
(1999) 04 CAL CK 0077

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 4023 of 1998

Ananta Kumar Bej

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21, 226

West Bengal Primary Education Act, 1973 — Section 10(3), 106(1), 304, 60, 60(1)

Citation : (2000) 2 CALLT 186 : (1999) LabIC 2544

Hon'ble Judges : Satyabrata Sinha, J; Samarendra Nath Bhattacharjee, J

Bench : Division Bench

Advocate : Mr. B.L. Sahoo, for the Appellant; Mr. Asok Maiti, Mr. Satyabrata Majumder, for the Respondent

Judgement

S.B. Sinha J.

1. This appeal is directed against a Judgment and order dated 27.11.98 passed by M.H.S. Ansari, J. whereby and whereunder the writ petition filed by the appellant-petitioner was dismissed.

The admitted fact of the matter is as follows :--

2. respondent-Council with a view to fill up 2700 posts of Primary Teachers requested the local Employment Exchange to sponsor the names of the eligible candidates. Pursuant to the said request names of 54,000 Including that of the appellant was sent.

3. Admittedly, recruitment of Primary Teachers is governed by the Rules regulating the Recruitment and Leave of Teachers in Primary Schools in West Bengal which has come Into force with effect from 25.11.1991, framed by the Governor in exercise of its power conferred upon him under sub-section (1) of section 106 of the West Bengal Primary Education Act, 1973 for the purpose of clause (k) of sub-section (1) of section 60 of the said Act.

4. The grievance of the petitioner is that he had not been called for Interview although the respondent-council called 13,500 candidates for the said purpose.

5. The principal contention raised in the writ application was that rule 9 of the recruitment rules does not provide for elimination of any of the candidates in the matter of holding the written test but despite the same, the appellant was not allowed to appear at the written test. The rule of elimination, according to the writ petitioner, is applicable only in terms of Rule 9(c) (ii) which relates to calling of the candidates for interview alone. According to the petitioner, he having been found eligible to be appointed as a Primary Teacher by the Employment Exchange as also by the Selection Committee, the respondents committed an Illegality in holding written examination excluding the petitioner.

6. The learned trial Judge held that although Rule 9(c)(ii) refers only to Interview, the same has to be read with Rule 9(b)(ii) and in that view of the matter the word "Interview" will encompass within its fold "written test" also and, thus, holding of written test, which was meant to ensure a fair and reasonable selection process, cannot be said to be arbitrary.

7. Section 60 of the West Bengal Primary Education Act. 1973 provides for the duties of the Primary School Council which in terms of clause (k) empowers it to appoint teachers and other staff in Primary Schools subject to the prescribed conditions.

8. Section 106(1) of the said Act empowers the State Government to make rules for the purpose of carrying out the purposes of the Act after previous publication. In exercise of the said powers the aforementioned Rules (hereinafter referred to as "the Leave and Recruitment Rules") had been made. Rule 8 provides for calling for the names from the Employment Exchange. A letter to the Employment Exchange in terms of sub-rule (a) of Rule 8 is required to be sent intimating the number of vacancies as may be determined under rule 4 containing the number of vacancies to be filled up.

9. Rule 9 provides for the selection procedure. Clause (a) provides that after obtaining the names of the candidates from the Employment Exchange, all candidates shall be communicated in writing to produce testimonials/certificates for computation of their marks in the score sheets prepared for the purpose of such selection. The full marks for the selection purpose is 100 which is to be allotted in the following manner :--

"1. Academic qualification -- 65 Marks 2. Training -- 20 Marks 3. Written Test/ Oral Interview -- 10 Marks 4. Co-curriculum Activity -- 5 Marks _____

Total -- 100 Marks"

10. Clause (iii), (iv), (vi) and (vii) of Rule 9 lay down the manner in which the marks for academic qualification, training and co-curricular activity are to be allotted. Clause (v) of Rule 9 provides that the marks obtained in the interviews shall be recorded in the score sheet.

