

(2012) 12 CAL CK 0008
In the Calcutta High Court

Case No : Writ Petition No. 11676 (W) of 2012 with W.P. No. 11677 (W) of 2012 with W.P. No. 14130 (W) of 2010

Abhijit Mahapatra and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Citation : (2013) 1 CALLT 330 : (2013) 3 CHN 55 : (2013) 1 LLN 125

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Biswaroop Bhattacharya and Anindya Bose, for the Appellant; Sipra Mazumdar, Advocate for Respondent No. 1, Debnarayan Roy, Advocate for Respondent No. 3 and Tarun Kumar Das, Advocate for Respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Harish Tandon, J.—All these three Applications though heard separately but since a common question of law is involved, therefore, this Court proposes to dispose of the aforesaid Writ Petitions by a common judgment. Before proceeding to frame the question involved in the above Writ Petitions, the salient facts are recorded hereunder:

W.P. No. 14130 (W) of 2010:

Two posts namely Librarian and Clerk were created vide G.O. No. 333/S.E. dated 8.6.2007 and prior permission was issued on 13.6.2008. The School Authorities notified the aforesaid posts with the Employment Exchange concerned and also advertised the aforesaid vacancies on 6.12.2008 & 12.12.2008 in Bengali Newspaper. The Employment Exchange sponsored the name of 20 candidates for the post of Librarian and 19 names for the post of Clerk. Although, the District Inspector of School (SE), Purba Medinipur indicated while sanctioning the prior permission that the aforesaid posts are permanent in nature, but in absence of

any concurrence in the form of sanctioned by the Director of School Education (SE), the school authorities sought for further clarification. Because of the inaction on the part of the authority concerned, a Writ Petition was moved by the Petitioner in W.P. No. 12316 (W) of 2009 before this Court. The Respondent authorities were permitted to file an Affidavit-in-opposition but no opposition could be filed when the matter was taken up for final disposal. On 9.4.2010, the said Writ Petition was disposed of with the following order:

This is an extremely short matter. The Secretary of the School has filed this Writ Application being aggrieved by the alleged inaction on the part of the District Inspector of Schools to make some clarifications that he sought for in his Letter dated 20th May, 2009. In my opinion the contents of that Letter are not quite intelligible and clear. What I understand is that the Management of the school seeks a clarification from the District Inspector of Schools regarding the correctness of the Advertisement being annexure P-2 at page 14 of the Writ Application and necessary advice to proceed with the selection process.

Let such clarification or advice to be given within a period of two weeks from the date of communication of this order.

In compliance of the aforesaid order, the District Inspector of School (SE), Purba Medinipur issued Memo dated. 10.5.2010 indicating that the Advertisement was done wrongly and, therefore, the entire selection process is vitiated. Additionally, it is further observed that because of the intervention of West Bengal School Service Commission (Selection of Persons for Appoints to the Post of Non-Teaching Staff) Rules, 2009, the vacancy is to be notified to the School Service Commission so that the appointment could be made under the aforesaid Rules. The said Memo is impugned in this Writ Petition.

W.P. No. 11677 (W) of 2012:

On November 06, 2008, an Advertisement was published in Bengali newspaper namely ""Statements" inviting an Application from the eligible candidates for the post of Clerk in Garkilla Santamayi High School (H.S). The prior permission was issued by the District Inspector of School (SE), Purba Medinipur on June 13, 2008. The said Advertisement indicates that the posts for which the Applications are invited are temporary and not permanent. The School Authorities sought for a clarification whether the said posts are permanent or temporary, which was not attended by the authority concerned. A Writ Petition was, thereafter, moved and a direction was made therein upon the District Inspector of School to answer the clarification sought for by the impugned Memo. The said Authority held that the selection process is vitiated and directed the School Authority to send the vacancies statement to the School Service Commission for taking step for filling up the said post.

W.P. No. 11676 (W) of 2012:

On November 12, 2008, an Advertisement was published in Bengali Newspaper

namely Statements inviting an Application from the eligible candidates for the post of Librarian in Garkilla Santamayi High School (H.S). The prior permission was issued by the District Inspector of School (SE), Purba Medinipur on June 13, 2008. The said Advertisement indicates that the post for which the Applications are invited is temporary and not permanent. The School Authorities sought for a clarification whether the said post is permanent or temporary, which was not attended by the authority concerned. A Writ Petition was, thereafter, moved and a direction was made therein upon the District Inspector of School to answer the clarification sought for by the impugned Memo. The said Authority held that the selection process is vitiated and directed the School Authority to send the vacancies statement to the School Service Commission for taking step for filling up the said post.

