
(2010) 04 CAL CK 0031
In the Calcutta High Court
Case No : Writ Petition No. 13825 (W) of 2009

Avik Chowdhury

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Citation : (2010) 2 CALLT 509

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : Ashok De and Kamalesh Bhattacharjee, for the Appellant; Kishore Duta, Tarun Kumar Das and Dilip Kumar Sanyal, Subir Sanyal and Swagata Datta for Respondent No. 8, Arunabha Banerjee, for Respondent Nos. 5 and 6, Shanti Das and Nilima Das for State, for the Respondent

Final Decision : Allowed

Judgement

I.P. Mukerji, J.—This is the fourth round of litigation in this Court. All these litigations for one post of Clerk in Madanmohan Chak Chowdhury Institution, a state aided School. The school had forwarded a panel of candidates to the District Inspector of Schools (S.E.), Paschim Medinipur for approval. In that panel the writ petitioner was first and the added respondent second. Aggrieved by non-approval of that panel the writ petitioner filed W.P. No. 28567 (W) of 2006, being the second of the four writs filed. Debasish Kar Gupta, J. by his order dated 5th March, 2007 disposed of that writ application by directing consideration of the matter by the District Inspector of Schools (S.E.), Paschim Medinipur. After about one and half years he proceeded to consider the matter. He passed an order on 28th August, 2008. He held that a mob invaded the school and intimidated the selection committee to prepare the panel at its dictates. Further, the test for typing was not taken properly. Different members of the selection committee awarded different marks. The school was asked to prepare a panel afresh.

2. Another writ followed. This was W.P. No. 20587(W) of 2007. This writ application challenged the order of the District Inspector of Schools dated 28th

August, 2008. The first point about the mob invading the school and intimidating the selection committee was before the court and dealt with by the final judgment and order dated 26th February 2009 of Indira Banerjee, J. as follows:

If as alleged, there were mob fights, and a siege there should at least have been a contemporaneous complaint. It is also difficult to appreciate why the Members of Selection Committee should sign the panel. There is no reference in the order impugned to any contemporaneous complaint or even any representation. The reasons for the District Inspector's belief that the Selection Committee signed the panel out of fear have not been disclosed. The belief is apparently not based on any materials. At least no materials have been disclosed.

The taking of test for typing was also before the Court. It was decided as follows:

The District Inspector of Schools also appears to have drawn adverse inference from the fact that different members of the Selection Committee awarded different marks for the typing test. It is difficult to understand what irregularity, there could be, in awarding different marks. It is only fair that each Member of the Selection Committee should independently assess candidates and award marks and the average of the marks given by the respective members of the Selection Committee should be taken into account.

3. The matter went to the District Inspector of Schools again, pursuant to the said judgment and order dated 26th February, 2009.

4. It is submitted by Mr. Ashok De, senior advocate appearing for the petitioner that both these issues have been conclusively decided by Indira Banerjee, J. by the said order.

Regarding the issue of mob invasion, I am unable to agree with Mr. De that the issue had been finally decided in the above judgment and order. The order of the District Inspector on this issue was not accepted by the Court first because it was without reasons and secondly it was without any materials. The observation in the judgment "at least no materials have been disclosed" and thereafter, remitting the matter to the District Inspector of Schools "to take a fresh decision on the panel in accordance with law, in the light of the observations made hereinabove" do not indicate that the issue has been closed but that the District Inspector of Schools was at liberty to re adjudicate that issue and come to a finding upon materials and with reasons. In my opinion, however, the finding regarding the taking of typing test was final and conclusive.

5. The District Inspector tried to re determine the matter again on 1st July 2009.

While redetermining the matter he tried to open issues which were closed. Thereby he did not try to determine the matter according to the said order of this Court dated 26th February 2009. In this determination he said that the records of the typing test were not available. This is absolutely contrary to what was observed in the earlier order of the District Inspector of Schools that the records were there but the evaluation was not proper. Just look at the finding on this

issue:

The type test is a document forming a requisite part of the panel and it is liable to be assessed by the members and due to non-availability of the said record there is hardly any scope to verify the award of marks as recorded in the assessment sheet i.e. examination of records of the panel remains incomplete.

6. That issue need not have been determined by him at all as it had been already determined by this Court as stated by me before. The only point which was open to him was to consider the alleged issue of mob intervention.

7. I am appalled by this finding:

Moreover, the submission made by the then Secretary and the Head of the Institution, who acted as members on the Selection Committee to the effect that due to prevailing circumstances on the date of interview in the school premises that they were under threat and compulsion to prepare the panel cannot be ruled out outright and the present Secretary who was the President of the Managing Committee of that time was not a member of the Selection Committee.

8. This finding was arrived at without consideration of any additional evidence than what was before the District Inspector of Schools at the time of passing of the first order. The finding is based on suspicion and assumption. Although, this point was left upon by the said order of Indira Banerjee, J. the order enjoined the District Inspector of Schools to decide the matter on the basis of proper materials. No such materials have been disclosed. However, the order is based on suspicion or assumption of the adjudicator. An order based on no evidence is no order at all.

9. For the above reasons, I am not prepared to give another chance to the District Inspector of Schools (S.E.), Paschim Medinipur to decide on this selection process. It appears from these two hopeless orders which have been passed that he has no materials to reject the selection already made by the selection committee of the school. Therefore, the order of the District Inspector of Schools dated 1st July, 2009 is set aside. He is directed to approve the panel sent to him by the school within a period of two weeks from the date of communication of this order. The writ application is allowed.

10. Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

Later

Stay of this judgment and order is prayed for by the learned Counsel for the added respondent.

Considering the facts that this is the fourth writ application regarding the selection of one Clerk in the School and the selection is pending for a very long time, such prayer for stay is considered and refused.

Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.