91 supra, were estopped from challenging the settled position.

(iii) Their appointment could not have been granted w.e.f. '87 as the order in WP was prospective and that a judgment unless expressly made retrospectively applicable cannot have such application.

In support Ld. Counsel would place the following decisions:

- (i) Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat and Others in (1994) Supp (2) SCC 591 that "Candidates in waiting list given appointment under decision of High Court which the Supreme Court found incorrect but did not quash the appointments – Such candidate from the waiting list appointed subsequently cannot, however, claim appointment from a back date".
- (ii) Ramendra Singh and Others Vs. Jagdish Prasad and Others in 1984 (Supp) SCC 142 that "Departmental orders appointing the sub-overseers as overseers on temporary basis with retrospective effect from the date of publication of their result of diploma examination, held, violative of Article 14 and 16 as that would adversely affect the seniority of those who had already been appointed overseers by the selection committee".
- (iii) Ram Janam Singh Vs. State of U.P. and Another in (1994) 2 SCC 622 that "Date of entry in a particular service is the safest criterion for fixing seniority".

7. Having devoured the facts and materials on record with all our senses, and having failed to decipher from the language of the decision of Hon'ble High Court, as observed in the order enumerated supra that Hon'ble Court intended to grant retrospective absorption, we are unable to concur with the view of the applicants that the effect and prospective applicability of the decision of the Hon'ble High Court via order dated 5.12.91 could be altered by this Tribunal.

8. Although the present applicants attempted to raise the issue for a second time before the Hon'ble High Court in WP 5378(W) of 2008 no mandatory order other than consideration of their representation was granted by the Hon'ble High Court. The respondents, as we would notice, have duly considered their prayer in the light of the mandatory direction of the Hon'ble High Court 1991, and issued a reasoned and speaking order.

9. In the aforesaid backdrop, We find no infirmity with the order impugned in the present O.A.

10. The decision in **Virender Hooda**, reported in 1999 (3) SCC 696 to that "The respondents are therefore directed to consider the appellants' cases for appointment. It is however made clear that the appellants shall be fitted to the post ranking below those who had been selected along with the appellants at the time of recruitment made pursuant to the result declared in June 1992. The appellants will be fitted in appropriate posts and they will be accorded appropriate scale of pay by giving them benefit of increments, if any, but they will not be entitled to any monetary benefits for the period for which they have been kept out of employment" cited by the Ld. Counsel for applicant ^Bthat, does not come to their aid due to the discussions ^Bsupra.

11. Accordingly the O.A. fails and is dismissed. No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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