11. Rule 9(c) (i) reads thus :--

"The total marks obtained by each candidate for academic qualification, training and co-curricular activities shall be computed in the manner prescribed in clause (iii), (iv) and (vi). and a list of names of all candidates of each category, namely, Scheduled Caste, Scheduled Tribe, physically handicapped and others shall be prepared in descending order of total marks obtained by them."

12. After computation is made in the manner laid down under clause (c) (i) of Rule 9 the Staff Selection Committee in a meeting is required to finalise the total number of candidates from the top of the lists mentioned in clause (I) of sub-rule (c), to be called for Interview, the number whereof shall be five times the number of vacancy unless the total number of candidate is Insufficient.

13. Sub-rule (d) of rule 9 provides that after the Interview all the scores shall be recorded and the marks obtained by a candidate shall be added up and the names of candidates shall be arranged according to marks obtained in a descending order.

14. Sub-rule (e) of Rule 9 provides for the manner in which the preparation of a panel required to be approved in terms of rule 10 of the Rules shall take place.

15. The only question which arises for consideration is as to whether despite the fact that rule 9(b)(ii) refers to written test/oral Interview carrying 10 marks, the Staff Selection Committee in view of rule 9(c) (II) can hold written test in place of oral interview.

16. Mr. Sahoo, the learned counsel appearing on behalf of the appellant submits that as rule 9(c)(11) does not provide for a written test, it was not permissible for the respondent to hold a written test in exclusion of the interview. The learned counsel submits that elimination of candidates is permissible only in relation to holding of an Interview as provided for under rule 9(c)(ii) of the Rules and not otherwise. It has been submitted that viva voce test does not mean oral examination.

17. Mr. Bhunia, the learned counsel appearing on behalf of the respondent, on the other hand, submitted that there are several clauses in the rules where "stroke" has been used and upon proper construction of the rules, there cannot be any doubt whatsoever that such "stroke" has been used in a case where the framer of the rules meant to use the same disjunctively. According to the learned counsel by reason of rule 9(b) (II) an option had been given to the respondent-council and holding of a written examination in place of oral interview which was taken with a view to avoid a possibility of arbitrariness and for enforcement of a reasonableness in the selection process, is not arbitrary.

18. A bare perusal of the aforementioned rules leaves no manner of doubt that the rule is ambiguous in nature. The Court while interpreting the provision of a statute, although, is not entitled to re-write the statute itself, is not debarred from "Ironing but the creases". The Court should always make an attempt to

uphold the rules and interpret the same in such a manner which would make it workable.

19. It is also a well settled principles of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided.

20. In Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , the Supreme Court has held :--

"Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are Important. That Interpretation is best which makes the textual Interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, , the sections clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to any as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place"

21. In "The Interpretation and Application of Statutes" by Reed Dickerson, the author at page 135 has discussed the subject while dealing with the importance of context in the following terms :--

"...The essence of the language is to reflect, express, and perhaps even effect the conceptual matrix of established ideas and values that Identifies the culture to which it belongs. For this reason, language has been called "conceptual map of human experience"."

22. Grant of marks towards academic qualification, training or relating to co-curricular activities is a ministerial Job. A score sheet has to be prepared keeping in view the marks obtained by each candidate in respect of academic qualification, training or co-curricular activities, such marks are to be allotted in the manner laid down under clauses (111), (Iv) and (vi) of sub-rule (b) of rule 9. The petitioner-appellant does not raise any complaint as regard the manner in which the marks had been allotted by the Staff Selection Committee in relation to the academic qualification, training or co-curricular activities.

23. It is a well settled principles of law that despite absence of a rule, the Selection Committee is entitled to short list the candidates. Rule 9(c)(ii) of the rules only gives a statutory recognition to the aforementioned service Jurisprudence. In a case of this nature, therefore, the doctrine of purposive

interpretation should be invoked, and in such a situation the word "written test" must be held to be Incorporated within the word "Interview". The answer to the question posed in this appeal, thus, in the opinion of this Court, should be rendered in affirmative as otherwise the word "written examination would become totally otiose. Such a construction is permissible by taking recourse to the doctrine of "strained construction" as has been elaborately dealt in by Francis Bennfon in his Statutory Interpretation. At section 304 "of the treatise purposive construction has been described in the following manner :--

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (In the Code called a purposive-and-strained construction)"

24. In DPP v. Schildkamp (1971) AC 1, it was held that the rule that severance may be effected even where the "blue pencil" technique is Impracticable.

