
(2013) 06 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 11678 (W) of 2009

Ajoy Kumar Das

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Citation : (2013) 4 WBLR 608

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya and Mr. P.C. Ghosh, for the Appellant; Kamalesh Bhattacharya, Advocate and Mr. Swapan Pal, for the Respondent

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J.—By this writ petition the petitioner has inter alia prayed for a writ in the nature of Mandamus commanding the College Service Commission not to give any effect or further effect to alleged withdrawal of its recommendation for appointment of the petitioner as a lecturer of the concerned college and for other reliefs. The case of the petitioner inter alia is that he holds a postgraduate degree in Bengali and has qualified in the SLET examination in the year 1999. Pursuant to an advertisement published by the West Bengal College Service Commission (the Commission, for short) for appointment of lecturer in Bengali the petitioner filed an application. On September 26, 2007 the petitioner was called for an interview. Thereafter the petitioner was empanelled and was recommended for the post of lecturer in Vivekananda Mission Mahavidyalaya in the district of Purba Midnapore and this was followed by an appointment letter, dated July 2, 2008, issued by the Principal of the College.

2. Before joining the petitioner obtained release from the College where he was teaching, i.e., Bhatler College in the district of Paschim Midnapore. In the release order it was mentioned that the petitioner was being released on lien for one year with effect from July 15, 2008 as per the resolution of the Governing Body

to join as a lecturer of the new college.

3. The petitioner states that he had joined the Bhatler College on July 11, 2002 and his service there was confirmed after one year by the College authorities. Even the pay fixation was made by the Director of Public Instruction of the said College. When approached by the authorities of the new college for the approval of the appointment of the petitioner the Director of Public Instruction made a query that in the bio-data furnished by the petitioner his B.Ed. qualification and teaching experience in the previous college were not mentioned.

4. The petitioner's further case is that he had come to learn from the Teacher-in-charge of the new college that the Director of Public Instruction had informed the college in the middle of June, 2009 that the Commission had withdrawn its recommendation in favour of the petitioner. His grievance is that he had been working in the new college for about a year without any regular salary being paid to him. No notice was served by the Commission before the withdrawal of the recommendation. The petitioner has moved this petition with the prayers as mentioned before.

5. On behalf of the Commission an Affidavit-in-opposition was affirmed and a copy thereof was served upon the petitioner. But the same has not been filed in the court. Since the petitioner has produced a copy of the Affidavit-in-opposition in the court and since the petitioner has also used a reply to the same I have decided to take the same into cognizance.

6. In the said Affidavit the Commission has taken a point that the petitioner is not entitled to any relief as the case was recommended by the Commission as a result of misrepresentation, i.e., the petitioner had suppressed the fact that he was working as a lecturer of the former college from 11th July, 2002. He had declared in his bio-data that he had no teaching experience though he had been working as a lecturer of Bhatler College since July 11, 2002. In the application form the petitioner had given a declaration inter alia to the effect that in the event of detection of any false or incorrect statement before or after the interview or empanelment or recommendation his application or candidature would be liable to be cancelled and appropriate action could be initiated against him. The petitioner was recommended on the basis of the interview held on September 26, 2007 and by a letter, dated June 2, 2008, of the Commission as a fresh candidate. The post that the petitioner was holding in the former College was substantive one. The Commission has referred to two government orders which say that no teacher of a non-government college would be entitled to protection of pay for movement from one non-government college to another college with effect from June 17, 1999 unless he served the former college for a period of five years. According to the Commission the advertisement pursuant to which the petitioner had applied for the second time was published on March 23, 2007 and that the last date of the submission of the application was April 25, 2007. He joined the former college on July 11, 2002. As such the tenure of his service in the earlier college on the date of the submission of the application

form was less than five years and considering all the facts the Commission had decided to withdraw the recommendation of the Commission in favour of the petitioner. The commission has prayed for a dismissal of the writ petition.

7. The petitioner has filed a Reply to the said Affidavit largely reiterating the stand taken in the writ petition. According to the petitioner the facts which are alleged to have been suppressed by him were mentioned in the information sheet on the date of the interview. The petitioner's main defence seems to be that he had mentioned this information in the information sheet which was given to him on the date of the interview and as such before the interview it was disclosed to the College Service Commission. According to him on the date of the interview he had the experience for more than five years and considering the facts the Interview Board had selected him for the post of lecturer in Bengali which was reserved for the Schedule Caste. According to him he had not misled the Commission.

8. The Commission did not appear and contest at the hearing of the writ petition.

9. Mr. Bhattacharya, the learned Senior Counsel for the petitioner has assailed the decision of the Commission on the ground that the recommendation has been cancelled by the Commission without any prior notice to him and which he had come to know only from the Teacher-in-charge of the College which he had subsequently joined. The other point of attack is that after a recommendation is made by the Commission it can neither withdraw nor cancel the recommendation.

10. The persistent case of the petitioner is that he was not served with any prior notice by the Commission before it decided to withdraw the recommendation in favour of the petitioner. The petitioner had served the new college for about a year. But if his appointment was to be cancelled or if his recommendation was to be withdrawn the Commission had no option but to give the petitioner an opportunity of being heard. But the Commission had taken a unilateral decision after going through certain records without making him a party to the decision making process. He was not given an opportunity to respond to the reasons on which the Commission had decided to withdraw its recommendation. Thus the petitioner has been adversely affected without being given the opportunity of being heard.

11. This is all the more so because the petitioner's case is that he had completed his five years' tenure on the date of interview. The petitioner's right to continue with the post was thus curtailed and a very valuable right has been taken away from the petitioner without being given an opportunity of being heard. It is a settled principle of law that before any adjudicatory process against a person is initiated notice is always considered to be the first starting point and this is the minimum that an authority is required to satisfy itself before an action can be initiated. The right of being heard was not given to the petitioner. The Commission in its Affidavit has not denied this allegation nor has it annexed any evidence to rebut the allegation. Thus the Commission violated the fundamentals

of the principles of natural justice. In such view of it the decision to withdraw the recommendation of the petitioner is patently bad and cannot stand. The resolution of the Commission as communicated by its letter, annexed hereto as Annexure-P-10 is set aside and quashed.

12. Since the petition succeeds on the first point alone it is not necessary to go into other grievances of the petitioner.

13. The writ petition is allowed.

14. There shall, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.