2. In all the aforesaid Writ Petition, a common point arose whether the West Bengal School Service Commission (Selection of persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 could be made applicable when a prior permission and the advertisement is made before coming in force of those Rules.

3. The Petitioners in all the Writ Petition are unanimous in their submissions that if the process for recruitment had begun before the said Rule came into operation, then such process should be completed under the earlier Rules and, therefore, the District Inspector of School (SE) cannot direct the School Authorities to notify the vacancies statement to the School Service Commission. In support of the aforesaid contentions, several judgments have been cited.

4. In case of Subhankar Mandal Vs. State of West Bengal and Others , the vacancy arose in the non teaching post and in terms of 2005 Rules, a prior permission was issued by the District Inspector of School. The School Authority not only requisitioned the name of the eligible candidates from the local Employment Exchanges but also advertised the said vacancy in the widely circulated newspaper. The panel was also prepared but the same was rejected as in the mean time, the said Rule of 2009 intervened. The Bench proceeded on the well-settled Rule of construction that every statute or statutory Rule is prospective, unless it is expressly or by necessary implication made to have retrospective operation. The subsequent Rules does not have a retrospective in operation, the process which was conducted under the unamended Rules should be completed as such.

5. In case of State of Bihar and Others Vs. Mithilesh Kumar, the Apex Court while answering the aforesaid point held:

20. The decisions which have been cited on behalf of the Respondent have clearly explained the law with regard to the applicability of the Rules, which are amended and/or altered during the selection process. They all say in one voice that the norms or Rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given

retrospective effect.

6. The Full Bench judgment rendered in case of *Tulsi Roy Vs. Sri Krishanu Roy and Others*, , although concurred the aforesaid views but made a departure, in the event, the appointment already made is found to be vitiated as the selection process was not undertaken within the rigidity of the Rules governing it, then such vacancy becomes a fresh vacancy and, therefore, required to be filled up by following the Rules applicable at the relevant period.

7. In case of *Asoke Sawoo v. State of West Bengal & others*, FMA 995 of 2011, the Division Bench in unequivocal term laid down that the selection process should be initiated and completed under the Rules, which were in force when the vacancy in question arose.

8. On the close conspectus of the ratio laid down in the aforesaid judgments, the selection process initiated under the particular Rules/enactment should be completed thereunder and any Rules/Circulars and/or enactment intervenes cannot effect such selection process unless, those are expressly or by necessary implication intended to operate retrospectively.

9. In all the aforesaid Writ Petitions, the prior permission was accorded before coming in force of the said Rules of 2009, even advertisement was made earlier thereto, but neither the Applicants were called to appear in the interview nor any panel was prepared by the School Authorities. The entire process was stagnant at the stage of seeking clarification when the Rule of 2009 was framed.

10. Although in *Asoke Sawoo v. State of West Bengal & others*, FMA 995 of 2011 (supra), the Division Bench held that the initiation of the selection process commenced when the vacancy arose by taking a different view to an earlier division bench in case of *Subhankar Mandal Vs. State of West Bengal and Others* , which laid down that the process commenced when the vacancy is advertised.

11. Without going into the further question whether the selection process reckons on creation of the vacancy or the Advertisement inviting an Application from the intending candidates, this Court can safely proceed that in either of the cases not only the vacancy arose prior to the coming in force of the said 2009 Rule but the advertisement was also made earlier. Therefore, this Court has no hesitation in mind that the process should be completed under the Recruitment Rules of 2005 and the Recruitment Rules of 2009 are not applicable.

12. The matter can also be viewed from another angle. In an earlier Writ Petition which was initiated by the Petitioner was determining the matter relating to inaction on the part of the Respondent-Authorities in not providing the clarification as sought for. The Court directed the Respondent--Authorities to make the clarification which does not necessarily confer the power upon the authorities to cancel the prior permission and diverted the entire issue within the narrow hole of the Recruitment Rules of 2009.

The impugned Memo, therefore, cannot be sustained and is quashed and set aside.

The Writ Petition succeeds.

The Director of the School Education is directed to take a decision whether the posts so created are permanent or temporary in nature and shall, thereafter, instruct the School Authorities to proceed accordingly. The said authority shall communicate its decision within six weeks from the date of the communications of this order.

However, there shall be no order as to costs.

Urgent photo state certified copy of the judgment, if applied for, be given to the parties on priority basis.