
(2007) 06 CAL CK 0058

In the Calcutta High Court

Case No : Writ Petition No. 17194 (W) of 2005

1981 Census and Election Job Workers' Association and
Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-06-2007

Acts Referred:

Citation : (2007) 3 CHN 704

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Arunava Ghosh, Anant Shaw and Prasun Mukherjee, P.S. Bhattacharya, for the Appellant; Dipankar Chakraborty, Somnath De and Tarapada Halder, for Seventh Respondent, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—This writ petition dated August 30th, 2005 was taken out by an association and two natural persons. Counsel for the petitioners has failed to satisfy me how the association could take out the writ petition. Nothing has been stated about the legal status of the association, i.e., whether it is a society. In my view, questioning the selection process that was initiated by Dakshin Dinajpur District Primary School Council, a statutory authority constituted under provisions of the West Bengal Primary Education Act, 1973, the association was not entitled to take out this writ petition.

2. Only those persons who were aggrieved, the second and third petitioners were, were entitled to approach the Writ Court questioning the selection process. Hence, while I hold that the writ petition is not maintainable at the instance of the first petitioner, it is maintainable at the instance of the second and third petitioners. They are questioning their exclusion from the panel of selected candidates and the appointments given to the ninth to nineteenth respondents as primary school teacher in primary schools within the jurisdiction of the Council.

3. Having worked as enumerators and supervisors in connection with the 1981 census, the second and third petitioners enrolled their names with the National

Employment Exchange as exempted category candidates. In response to requisition put in by the Council, the competent Employment Officer sponsored names of 219 persons for the post of primary school teacher. In that list names of the second and third petitioners were included. With others they were called for written test and interview.

4. The Council prepared the merit list and keeping in view the number of notified vacancies it prepared the panel of the selected candidates for appointment. From the panel unreserved category candidates obtaining 32.79 and above, and other backward class category candidates obtaining 31.17 and above, were given appointment. While the second petitioner (Abdus Sattar: unreserved category candidate) obtained 32.58, the third petitioner (Bidhan Debnath: other backward class category candidate) obtained 31.02 mark. As a result they were not appointed.

5. Complaints were made to the Employment Exchange and the Council authorities that a large number of candidates among 219 named in the list were not eligible. In view of the complaints the authorities started investigation and ultimately the Commissioner. Jalpaiguri submitted his report dated December 15th, 2004 to the Chief Secretary of the State. The Commissioner recorded in his report that the allegations made by the complainants were substantially correct. In the report it was stated that a large number of candidates named in the list sent by the Employment Exchange on August 16th, 2002 were not eligible.

6. It was further mentioned that it was doubtful whether 25 persons named in the report were at all entitled to be treated as exempted category candidates. After considering the inquiry report the Joint Secretary of the Labour Department of the State Government issued Order No. 205-EMP dated December 16th, 2005 specifying who was eligible and who was not. It is understood that when the matter was being investigated by the Commissioner, the Council gave appointment on the basis of the list dated August 16th, 2002 treating all the 219 sponsored candidates as eligible. As a result many ineligible persons got appointment as primary school teacher. This is the clear position that has now emerged from the affidavits filed by the parties.

7. I am told that notice of the case was given to the ninth to nineteenth respondents. Those respondents have chosen not to appear and contest this case. The case of the second and third petitioners is that if the ineligible persons were excluded from the merit list and the panel, then they would possibly have fallen within the zone of consideration. It is very difficult for me to determine whether on exclusion of the ineligible candidates, with the marks obtained by the second and third petitioners they would have fallen within the zone of consideration for getting offer of appointment as primary school teacher, because the determination process would require recasting of the merit list and the panel.

8. The case of the Council is that it just proceeded on the basis that all the persons named in the list were eligible, and that it prepared the merit list and

the panel on the basis of the marks obtained by the participating candidates including the second and third petitioners. Its further case is that since marks obtained by the second and third petitioners could not place them within the zone of consideration, no offer was made to them. Case of the State respondents is that after making necessary inquiry the Commissioner detected the gross illegality that took place while sponsoring names of the 219 persons in question. Their Counsel has said that as will appear from the order of the Joint Secretary of the Department concerned of the State the inquiry report of the Commissioner was accepted and directions were given for making recruitment according to the directions given in the order. His further submission is that the persons who were not eligible to be sponsored were not entitled to be considered for appointment as primary school teacher, and hence they were not entitled to get appointment as well.

9. I thus find that a large number of candidates who were not entitled to be considered for the post of primary school teacher were included in the list of 219 candidates sent by the Employment Exchange on August 16th, 2002. It cannot be said that the Council knowingly committed any wrong by considering the ineligible candidates, because there was no scope for the Council to ascertain whether the persons sponsored all were entitled to be sponsored. On the basis of the complaints the State authorities made necessary inquiry, and the Commissioner came to the definite conclusion that the persons identified by him and named in his report were not eligible to be sponsored.

10. The inquiry report was accepted and the Joint Secretary of the Department concerned of the State Government issued necessary order that only the persons specified therein as eligible should be considered for recruitment and appointment. The Council, however, concluded the process, and a large number of ineligible candidates were appointed. As I have already indicated some of them were made respondents in this case, but they chose not to enter appearance and contest. On the facts, I conclude that the persons who were not eligible to be sponsored as exempted category candidates were not entitled to be considered for the post of primary school teacher, and hence they were not entitled to get appointment. I further hold that the Council should take immediate corrective measures for setting the wrong right.

11. For these reasons, I dispose of the writ petition ordering that on the basis of the abovementioned inquiry report of the Commissioner and order of the Joint Secretary of the Department concerned of the State Government, the council shall recast the merit list and the panel by excluding the candidates who according to the report of the Commissioner and order of the Joint Secretary were not eligible to be sponsored as exempted category candidates. If any such candidate was given appointment, then such appointment shall be immediately cancelled on the ground that the person concerned was not entitled to be sponsored for the post of primary school teacher, and hence was not entitled to be considered for the post and get appointment.

12. After excluding all the persons who were not eligible to be sponsored as exempted category candidates, the Council shall recast the merit list and the panel, and keeping in view the number of notified vacancies, shall take steps for filling the available vacancies, and if the second and third petitioners come within the zone of consideration on the basis of marks obtained by them, then appointment shall be offered to them for the post of primary school teacher. The entire exercise shall be completed by the Council within six weeks from the date of communication of this order. The Commissioner and the Joint Secretary are directed to send the inquiry report and the order to the Chairman of the Council within a week from the date of communication of this order. There shall be no order for costs in the case.

13. Urgent certified xerox copy of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the Section concerned.