

(2014) 02 CAL CK 0046
In the Calcutta High Court
Case No : Writ Petition No. 2640 (W) of 2012

Amiya Kumar Giri

APPELLANT

Vs

The Teacher-in-Charge

RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 WBLR 567

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : R.N. Dutta and Radhyashyam Maity, Advocate for the Appellant;
Rabibal Maitra and Soumen Dutta, Advocate for the Respondent

Judgement

Debasish Kar Gupta, J.—The subject-matter involved in this writ application is the process of selection for the posts of non-teaching staff of Ramnagar College, District Purba Medinipore. The writ petitioners are the participants of the above selection process. This matter has a chequered history which is discussed in a nutshell as follows:

"By an order passed under Memo No. 780-Edn(CS)/4E-64/95 dated October 5, 2010, the following vacancies were created by the Government of West Bengal for Ramnagar College, District Purba Medinipore (hereinafter referred to as "the said College")

- (i) One post of Lady Attendant
- (ii) Two posts of Laboratory Attendant (Geography)
- (iii) One post of Laboratory Attendant (Zoology)
- (iv) One post of Laboratory Attendant (Nutrition)
- (v) One post of Laboratory Attendant (Aqua Culture)
- (vi) One post of Laboratory Attendant (Physiology)

(vii) One post of Librarian

(viii) One post of Sweeper (Part Time)"

2. Recruitment to all the aforesaid non-teaching posts except the post of Librarian were allowed subject to strict observance of recruitment procedure as prescribed in G.O. No. 585-Edn(CS) dated September 9, 2008.

3. By virtue of another Government Order No. 63-Edn(CS)/4E-64/95 dated January 21, 2011, one post of Clerk and another post of Laboratory Attendant (Physics) was created by the Government of West Bengal permitting the authorities of the said College to fill up the aforesaid posts subject to strict observance of the recruitment procedure as prescribed in G.O. Nos. 585-Edn(CS) dated September 9, 2008 and 924-Edn(CS) dated November 26, 2007 and also reservation policy of the Government as applicable from time to time.

4. An advertisement was published by the said College in "Sangbad Pratidin" (a daily vernacular) on August 17, 2011 inviting applications from the eligible candidates for the posts of one clerk, seven Laboratory Attendant, one Lady Attendant, one Sweeper (Contractual). Similar advertisements were published in other newspapers. It was followed by the Corrigendum dated August 20, 2011.

5. The aforesaid advertisement was challenged in an application filed by Sudip Maity & Ors. under Article 226 of the Constitution of India (In re: W.P. 14850 (W).of 2011). An interim order dated September 7, 2011 was passed in the above matter staying operation of the impugned notice dated August 16, 2011, the above advertisement dated August 17, 2011 and the Corrigendum dated August 20, 2011. An appeal was preferred by the said College against the above interim order bearing A.S.T. 655 of 2011 and the same was disposed of by a Division Bench of this Court directing the authority of the said College to re-advertise the above vacancies inviting applications afresh strictly in terms of the permission granted by the State Government. Further direction was given to the authority of the said College to consider the applications which had been received in response to the previous advertisement along with the applications which might be received. Though, the authority of the said College was allowed to proceed with the selection process in terms of the above directions, it was restrained to give appointment on the basis of such selection process without obtaining leave of the Court in W.P. No. 14850 (W) of 2011.

6. In compliance of the aforesaid judgment and order dated September 16, 2011, an advertisement was published in "The Statesman" (a daily newspaper in English) on October 31, 2011 by the said College inviting applications from the eligible candidates for the following posts:

"(i) One Lady Attendant

(ii) Two Laboratory Attendants (Geography)

(iii) One Laboratory Attendant (Zoology)

- (iv) One Laboratory Attendant (Nutrition)
- (v) One Laboratory Attendant (Aqua Culture)
- (vi) One Laboratory Attendant (Physiology)
- (vii) One Sweeper (Part time)
- (viii) One Laboratory Attendant (Physics)
- (ix) One Clerk"

7. The selection committee in its meeting dated November 18, 2011 fixed the date of written test in connection with the selection process under reference on December 4, 2011, save and except the post of Sweeper. All the eligible candidates who had submitted their applications either in response to the first advertisement or in response to the re-advertisement were allowed to participate in the written test. The selection committee decided to select the candidate in respect of the post of Sweeper (part time) on the basis of oral interview.

8. The selection committee of the said College in its meeting dated December 20, 2011 decided to hold the interview of successful candidates in the written examination in order of merit for each and every post on January 1 and 2, 2012.

9. From the minutes of the meeting of the above selection committee held on January 1, 2012. It appears that due to movement of casual employees for their regularization followed by non-appearance of the participants, the Interview for the posts under reference could not be held on that date. From the minutes of the meeting of the above selection committee held on January 2, 2012, it further appears that due to strike called by the students' union, the interview could not be held on that date also. Thereafter, the Governing Body took a decision in its meeting dated January 2, 2012 to conduct the above interview on January 22, 2012 with a request to the President to select the place of interview.

