
(1989) 02 CAL CK 0056
In the Calcutta High Court
Case No : C.O. No. 4640 (W) of 1988

Ashok Roy and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-02-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1989) 2 CALLT 139

Hon'ble Judges : Khawaja Mohammad Yusuf, J

Bench : Single Bench

Advocate : N. Chowdhury, for the Appellant; B. Bhattacharyya, for the Respondent

Final Decision : Allowed

Judgement

Khawaja Mohammad Yusuf, J.—The petitioners pursuant to an advertisement applied for the post of Teachers in different Primary Schools in urban area in the district of 24-Parganas and they were duly selected for the interview. The petitioners appeared before the Interview Board and empanelled in 1981 as qualified candidates for the Primary School Teachers in Serial Nos. 26, 6, 84 and 36 respectively. Since then the selected candidates were absorbed in the post of the Teachers only not serially from the panel but even from outside the panel. The petitioners came to know in July 1986 that fresh recruitment for the post of Primary Teachers through different Employment Exchanges in the urban area within the district is going to be made. The case of the petitioners is that the preparation of the new panel amounts to virtual cancellation of old panel of 1981 to the prejudice of the petitioners. The writ petitioners had referred to a judgment delivered by me on 12th August, 1987 in CO. No. 12112(W) of 1986 (Arun Kumar Chowdhury and Ors. v. Secretary, Ministry of Education (Primary) and Ors.) wherein some petitioners who were empanelled in the panel of 1981 moved the writ petition and I directed the State respondents to give appointment of the Primary School Teachers to the writ petitioners according to the vacancy

occurring in the district until all the writ petitioners were absorbed from the existing panel of 1981. The State was further given liberty to prepare a new panel for future appointment.

2. From the perusal of the facts and circumstances of the case it appears that in CO. No. 12112(W) of 1986 referred to in the writ application neither any Affidavit-in-opposition was filed on behalf of the State nor the learned State Advocate could render any assistance to the Court and the matter virtually went ex parts. Here I have the assistance of the State Advocate and also Affidavit-in-opposition as well as a supplementary Affidavit by the State before me. In this particular writ application the specific case of the State is that the writ petitioners were called for interview for the preparation of panel of the Primary Teachers for the urban area of Bhatpara Municipality and not for the entire urban area of the district of 24-Parganas. The State relies upon the Notification, dated 8th February, 1974 which is the amendment to the certain Rules of the Notification, dated 25th July, 1940. The relevant amended Rule 3E is quoted as under:-"A panel of teachers for a district shall remain valid, unless exhausted earlier, for 12 months from the date of its preparation, but the State Government may extend the period of validity of a panel by a period not exceeding six months. When a panel is exhausted or ceased to be valid the Director of Public Instructions, West Bengal, shall proceed to prepare a fresh panel in accordance to the provisions of these rules." It is also the specific case of the State that the petitioner No. 1 secured 26th position in General Trained Category and the petitioners Nos. 2 and 3 secured 6th and 82nd position, respectively, in the panel of the General Untrained Categories for the urban area of Bhatpara Municipality but the petitioner No. 4 failed to-secure any position in the panel under any category. The learned Advocate for the State has also produced the records in support of its contention. Another defence taken by the State is that the panel prepared in 1981 has been challenged after lapse of 7 years when already the life of the panel has been exhausted and, as such, on the ground of delay the application should also not be entertained.

3. During the course of argument Mr. Chowdhury, the learned Advocate for the petitioners, submitted that the Interview Letter was issued for the entire district of 24-Parganas and not for any Particular Municipality or urban area and produced a Letter of Interview as well which prima facie appears to be for the district concerned and not for any particular area. He also placed before the Court a joining report of one Bhaskar Goon of Kanchrapara, dated 20th May, 1988 which refers to the Memo No. L.S. 95/1(5)/L, dated 16th May, 1988 issued by the District Inspector of Schools (E), North 24-Parganas, appointing the said Goon as Assistant Teacher of Dayananda Adarsa Vidyalaya of Kanchrapara. Mr. Chowdhury submitted that this particular candidate was a successful candidate of 1981 panel in question to which the petitioner also belongs. The State could not rebut this contention of the petitioners.

4. I fail to understand how an appointment can be made in 1988 when by the

Notification, dated 8th February, 1974 the life of the panel was limited to one year and six months in total. One significant thing in the amended Rule 3E is that it refers to "A panel" and "for a district" and not to urban area or non-urban area. The purpose of the amendment appears to be the empanelment of the successful candidates in one panel for one district as a whole and not urban area or non-urban area-wise or any category-wise as is being done by the State respondents.

5. In my view it is sheer injustice that those candidates who have been empanelled in 1981 should be deprived of the opportunity of having an employment within a course of one year or maximum one-and-a-half year for no fault of theirs and a fresh panel would be prepared. There is no dispute of the fact that this panel was prepared in 1981 and the steps for the preparation of a fresh panel were taken only in 1985 after a lapse of four years. This itself indicates that the respondents themselves kept the panel alive for pretty longer than one-and-a-half years in utter violation of the said Rule 3E and thought of fresh panel only in 1985. Further by their own act of giving appointment in 1988 to Bhaskar Goon, a candidate of 1981 panel, the submission of the State that the panel exhausted its force by virtue of Rule 3E has no force at all. For the ends of justice it is necessary to strike down the limitation of 12 months and further extension of 6 months from the amended Rule 3E of the Notification, dated 8th February, 1974 when the State itself is not following the time-limit prescribed in the said Rule and whimsically giving appointments on pick and choose basis from (he old panel of 1981 much beyond its life and which according to the State Authorities themselves is no more valid. Even candidates were appointed from outside the panel. The action of the State respondents in exercising this executive power in the facts of this particular case offends the right of equality and is violative of Article 14 of the Constitution.

6. In the circumstances aforesaid I direct the State respondents to give appoints of Primary School Teachers to the writ petitioners Nos. 1 to 3 according to the vacancy occurring in the District until all the said writ petitioners are absorbed from the existing panel made in 1981. No new candidate shall be appointed till the writ petitioners Nos. 1, 2 and 3 are absorbed. The State respondents shall scrutinise the papers of the petitioner No. 4 and on such scrutiny if it is found that he was empanelled in 1981 he should also be similarly treated as other petitioners in absorption as a teacher. The age-bar, if any, shall not stand in the way of appointment of the petitioners and shall be treated as waived.

7. Further, I strike down the limitation period incorporated in Rule 3E by amendment through Notification No. 271-Edn. (P)/4A-5/73, dated 8th February, 1974, issued by the Primary Branch of the Education Department of the Government of West Bengal.

8. The writ application is allowed. The respondents shall pay costs assessed at 60 G.M.s to the petitioners.