

(2010) 03 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 29697 (W) of 2008

Ayantika Das

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 03 CAL CK 0007

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Soumen Kumar Dutta, Mr. Subhas Jana, Mr. Bhabesh Chandra Biswas, Ms. Mitali Das, Ms. Usha Maity, Mr. Ashok Maity and Mr. Sakya Maity, for the Appellant;

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—Three petitions under Article 226 have been filed questioning an undated decision of the District Inspector of Schools (SE), Paschim Medinipur, copy whereof was supplied to all concerned by a memo dated September 12, 2008. The District Inspector of Schools (in short DIS) approved a panel of select candidates for appointment to the post of librarian at Aligunj Rishi Rajnarayan Balika Vidyalaya in Aligunj of the district Paschim Medinipur.

2. By an order dated February 20, 2008 the DIS granted the institute permission to appoint a librarian in the institute. The institute was directed to make appointment according to the provisions of the West Bengal Schools (Recruitment of Non-teaching Staff) Rules 2005. The institute constituted a selection committee according to the provisions of Rule 6. The selection committee consisted of the headmistress, the secretary, headmaster of a school situated in the sub-division in which the institute is situated, an expert, and a nominee of the municipality.

3. The institute sent requisition requesting the employment exchange to sponsor

names of eligible candidates. Interview letters were sent to 21 candidates. 18 candidates appearing before the selection committee were interviewed on May 22, 2008. The selection committee listed the best candidates in the following order: 1) Smt. Ayantika Das, 2) Smt. Chhanda Panja, and 3) Sri Amal Kumar Manna. The computation sheet prepared on the basis of total marks awarded to each candidate by each member of the selection committee and the final panel of three candidates both were signed by all the five members of the selection committee.

4. The panel, the computation sheet and the score sheet of each member of the selection committee all were submitted by the selection committee to the managing committee of the institute on May 22, 2008 itself. The managing committee adopted a resolution dated July 22, 2008 that the panel submitted by the selection committee being defective would be kept by the secretary with other papers in his custody until it was rectified, and that the headmistress wanting a copy of the defective panel should not be supplied any copy.

5. On July 29, 2008 the managing committee adopted another resolution to change the panel positions of the candidates on the basis of the actual marks appearing from the score sheet of each member of the selection committee. Accordingly, the secretary of the managing committee amended the panel signed by all the five members of the selection committee on May 22, 2008 and placed the three select candidates in the following order: 1) Smt. Chhanda Panja, 2) Smt. Ayantika Das, and 3) Sri Amal Kumar Manna.

6. By a covering letter dated July 30, 2008 the secretary of the managing committee forwarded the amended panel with other relevant papers to the DIS for his approval. Three complaints were lodged with the DIS alleging change in certain records of the selection process for changing the merit positions of the first and second candidates named in the original panel signed by the five members of the selection committee.

7. Under the circumstances, the DIS made inquiry and in the process he heard all concerned including the members of the selection committee and gave the decision, copy whereof was forwarded to all by a memo dated September 12, 2008. The DIS held that the select candidate list originally prepared by the five members of the selection committee should be approved, and accordingly he approved the list naming the select candidates in the following order: 1) Smt. Ayantika Das, 2) Smt. Chhanda Panja, and 3) Sri Amal Kumar Manna.

8. The managing committee refused to accept the order of the DIS and it adopted a resolution dated September 18, 2008 and sent it to the DIS who wrote a letter dated November 3, 2008 justifying his decision, copy whereof was forwarded to all concerned by his memo dated September 12, 2008. The managing committee still refused to accept the decision of the DIS and it adopted a resolution dated November 10, 2008.

9. Under the circumstances, Ayantika filed W.P. No. 29697 (W) of 2008 dated

November 27, 2008 seeking a mandamus commanding the institute to take steps on the basis of the decision of the DES approving the panel. Then Chhanda filed W.P. No. 30753 (W) of 2008 dated December 10, 2008 questioning the decision of the DIS approving the panel. Finally the managing committee of the institute fled W.P. No. 11094 (W) of 2009 dated June 29, 2009 questioning the order of the DIS approving the panel. Because of pendency of these three petitions nobody has been appointed to the post.

10. Mr Dutta, counsel for Ayantika, has submitted that the DIS rightly found that the managing committee changed the original panel positions on the basis of changed score sheets of the secretary and the expert - two members of the selection committee.

11. Mr Maity, counsel for Chhanda, has submitted as follows. Since the computation sheet and the final panel were not prepared incorporating actual marks recorded in the score sheets of the secretary and the expert, and the defect was noticed by the members of the managing committee, in view of the provisions of Rule 9(7)(b) the managing committee qua the appointing authority was empowered to remove the defect by rectifying the errors concerned. There was no basis for the DIS to say that score sheets of the secretary and the expert were subsequently changed for making Chhanda the first candidate in the panel. In any case, the DIS did not possess any power to change the amended panel submitted by the managing committee of the institute.

12. Ms Maity, counsel for the managing committee, has submitted as follows. The allegation that the score sheets of the secretary and the expert were changed are absolutely baseless. The original score sheets submitted to the DIS have already been submitted to this Court. In view of the provisions of Rule 12, if there was any doubt, the DIS ought to have sent the matter to the Director of School Education for rectification of the panel or seeking the requisite opinion.

The selection was to be made according to Rule 9, and sub-rule (1) thereof provides as follows:

"9. Allotment of marks. - (1)(a) For selection of a Librarian in a school, -

(i) full marks for possessing the qualifications shall be as follows:

(A) Certificate of passing Madhyamik

Examination (or equivalent) ... 10 marks,

(B) Certificate of passing Higher secondary

Examination [or equivalent including old

Higher Secondary Examination (class XI)] ... 10 marks,

(C) Bachelor's Degree ... 10 marks,

(D) Certificate in Library Science ... 10 marks,

or

Diploma in Library Science ... 15 marks,

or

Degree in Library Science ... 20 marks;

(ii) full marks for the interview shall be 5 marks.

(b) The marks to be awarded to a candidate for each qualification shall be computed by multiplying the full marks for possessing that qualification by the percentage of marks obtained by the candidate in the respective examination.

Sub-rules (4) and (5) of Rule 9 provide as follows:

"(4) Each member of the selection committee shall record separately in his itemwise score sheet the marks awarded for that item to each candidate by him.

(5)(a) The total marks awarded to each candidate by each member of the selection committee shall be computed and then the average of all the total marks awarded to each candidate by all the members of the selection committee shall be computed and finally a panel of three candidates who has scored the highest total marks in average shall, with names of such candidates arranged in order of the merit, be prepared.

(b) if two or more candidates score equal total marks in average, such of those candidates who is senior most in age shall be preferred over the others.

(c) A panel of less than three candidates may be prepared for only a post reserved for the candidates belonging to the Scheduled Castes, Scheduled Tribes or other backward classes, if only less than three suitable candidates belonging to that category are available."

Suba-rules (6) and (7) of Rule 9 provide as follows:

"(6) No second list of names of the candidates shall be obtained from the employment exchange.

(7)(a) The selection committee shall, within fifteen days from the date of the interview, prepare a panel and submit the same to the appointing authority.

(b) The appointing authority shall, within fifteen days from the date of submission of the panel by the selection committee, examine the panel and, along with all relevant papers, submit the same to the District Inspector of Schools for his approval.

(c) The District Inspector of Schools shall, within one month from the date of receipt of the panel, convey his decision thereon."

The provisions of Rule 11 are as follows:

"11. Appointment. - (1)(a) On getting approval of a panel from the District

Inspector of Schools, the appointing authority shall, within fifteen days from the date of getting the approval, issue appointment letter on an inland letter to the first empanelled candidate and send the same to the candidate by registered post with acknowledgment due.

(b) If any candidate fails to join the service within three months from the date of receipt of the appointment letter or abandons the offer of the appointment, the next empanelled candidate shall, if the validity period of the panel has not expired, be offered the appointment.

(c) Name of each candidate who does not join the service within three months from the date of receipt of the appointment letter shall be struck off from the panel.

(2) Before letting a candidate who has been a staff of a school to join the service, the appointing authority shall ensure that the candidate has duly been released from that school.

(3)(a) The appointing authority shall, within fifteen days of joining of the service by a candidate, submit papers to the District Inspector of Schools for approval of the appointment and the District Inspector of Schools shall, within one month, convey his decision thereon.

(b) In the letter of approval, District Inspector of Schools shall mention the name and qualifications of the candidate, the scale of pay and the nature of vacancy against which the appointment has been approved."

The provisions of Rule 12 are as follows:

"12. Interpretation. - (1) If any question arises regarding any decision of the District Inspector of Schools, the school authority may refer the question, through the District Inspector of Schools to the Director for his decision thereon; and the decision taken by the Director shall be final.

(2) In regard to interpretation of any expression in or provision of these rules, the decision of Director shall be final."

13. The rules provide that each member of the selection committee shall separately record in his itemwise score sheet the marks awarded by him for that item to each candidate. The computation sheet is prepared on the basis of the total marks awarded to each candidate by each member of the selection committee, and lastly a panel of three candidates is prepared on the basis of the computation sheet.

14. The selection committee is to submit the panel to the managing committee within fifteen days from the date of interview, and the managing committee is to examine the panel and submit it with all relevant papers to the DIS for his approval within fifteen days from the date of submission of the panel by the selection committee. The DIS is to convey his decision within one month from the date of receipt of the panel. Within fifteen days from the date of receipt of

the approved panel the managing committee is to issue appointment letter to the first candidate.

15. In this case the 18 candidates who appeared before the selection committee in response to interview letters sent to them were interviewed by the selection committee on May 22, 2008. According to provisions of Rule 9(1)(a), 5 was the maximum mark for viva. The five members of the selection committee interviewed the 18 candidates and recorded the marks they awarded to the 18 candidates for viva. Marks for educational qualifications of the candidates were computed separately.

16. On the basis of the score sheets maintained by the five members of the selection committee the computation sheet showing the total marks of all the 18 candidates was prepared and signed by all the five members of the committee on May 22, 2008 itself, and on the basis of the computation sheet they prepared the final panel of three candidates and signed it also on May 22, 2008. In the original computation sheet it was recorded that on educational qualifications while Ayantika obtained 25.37, Chhanda obtained 25.75; and on viva while Ayantika obtained 2.1, Chhanda obtained 1.3. As a result, while Ayantika's total became 27.47, Chhanda's became 27.05.

17. Although the selection committee submitted the panel to the managing committee on May 22, 2008 itself and according to the provisions of Rule 9(7)(b) the managing committee was to submit the panel with all relevant papers to the DIS for his approval within fifteen days from May 22, 2008, in contravention of its statutory duty it decided to keep the panel with it on the ground that it was defective, and for the purpose it adopted a resolution dated July 22, 2008.

18. The headmistress of the institute wanted a copy of the defective panel, but the managing committee decided that no copy would be given. It ultimately decided to amend the panel submitted by the selection committee and changed the merit positions of the first and second candidates. Chhanda was upgraded to the first position on the ground that marks on viva given to her by the secretary and the expert recorded in their respective score sheets were not correctly recorded in the computation sheet on May 22, 2008.

19. In the computation sheet prepared on May 22, 2008 and signed by all the five members of the selection committee it was recorded that on viva the secretary and the expert both awarded Chhanda "0". On the basis of the score sheets of the secretary and the expert signed only by themselves, original computation sheet was amended to show that the secretary and the expert both had actually awarded Chhanda "3" on viva. This amendment increased Chhanda's total marks from 27.05 to 28.25, and thus she surpassed Ayantika whose total was 27.47, originally shown and remaining unchanged.

20. The score sheets maintained by the five members of the selection committee separately were kept in the custody of the secretary and it was possible for him to change his own score sheet and also the expert's score sheet in collusion with

the expert. But it was difficult for the secretary or the expert or the members of the managing committee who wanted improvement in Chhanda's merit position to change the original computation sheet and the panel prepared on the basis thereof. As a result, the original computation sheet and the panel both prepared on May 22, 2008 and signed by all the members of the selection committee including the (sic) were only amended and the amendments evidently showed both the original and the amended positions.

21. The DIS has made an inquiry and in the process he has heard the members of the selection committee and the persons lodging the complaints. He has held that the managing committee unauthorisedly amended the original computation sheet and the panel. He noticed the conduct of the managing committee and the secretary thereof, and concluded that the allegation of malpractice was of substance. The question is whether in exercise of power of judicial review I should substitute my decision for that of the DIS.

22. I think the proposition that the managing committee was quite competent to examine the panel prepared by the selection committee and remove the evident defects, if any, can be limitedly accepted. The rules empowered the managing committee to examine the panel. It means that it was to see whether the panel had been prepared correctly reflecting the marks awarded by the members of the selection committee. There can be no doubt that if in the process the managing committee detected a totaling error it could say so in its resolution and send the panel with its observations, views and recommendations to the DIS for approving the panel accordingly, but it could not substitute any mark for the original mark recorded in the computation sheet.

23. I am unable to accept the argument that the DIS was just to accept whatever was decided by the managing committee of the institute. Such an interpretation of the rule as this is bound to defeat the purpose of the power conferred on the DIS to give his decision dealing with the institute's request for approval of the panel. The DIS was to give a decision, not merely to sign the panel forwarded by the managing committee of the institute.

24. For giving his decision, needless to say, the DIS was empowered to make inquiry, and, in the process, to examine all papers and collate information by hearing the members of the selection committee, candidates and other persons connected with the selection process. If this is not seen as the power of the DIS, then he will be made a helpless mute spectator in the whole process, and taking advantage of the situation, unscrupulous members of the managing committee will be able to manipulate the selection process and the select candidate list to suit their purpose. Therefore, I am of the view that when allegations such as were made in this case are made, the DIS is quite competent to make a detailed inquiry and give his decision dealing with the institute's request for approval.

25. In this case the DIS has made inquiry and has found that there was absolutely no scope for the managing committee to say that marks awarded by

the secretary and the expert to Chhanda on viva were not correctly recorded in the computation sheet prepared on May 22, 2008 on the basis of the five score sheets in which the respective members of the selection committee recorded their respective marks they awarded to each of the candidates on viva.

26. I am unable to see how the provisions of Rule 12 can be relevant to the question involved in the case. Rule 12 provides that if any question arises regarding any decision of the DIS then the school authority may refer the question to the Director of School Education, and that the decision of the Director shall be final. I am unable to see how in the present case the DIS incurred the obligation to refer the matter to the Director.

27. There is nothing to show that the school authority ever referred any question arising regarding the decision of the DIS to the Director through the DIS. From the managing committee's resolution dated September 18, 2008, and letters to the DIS dated September 22, 2008 and November 10, 2008, it is evident that the managing committee was only protesting against the findings of the DIS. It did not seek any reference of any question to the Director.

28. For these reasons, I am of the view that the decision of the DIS approving the original panel does not call for any interference, and that, in view of the provisions of Rule 11 the managing committee incurred a statutory obligation to issue appointment letter to Ayantika. Accordingly, I allow W.P. No. 29697 (W) of 2008 and command the managing committee of the institute to issue appointment letter to Ayantika according to provisions of Rule 11 within fifteen days from the date of service of a copy of this order. W.P. Nos. 30753 (W) of 2008 and 11094 (W) of 2009 are hereby dismissed. No costs. Certified xerox.