10. The interview in respect of the selection process under reference took place on January 22 and 23, 2012 at Maitana Girls' High School, Post Office-Maitana, Dist-Purba Medinipore. From the minutes of the meeting of selection committee held on January 23, 2012, it is revealed that out of total 86 (Eighty Six) candidates called for interview, 67 (Sixty Seven) candidates appeared before the interview board on the aforesaid date and the details of absent candidates against each post were as follows:

11. After taking into consideration the performances of the respective candidates, the selection committee prepared the list of empanelled candidates for appointment to the posts under reference as follows:

12. The above list of empanelled candidates prepared by the selection committee on the basis of merit of the respective candidates was approved by the Governing Body of the said College in its meeting dated January 27, 2012.

13. It is submitted by Mr. R.N. Dutta, learned Advocate appearing on behalf of

the petitioners, that the selection process under reference is liable to be quashed and set aside on the ground of mala fide, arbitrariness and motivated acts on the part of the respondent authority. It is submitted by him that though the academic qualification for the post of Group D staff was fixed as "Class VIII pass" in the advertisement dated August 17, 2011, it was changed by a subsequent Corrigendum as "able to read and write". It is also submitted that the venue of the interview was changed to a distant place from the said College. According to him, academic qualification for the post was fixed ignoring the judgment dated September 16, 2011 passed in the matter of Governing Body of the Ramnagar College and Anr. v. Sudip Maity & Ors. (In re: AST 655 of 2011). It is also submitted on behalf of the writ petitioners that the names of the selected candidates were published in a local newspaper prior to their selection.

14. On the other hand, it is submitted by Mr. Rabilal Maitra, the learned Advocate appearing on behalf of the respondent Nos. 2 to 4 that the requisite qualification was fixed in terms of the recruitment rules prescribed in G.O. No. 585-Edn(CS) dated September 9, 2008 and the advertisement was published in compliance of the judgment dated September 16, 2011 passed in the matter of Governing Body of Ramnagar College & Anr. v. Sudip Maity & Ors. (In re: AST 655 of 2011) It is also submitted by him that the venue of the interview was changed consequent upon the agitation of the casual Group D staff of the said. College on January 1, 2012 which was followed by a students' strike on January 2, 2012. According to him, it was done on the basis of a resolution of the Governing Body of the said College adopted in its meeting dated January 2, 2012. It is also submitted by him that in a proceeding under Article 226 of the Constitution of India, a reporting in a daily newspaper cannot be taken into consideration. Reliance is placed by Mr. Maitra on the decisions of K.A. Nagamani Vs. Indian Airlines and Others, , Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , Kuldip Chand Vs. State of H.P. and others, , Supreme Court Advocates-on-Record Association and another Vs. Union of India, , Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, .

15. I have heard the learned Counsel appearing for the respective parties at length and have considered the facts and circumstances of this case carefully. At the very outset, let it be recorded that the records relating to the selection process for the posts under reference were produced before this Court in course of hearing and a compilation containing true copies of the relevant records have been kept on record.

16. After considering the Corrigendum to the advertisement dated August 17, 2011, I find that the academic qualification of the candidates for the Group D post was changed from "Class VIII pass" to "able to read and write". But in the advertisement published afresh in compliance of the order dated September 16, 2011 in the matter of Governing Body of Ramnagar College & Anr. v. Sudip Maity & Ors. (In re: AST 655 of 2011), the academic qualification was mentioned in terms of G.O. No. 585-Edn (CS) dated September 9, 2008. Therefore, the

challenge thrown against the selection process under reference on that ground cannot be sustained in law.

17. With regard to the ground of changing the venue of the interview. It is revealed from the relevant records that due to agitation of the casual workers for their regularization on January 1, 2012 and the strike called by the students' union on January 2, 2012, the candidates could not participate in the interview on those dates. As a result, the Governing Body of the said College changed the venue of interview in connection with the selection process under reference to Maitana Girls' High School. Taking into consideration the above facts and circumstances of this case, I am of the opinion that there was no arbitrary decision on the part of the authority of the said College in changing the venue of interview.

18. Regarding the allegation of publication of the names of the selected candidates for some of the posts under reference before their selection, I find that in absence of any specific allegation with regard to arbitrariness on the part of the respondent authority, the selection process under reference cannot be interfered with. Needless to observe that such a disputed fact cannot be decided in an application under Article 226 of the Constitution of India when no irregularity is detected from the materials produced before this Court relating to the decision-making process of the selection under reference. Further, the attention of this Court has not been drawn towards any irregularity so far as those records are concerned.

19. In view of the above, this writ application is dismissed.

20. There will be, however, no order as to costs. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.