

(2015) 02 CAL CK 0086
In the Calcutta High Court
Case No : WP No. 16601 (W) of 2003

Asish Kumar Ray and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

West Bengal Primary Education Act, 1973 — Section 106

Citation : (2015) 02 CAL CK 0086

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : P.S. Deb Barman and Tarun Kumar Das, for the Appellant; K.J. Yusuf and Tapasi Sinha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—The petitioners have assailed the selection process commenced in the year 2002 for appointment to the post of an Assistant Primary Teacher by the District Primary School Council, Howrah, in this writ petition.

2. The petitioners claimed to have registered themselves with the concerned Employment Exchange for sponsorship of their candidature as trained candidates, as and when the concerned District Primary School Council notified the vacancies to the said Employment Exchange. It is a specific case made out by the petitioners that their candidatures were sponsored by the Employment Exchange in the month of April, 2002 when the petitioners were informed by the District Primary School Council, Howrah, to submit their testimonials and/or certificates. The petitioners were allowed to sit in the written test after the preliminary scrutiny and the said written test was conducted on 30th March, 2003.

3. It is a further case of the petitioners that the said selection process should have been conducted on the basis of the West Bengal Primary School Teachers' Recruitment Rules, 2001, which came into effect on and from 15th January, 2002

but the same has been conducted by the respondent authorities under the previous recruitment Rules, 1991 which stood repealed by virtue of the subsequent Recruitment Rules of 2001. It is further stated that the said Recruitment Rules of 2001 provides that only the trained candidates who have obtained the requisite training from recognized institutes shall be eligible for such posts.

4. It is a further case of the petitioners that a good number of untrained candidates have been given appointment by the said District Primary School Council. It is stated that challenging the earlier selection process, several litigations were initiated before this Hon"ble Court and the Division Bench in M.A.T. No. 73/2002 directed the respondent authorities to fill up the available vacancies after making an advertisement. The said order was passed on 21st August, 2002.

5. The petitioners, therefore, contended that the selection process should have been conducted under the Recruitment Rules, 2001, which came into effect on 15th June 2002 and not under the Recruitment Rules of 1991, which stood repealed by a subsequent Recruitment Rules.

6. In opposing the aforesaid contentions, it is specifically stated in the affidavit-in-opposition filed by the respondent Nos. 4 and 5, the District Primary School Council, Howrah, that the recruitment process was conducted when the Recruitment and Leave Rules to Primary Teacher, 1991 which does not postulates that the eligibility criteria for such posts would be that the candidates must have requisite training from a recognized institution. It is specifically stated that after participation in the selection process without any objection the petitioners cannot challenge the selection process. The selection process commenced on 4th January, 2002 when the names were notified by the District Primary School Council to the concerned Employment Exchange and as such the same has to be completed and was conducted under the said Recruitment and Leave Rules, 1991.

7. Mr. Partha Sarathi Deb Barman, learned Advocate appearing for the petitioners, submits that the selection process commenced when the testimonials/certificates are invited by the concerned District Primary School Council and as such the Rules applicable for recruitment as on the date of commencement of the selection process should be followed by the authorities. He further submits that the petitioner has a right to challenge the selection process if the authorities have acted contrary to the statutory Rules.

8. Mr. K.Y. Yusuf, learned Advocate appearing for the State, submits that the petitioners participated in the selection process without raising any objection and as such cannot challenge the selection process after having found unsuccessful. He further submits that the vacancies were notified to the concerned Employment Exchange by the District Primary School Council, Howrah, before coming in force of Recruitment Rules of 2001, i.e., prior to 15th January, 2002 and as such the authorities have rightly conducted the selection process under

the Recruitment and Leave Rules, 1991.

9. Having considered the respective submissions made at the bar the points which emerge for consideration are firstly, whether the selection process commenced on notifying the vacancies to the concerned Employment Exchanges by the District Primary School Council or it commences when the District Primary School Council invited the sponsored candidates to submit their certificates/testimonials, secondly, whether the candidates who participated in the selection process without raising any objection, can challenge the selection process afterwards.

10. Point No 1: For effective adjudication it would be profitable to quote certain provisions contained in the Recruitment and Leave of Primary Teachers Rules, 1991 and the West Bengal Primary Teachers Recruitment Rules, 2001.

