

CONSTITUTIONAL WRIT

W. P. 14404 (W) of 2008

Uttam Kumar Das & Ors.

Vs

The State of West Bengal & Ors.

Present:

The Hon'ble Mr. Justice Syamal Kanti Chakrabarti

Judgement on : 13.01.2010

Point:

POLICY DECISION: Government official cannot act contrary to the policy decision of the Government - Constitution of India, Art 226

Fact: The petitioners made a representation before the respondent for restoration of their names in exempted category as the ex-census workers and thereafter they received a notice from the Additional Director of Employment, West Bengal indicating that as per existing Government notification only the census workers of 1981 and 1991 census operation are recognized as exempted category and as such their prayer cannot be entertained. As per the notice they appeared and made submission which was not accepted by the respondent and by an order their prayer was rejected. Being aggrieved by and dissatisfied with such decision of respondent the writ petitioners have approached this Writ Court and claimed that they have completed their job of census work for the period of 2000-2001 prior to issue of aforesaid notification on 21.08.2002 and as such the said notification is not applicable in their case and they would be treated as 'exempted category' for the purpose of enlistment.

Held: A Government official cannot act contrary to the policy decision of the Government. The Act was passed in 1999 and the notification was issued in August, 2002 excluding or denying the right of the present petitioners to be identified as 'ex-census employees' and no benefit was extended to any other persons or employees except those who rendered services in connection with census operations of 1981 and 1991. Where the State Government has deliberately excluded a

group of persons from being considered as 'exempted category' for the purpose of employment the official working under the State Government cannot violate the Government notification and so he has acted within his jurisdiction and such an act is neither illegal nor arbitrary which requires judicial interference. Paragraph – 8

Cases:

AIR 1990 SC 405

For the Petitioner : Mr. Yamin Ali,
Mr. Sufi Kamal.

The Court:

1. In this writ petition 18 writ petitioners have claimed that they were engaged in the job of census work of 2000-2001 in the capacity of 'enumerator' in the first phase of household enumeration for the period from 17.04.2000 to 16.05.2000 and in the second phase for the period from 09.02.2001 to 05.08.2001 in different areas under the Block Development Officer, Gangarampur, District Dakshin Dinajpur. After completion of their job they approached the Director of Employment, the respondent no. 2 herein, to enlist their names as exempted category being the ex-census workers. But he refused to comply with their request without assigning any reason.

2. Thereafter they filed a writ petition being W. P. No. 18191 (W) of 2003 before this Hon'ble Court claiming the said relief. On 19.03.2007 their writ petition was disposed of with direction to file a fresh joint representation before the respondent no. 2, ventilating their grievances within a period of fifteen days from the date. If such representation is received by the respondent no. 2 within the time fixed it was further directed that he shall consider the same and dispose it of

in accordance with law. It was further stipulated that if the respondent no. 2, upon perusal of such representation is prima facie of the view that the prayer of the petitioners cannot be granted he shall afford their authorised representative an opportunity of personal hearing prior to disposal of such representation. In such a case in the notice of hearing he shall indicate the tentative reasons for which he is not inclined to grant the prayer of the petitioners so as to enable them meet the same at the hearing. The exercise of consideration and disposal of such representation shall be completed within eight weeks from the date of receipt of representation from the petitioners and the reasoned order shall be communicated to them within a week from the date of taking the decision.

3. Further case of the petitioners is that they made a fresh representation before the respondent no. 2 for restoration of their names in exempted category as the ex-census workers and thereafter they received a notice dated 22.05.2007 from the Additional Director of Employment, West Bengal indicating that as per existing Government notification no. 301-EMP dated 21.08.2002 only the census workers of 1981 and 1991 census operation are recognised as exempted category and as such their prayer cannot be entertained. As per the notice they appeared on 12.06.2007 and made the aforesaid submission which was not accepted by the respondent no. 2 and by order bearing no. 4L-6573/06/505-06R dated 26.06.2007 their prayer was again rejected. Being aggrieved by and dissatisfied with such decision of respondent no. 2 the present writ petitioners have approached this Writ Court and claimed that they have completed their job of census work for the period of 2000-2001 prior to issue of aforesaid notification on 21.08.2002 and as such the said notification is not applicable in their case and they would be treated as 'exempted category' for the purpose of enlistment. The writ petitioners have further claimed that such rejection is bad, illegal, arbitrary and unsustainable in law and as such violative of the Articles 14 and 16 of the Constitution. Accordingly, they have approached this Court with a prayer for issuing

a writ of Mandamus commanding the respondents, their men and agents and each of them to withdraw, cancel, revoke and/or set aside the said order dated 26.06.2007 passed by the respondent no. 2 being annexure P-7 to the writ petition and to enlist the names of the petitioners as 'exempted category' candidates etc.

4. Learned lawyer for the petitioners has also drawn my attention to the principle laid down in AIR 1990 SC 405 in support of his contention.

5. Thus the point for consideration of this Court is to decide whether the present writ petitioners have acquired any right for the inclusion of their names as 'exempted category' under the existing provisions of West Bengal Regulation of Recruitment in a State Government Establishment and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 and whether the impugned order passed by respondent no. 2 on 12.06.2007 is inconsistent with any provisions of the aforesaid Act or rules framed thereunder.

