

16.03.2017.

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W.P. No.6151(W) of 2017
Atri Kar
Versus
The Union of India & Ors.

Mr. Kaushik Gupta
Mrs. Aindreela Chakraborty ... For the petitioner

Mr. Sudip Pal Chowdhury ... For the bank

A transgender is the petitioner in the instant writ petition. The petitioner seeks a right to participate in a selection process initiated by the State Bank of India as a transgender.

Learned advocate for the petitioner refers to a judgment and order dated April 15, 2014 passed in Writ Petition (Civil) No. 604 of 2013 (National Legal Services Authority Vs. Union of India & Ors.) reported at (2014) 5 Supreme Court Cases Page 438 in support of his contention.

He submits that, the State Bank of India had initiated a selection process for recruitment of Probationary Officers by an advertisement. The State Bank of India had invited on-line registration of the applications. The period prescribed for submission of applications was between February 07, 2017 to March 06, 2017. He submits that the petitioner upon opening the relevant page of the website of the State Bank of India in the internet had found that the on-line application form had discriminated against a transgender. The gender column provided in the application format did not provide for a transgender. Consequently the petitioner was unable to apply. The petitioner had made a representation. Such representation has not been considered. He submits that the examination for the selection process is scheduled to be held on and from April 29, 2017.

He submits referring to a National Legal Services Authority (Supra) and particularly to the directions given in paragraph 135 thereof that, the State Bank of India being an authority within the meaning of Article 12 of the Constitution of India should be directed to permit the petitioner to participate in the selection process as a transgender. The State Bank of India be also directed to extend to all kinds of reservation as in the case of public appointments.

Learned advocate for the bank submits that, the directions contained in paragraph 135 of the National Legal Services Authority (Supra) relates to State and the Central Governments. The State Bank of India is not one of those governments. Therefore, such directions are not binding upon the State Bank of India. He refers to a bill which he claims is pending before the legislature where certain provisions are made. He submits that till such time the bill becomes an Act of legislature, the question of allowing a transgender to participate in the selection process does not arise. He submits that, all the respondents are outside the territorial jurisdiction of this Hon'ble Court and, therefore, writ petition is not maintainable in this Hon'ble Court. He refers to the application form and submits that the date for on-line application is over.

I have considered the rival contentions of the appearing parties and the materials made available on record.

State Bank of India is an authority within the meaning of Article 12 of the Constitution of India.

National Legal Services Authority (Supra) concerns the rights of transgender. It directs in paragraph 135 as follows:-

“135. We, therefore, declare:

135. 1. Hijras, Eunuchs, apart from binary gender, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.

135. 2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

135. 3. We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

135. 4. Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/ Transgenders face several sexual health issues.

135. 5. Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma etc and any insistence for SRS for declaring one's gender is immoral and illegal.

135. 6. Centre and State Governments should take proper measures to provide medical care to TGs in the hospital and also provide them separate public toilets and other facilities.

135. 7. Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

135. 8. Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchable.

135. 9. Centre and State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life."

The directions in paragraphs 135-2 and 135-3 are to the Centre and State Governments. Such directions, in my view, would also include an authority within the meaning of Article 12 of the Constitution of India. Therefore, State Bank of India is bound by such directions issued in National Legal Services Authority (Supra). That apart a transgender is entitled to the right to participate in the selection process as a transgender. A transgender cannot be discriminated on the basis of sex. The selection process undertaken by the State Bank of India does not allow a transgender to apply as such as the gender column of the on-line application form provides for two options which does not include a transgender. Such a on-line application form is an active discrimination against a transgender and is violative of Article 15 of the Constitution of India.

The petitioner has come to Court within time. The examination for the selection process is yet to be held. Before approaching the Court, the petitioner had made a representation. The petitioner had expressed an intention to participate in the selection process but for the on-line application form as it stands. The petitioner has been denied a right to participate in the selection process on the basis of the sex of the petitioner.

In such circumstances, since the on-line application form did not allow the petitioner to declare its status, State Bank of India will permit the petitioner to participate in the selection process as a transgender. Application by the petitioner in this regard dispatched by Registered Post with Acknowledgement Due Card within seven days from date to the respondent no. 2 at the address given in the cause title of the writ petition will be considered to be an application of the petitioner in terms of the advertisement for the selection process. The respondent no. 2 will also extend the benefits of paragraph 135-3 of National Legal Services Authority (Supra).

The question of jurisdiction of the Court to entertain the writ petition is required to be decided. All the respondents arranged in the writ petition are outside the territorial jurisdiction of this Hon'ble Court except the respondent no. 1 on whom service is sought to be effected through the learned Additional Solicitor General having its office at the

Court premises. The writ petitioner is a resident of Hooghly. The right of the petitioner to participate in the selection process stands infringed at Hooghly. It is within the territorial jurisdiction of this Hon'ble Court. A substantial part of the cause of action of the petitioner has arisen within the territorial jurisdiction of this Hon'ble Court.

In such circumstances I find that this Court has the territorial jurisdiction to try, entertain and determine the instant writ petition.

With the above directions and observations W.P.No. 6151(W) of 2017 is disposed of without any order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Debangsu Basak, J.)