11. The Rules regulating the Recruitment and Leave of Teachers in Primary Schools was promulgated in exercise of power conferred by sub-section (1) of Section 106 of the West Bengal Primary Education Act, 1973 vide Government Order No. 768/Edn (P) dated 22nd November, 1991.

12. Rule 3 of the said Rules provides that there shall be ordinarily one teacher of every forty pupils and the second teacher may be admissible when the roll strength exceeds sixty pupils subject to the prior permission of the Director of School Education being obtained by the council. Rule 4 of the said statutory Rules envisaged the determination of number of vacancies in the Primary School by the concerned District Primary School Council for taking steps to fill up the vacancies as and when necessary.

13. The word "vacancy" is defined under Rule 2(o) to mean vacant post of a Primary School Teacher caused by (i) creation of a new post by the council with prior sanction by the Government, (ii) retirement of a teacher, (iii) death of a teacher, (iv) resignation tendered by a teacher and accepted by the council, (v) removal or dismissal of a teacher and (vi) deputation of a teacher.

14. The qualification is enshrined in Rule 6 of the said Rule, which reads thus:

"6. Qualifications.-

(a) No person shall be appointed by the Council, as a teacher unless he satisfies the conditions;

(i) that he is a citizen of India; and

(ii) that he is not below 18 years of age and above 40 years of age; and

(iii) that he possesses the minimum educational qualifications as mentioned in sub-rule (b)

(b) The required educational qualifications for the post of a teacher shall be-

(i) School Final/Madhyamik pass or equivalent, or

(ii) Higher Secondary (XI class) pass under the West Bengal Board of Secondary Education, or equivalent,

(c) The decision of the State Government on the question of equivalence for the purpose of sub-rule (b) shall be final

(d) No extra credit shall be given for higher academic qualification at the time of selection of a teacher:

provided that a trained candidate shall be given extra credit in the manner prescribed under sub-rule (c) of rule 9

(e) A trained candidate belonging to scheduled tribe category who have not passed Madhyamik examination or its equivalent shall be eligible for appointment as teacher in Primacy School."

15. Rule 8 of the said Rules provides that the vacancies determined under Rule 4 shall be intimated by the District Primary School Council to the concerned Employment Exchange for sending the names of the eligible candidates both trained and untrained having a requisite qualification in order of seniority of registration containing the names of 50% of the trained candidates and 50% of the untrained candidates, such number may vary, if the sufficient number of the above category is not found.

16. Rule 8(c) provides that total number of vacancies existed as on 31st December of a calendar year shall be treated as the number of vacancies for that year. However, Rule 9 provides the selection procedure and it would be profitable to quote the same, which reads thus:

9. Selection procedure.-

(a) On or after the names of candidates for the posts of teachers 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.

(b) Credit shall be given and computed in the following manner:

(i) there shall be 100 marks in total as full marks;

(ii) the full marks shall be allotted to four different aspects of the candidate's eligibility in the following manner:-

(iii) the percentage of marks to the total full marks obtained by the candidate in School Final/Madhyamik/Higher Secondary (XI Class) shall be computed as percentage of 65 and recorded in the score sheet, and if a candidate has passed two of the above public examinations, the better result only shall be computed;

(iv) the percentage of marks to the total full marks obtained in Junior Basic Training Certificate Examination or equivalent shall be computed as percentage of 20 (twenty) and recorded in the score sheet;

(v) marks obtained in the interviews shall be recorded in the score sheet;

(vi) in awarding marks for co-curricular activities one mark shall be credited for each of the certificates mentioned below:-

(A) A certificate that he/she has represented the district in State level games, sports, issued by district level sports authority.

(B) A certificate that he/she shown excellence in cultural activities representing the district in State level competitions issued by district level authority.

(C) Minimum "A" certificate of National Cadet Corps.

(D) A certificate of successful participation in liberating the illiterates by a district level officer. and

(E) A diploma/certificate in Music/Arts and Craft on completion of a course of at least one year's duration from any University/recognized government institutions:

Provided that the maximum of such marks to be credited shall not exceed five.

(vii) 18 (eighteen) marks shall be credited for academic qualification to an eligible candidate belonging to Scheduled Tribe category who has required qualification as mentioned in sub-rule (e) of Rule 6. Awarding of marks for training, interview and co-curricular activities shall be done in accordance with clauses (iv), (v) and (vi) respectively.