6. Having heard learned lawyer for the petitioner as well as on perusal of the impugned order in question I find that the Director of Employment, West Bengal, being the respondent no. 2 herein, has complied with the direction given in W. P. No. 18191 (W) of 2003 strictly in terms of the existing provisions of the said Act of 1999. He has cited the definition of 'exempted category' as defined under item no. 4 of the said Regulation which was issued in exercise of the power conferred by sub-Section 3 of the said Act of 1999. For the purpose of identification of the exempted categories the labour department issued their notification no. 301-EMP/1M-10/2000 dated 21.08.2002 in exercise of the power conferred by sub-Section (a) of Section 3 of the West

Bengal Regulation of Recruitment in a State Government Establishment and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 and in exercise of such power the Governor was pleased to declare the following categories of ex-census employees as exempted categories under item no. 4 which is quoted below:-

“4. Ex-census employees:

- a) Ex-Census employees who worked in connection with 1981 Census Operation and who had put in at least six months' continuous service under the Director of Census Operations, West Bengal.
- b) Ex-census Enumerators/Supervisors of 1981 Census Operations and 1991 Census Operations holding authentic, “Experience Certificate” issued by the Directorate of Census Operations, West Bengal or any other competent authority duly authorised by the said Directorate.
- c) Persons holding “Discharge Certificate” only shall not be considered for inclusion in the “Exempted Categories” since certificates granted by certain officials in some cases do not conform to the census frame work communicated by the Directorate of Census Operations, West Bengal.”

7. On the same date the Labour Department issued notification no. 303-EMP/1M-10/2000 prescribing the procedures for filling up the vacancies reserved for the exempted categories as specified under sub-Section (a) of Section 3 of the said Act of 1999.

8. From the facts and circumstances of the present case as well as the existing provisions of the Act and notifications issued thereunder it appears that while in August, 2002 the State

Government has defined the ex-census employees they have taken into consideration the employees who worked in connection with 1981 census operations and 1991 census operations and obviously they have excluded from their purview the claims of those who worked in similar capacities after 1991 till publication of their notification. Such exclusion of other temporary staff engaged for the purpose has been consciously made by the State Government as a policy decision which is reflected in their aforesaid two notifications. The respondent no. 2 being in charge of the affairs in the State of West Bengal has rightly rejected the prayer of the present writ petitioners since they are not coming within the purview of the aforesaid notification dated 21.08.2002 (annexure R-1).

A Government official cannot act contrary to the policy decision of the Government. The Act was passed in 1999 and the notification was issued in August, 2002 excluding or denying the right of the present petitioners to be identified as 'ex-census employees' and no benefit was extended to any other persons or employees except those who rendered services in connection with census operations of 1981 and 1991. Where the State Government has deliberately excluded a group of persons from being considered as 'exempted category' for the purpose of employment the official working under the State Government cannot violate the Government notification and so he has acted within his jurisdiction and such an act is neither illegal nor arbitrary which requires judicial interference.

9. From Annexure P-3 of the writ petition it will be crystal clear from paragraph 3 that in the order of appointment as Enumerator such appointment was made against fixed honorarium for a fixed period with following stipulations:

“3(c) - *This appointment* does not confer upon you any right/entitlement to any employment or further employment under the State/ Central Government in any manner whatsoever and is completed with specific job of Census taking for 2001.”

Therefore, such temporary appointment on fixed honorarium for a fixed period cannot confer upon a person any right of permanent employment and acceptance of such terms of temporary assignment is a further barrier for such person to claim something more which was initially eliminated from the privity of contract.

Having no contractual obligation the State Government, however, has adopted a policy decision in their said notification to identify certain classes of ex-census employees and ex-census enumerators/ supervisors of 1981 and 1991 Census Operation as ‘exempted category’ for the purposes of filling up 30% of total vacancies arising in a year under some specified appointing authority in the manner prescribed under Notification No. 303-EMP/1M-10/2000 dated 21.08.2002 of the Labour Department Such an endeavour on the part of the State Government is to extend the means of livelihood of its citizen and not based on any unreasonable classification of a group of person to the exclusion of others similarly placed having no nexus with its object. Therefore, it is neither violative of Article 14 and 16 of the Constitution nor any invasion to any accrued right of a person calling for judicial review of policy decision of the State Government. From this point of view I hold that instant writ petition is not maintainable.

10. The ratio in AIR 1990 SCC 405 relates to the amendment of any rule in the midst of consideration of some applications for appointment of Motor Vehicle Inspectors after commencement of the process of selection. The facts are distinguishable from the present case and I hold that it has no applicability in the facts and circumstances of the writ petitioners.

11. Considering all these aspects I hold that the impugned order passed by the respondent no. 2 does not suffer from any illegality or impropriety or inconsistency with Labour Department notification no. 301-EMP/1M-10/2000 dated 21.08.2008 and the said notification has not conferred any right upon the present petitioners to claim any advantage of ex-census employees for the purpose of their future absorption in Government establishment or Government aided establishments. Therefore, their claim ultimately does not constitute any breach of the State Government notification or any right accrued in their favour which has been denied by the State Government. Therefore, I conclude that this Writ Court should not interfere in the aforesaid findings of the respondent no. 2 which is made in accordance with existing provisions and not violative of any right accrued in favour of the writ petitioners. Accordingly, I hold that there is no merit in this writ petition which is dismissed without costs.

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

(S. K. Chakrabarti, J.)