25. In Jones v. Wrotham Park Settled Estates (1980) AC 74, the law is stated in the following term :--

"...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a Court of Justice is engaged remains one of construction, even where this Involves reading into the Act words which are not expressly Included in It. Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd. (1971) AC 850 provides an Instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy: secondly, it was apparent that the draftsman and Parliament had by Inadvertence overlooked, and so omitted to deal with an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been Inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed Into law. Unless this third condition is fulfilled any attempt by a Court of justice to repair the omission in the Act cannot be Justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed."

26. Furthermore, the word "written test" cannot be said to be casus omissus.

27. In Principles of Statutory Interpretation of Justice G.P. Singh. 5th Edition.

1992. It is stated :--

"The Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, approved the rule of construction stated by Denning, L.J. while dealing with the definition of "Industry" in the Industrial Disputes Act, 1947. The definition is so general and ambiguous that Beg. C.J. said that the situation called for "some judicial heroics to cope with the difficulties raised". K. Iyer, J., who delivered the leading majority judgment in that case referred with approbation the passage extracted above from the judgment of Denning, L.J. In Seaford Court Estates Ltd. v. Asher. But in the same continuation he also cited a passage from the speech of Lord Simonds in the case of Magor & St. Mellons R.D.C. v. Newport Corporation 1951(2) All ER 839 as if it also formed a part of the judgment of Denning, L.J. This passage reads : "The duty of the Court is to interpret the words that the legislature has used. Those words may be ambiguous, but, even if they are. the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited". As earlier noticed Lord Simonds and other Law Lords in Magor & St. Mellon's case were highly critical of the views of Denning, L.J. However, as submitted above, the criticism is more because of the unconventional manner in which the rule of construction was stated by him. In this connection it is pertinent to remember that although a Court cannot supply a real casus omissus it is equally clear that it should not so Interpret a statute as to create a casus omissus when there is really none."

28. In Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, the rule of additional of word had been held to be permissible in the following words :--

"We are of the view that having regard to the pattern in which clause (a) of sub-section (3) of section 10 of the Act is enacted and also the context, the words "if the landlord required it for his own use or for the use of any member of his family" which are found in sub-clause (11) of section 10(3) (a) of the Act have to be read also into sub-clause (11) of section 10(3) (a) of the Act Sub-clause (11) and (HI) both deal with the non-residential building. They could have been enacted as one sub-clause by adding a conjunction "and" between the said two sub-clauses, in which event the clause would have read thus : "in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own: and in case it is any other non-residential building, if the landlord or member of his family is carrying on. a non-residential building in the city, town or village concerned which is his own." if the two sub-clauses are not so read, it would lead to an absurd result."

29. In this case also unless it is held the word "written test" would read with the word "oral interview", the rules cannot be given full effect. In that situation it must be held that the word "written test/oral Interview" has been used in

disjunctive manner particularly in view of the fact that no separate marks had been allotted therefore which leads to the conclusion that the same was meant to be conjunctive in nature.

30. For the aforementioned reasons we have no other option but to hold that the learned trial Judge has rightly come to the conclusion that by holding written test alone no illegality has been committed. There is another aspect of the matter. The petitioner-appellant did not come within the purview of zone of consideration. He was, thus, keeping in view the provision of Rule 9 not entitled to be called at the interview even if the same would have held. As in view of our findings aforementioned that the word written test/oral Interview has to be read disjunctively, the petitioner being an unsuccessful candidate and further in view of the fact he did not come within the purview of zone of consideration, he was not entitled to maintain the writ application. Consequently the writ application is not maintainable at his Instance. See Steel Authority of India Ltd. v. Nayan Kumar Roy & Ors. reported in 1998 (2) CLJ 125.

For the reasons aforementioned there is no merit in this appeal which is accordingly dismissed but in the facts and circumstances of this case there will be no order as to costs.

S.N. Bhattacharjee, J.

31. I agree.

32. Appeal dismissed