(c)(i) the total marks obtained by each candidate for academic qualification, training and co-curricular activities shall be computed in the mane prescribed n clauses (iii), (iv) and (vi) and a list of names of all candidates of each category namely, Scheduled Caste, Scheduled Tribe, physically handicapped and other shall be prepared in descending order of total marks obtained by them

(ii) the Staff Selection Committee, in its meeting shall finalize 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 of candidness to be called for interview shall be five times the number of vacancies unless the total number of candidates is insufficient for the same.

(iii) The candidates selected for interview shall be intimated the date, time and place for the interview.

(d) 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.

(e) After the process as laid down in sub-rule (b) is complete, the Selection Committee shall arrange the names serially down from the top of the list. A panel of such number of candidates as there are vacancies plus 10% of such vacancies shall be prepared. The reservation for Scheduled Caste, Schedule

Tribes and physically handicapped persons shall have to be strictly maintained in the panel. The panel shall show separately names of Scheduled Tribes, Scheduled Caste, physically handicapped, and other eligible candidates.

(f) Thereafter the panel thus prepared shall be placed in the meeting of the Council for passing and the total number of eligible candidates included in the panel shall be the same as the number of vacancies plus 10% of such existing vacancies."

17. The panel so prepared shall be sent to the Director of the School Education for approval and if the approval so granted, the appointment letter shall be issued by District Primary School Council under the signature of the Chairman or by an Officer not below the rank of Secretary, who is duly authorized by the council to sign such appointment letters.

18. On conjoint reading of the aforesaid provisions, after notifying the number of vacancies to the concerned Employment Exchange upon determination thereof, the District Primary School Council can neither exceed the number of vacancies nor diminish it and have to restrict the selection process within the sponsored candidates for such notified vacancies.

19. In the instant case the number of vacancies have notified prior to the promulgation of Recruitment and Leave Rules of 2001, which was done on the strength of an order dated 24th December, 2001 passed by this Court in one of the writ petitions. Thus, vacancies which were duly notified before 15th January, 2001 commenced the selection process. There is no manner of dispute that the selection process should be conducted on the basis of the Rules applicable at the time of its commencement and not afterwards. Furthermore, both the parties are ad idem on such issue and have laid foundation of their respective cases on the basis thereof. Therefore, the selection process commenced so far as the Recruitment of Primary School Teachers under the Recruitment and Leave of Primary Teacher, 1991 is concerned, on the date of inviting the number of vacancies by the concerned District Primary School Council to the concerned Employment Exchange.

20. Point No. 2: The petitioners themselves participated in the selection process by submitting their testimonials/certificates to the District Primary School Council, Howrah, after the names sponsored by the concerned Employment Exchange. All the petitioners were found eligible on initial scrutiny to sit in the written test and all of them participated in the said written test but at this juncture they were not found eligible so as to include in the panel of the successful candidates. It is a specific case of the petitioners that after coming to note all the appointments being made of the untrained candidates and after the passing of the order passed by the Division Bench of this Court in appeal directing the concerned authority to fill up the remaining vacancies, the present writ petition is filed.

21. The similar point came for consideration before the Supreme Court in case of

Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Others, (2010) 127 FLR 723 : (2010) 11 JT 629 : (2011) 1 SCC 150 : (2011) 1 SCC(L&S) 21 : (2010) 9 UJ 4650 , whether a challenge to a selection process is thrown being conducted de hors the prescribed procedures and it is observed:

25. In this connection, we may refer to the decision of the Supreme Court in G. Sarana (Dr.) v. University of Lucknow wherein also a similar stand was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus: (SCC p. 591)

"15. ...He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee."

26. In P.S. Gopinathan v. State of Kerala this Court relying on the above principle held thus: (SCC p. 84, para 44)

"44. ...Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is estopped and precluded from questioning the said order dated 14-1-1992. The application of principles of estoppel, waiver and acquiescence has been considered by us in many cases, one of them being G. Sarana (Dr.) v. University of Lucknow...."

27. In Union of India v. S. Vinodh Kumar in SCC at para 18 it was held that: (SCC p. 107)

"18. ...It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

28. Besides, in K.H. Siraj v. High Court of Kerala in SCC paras 72 and 74 it was held that the candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel."

22. Therefore, after participating in the selection process without any demur the petitioners cannot challenge the said process by contending that the same was not undertaken under the amended Rules but have been taken under the previous Rules.

23. Thus, on both the points the petitioners cannot succeed in this writ petition.
24. The writ petition is, thus, dismissed.
25. There shall be no order as to costs.
26. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis.