
(2013) 04 CAL CK 0101
In the Calcutta High Court
Case No : Writ Petition No. 13939 (W) of 2012

Banamali Badyakar	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

Citation : (2013) 2 CALLT 448 : (2013) 4 WBLR 904

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Shamim Ul Bari, for the Appellant; Susmita Biswas Chowdhury for the State and Mr. Robiul Islam for the Respondent Nos. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

Debasish Kar Gupta, J.—Let affidavit-in-opposition filed on behalf of the respondent Nos. 5 and 6 be kept on record. This writ application is filed by the petitioner assailing an order passed by the respondent No. 4 under his Memo No. 871 dated September 23, 2010. By the impugned order, the respondent No. 3 withdrew the approval of the panel for appointment of Laboratory Attendant of Durgapur Girls' High School, District-Burdwan, of Memo No. 721 dated August 27, 2010 alongwith another similar panel.

2. The facts of this case in a nutshell are as follows.

The respondent No. 3 granted prior permission to the above school for filling up of two posts of Laboratory Attendant on July 22, 2008. On the basis of the above prior permission an interview took place on March 15, 2009. The petitioner participated in the above interview, amongst other eligible candidates. The panel prepared for appointment of the aforesaid Laboratory Attendant was approved by the Managing committee of the above school in its meeting dated January 7, 2009. The same was forwarded to the respondent No. 4 by the above school, for approval. By an order dated August 27, 2010 passed by the respondent No. 4,

i.e. the Additional District Inspector of Schools (SE), Durgapur Sub-Division. District-Burdwan, the above panel was approved. An appointment letter dated August 28, 2010 was issued in favour of the petitioner. The petitioner joined the post of Laboratory Attendant of the above school on September 3, 2010. Suddenly the above order of approval dated August 27, 2010 was withdrawn by the respondent No. 4 by virtue of the impugned order.

3. I have heard the learned Counsel appearing for the respective parties at length and I have taken my thoughtful consideration to the facts and circumstances of this case.

4. For the purpose of adjudicating the decision making process adopted by the respondent No. 4 for passing the impugned order the operative portion of the same is quoted below:

In view thereof the panels which are approved vide this office memo Nos. 721 dated 27-8-2010 & 722 dated 27.8.2010 are hereby withdrawn due to following reasons:

(a) The date of Prior Permission by the District Inspector of Schools (SE), Burdwan in the instant cases was on 22.7.2008 which is not in accordance with in the School Education memo No. 740/ES/S/IS-18/08 dated 13.5.2010.

(b) In the period of administrative vacuum no selection process of recruitment of any post of the school would be done.

(c) The papers relating to separate panel cannot be considered as the same was endorsed by the Headmistress of the school who has no authority to do so in time of administrative vacuum.

(d) She is requested to act accordingly.

Addl. District Inspector of Schools (SE) Durgapur Sub Division

5. So far as the first ground for withdrawal of the order of a approval of the panel is concerned, I find that the provisions of School Education Memorandum N0.740/ES/S/IS-18/08 dated May 13, 2010 was taken into consideration by the respondent No. 4. By virtue of a judgment delivered in the matter of Subhankar Mandal Vs. State of West Bengal and Others , the above School Education Memo was quashed and set aside: The relevant portion of the above judgment is quoted below:

35. For the reasons aforesaid, all the writ petitions must succeed and are, accordingly, allowed. The Memo dated July 22, 2008 stands quashed. The subsequent memo dated May 13, 2010 following it cannot independently stand and stands quashed also. Insofar as the impugned orders of the concerned District Inspectors declining to accord approval to the panels forwarded to them by the respective school authorities are concerned the same also stand set aside. The said District Inspectors shall consider the issue of approval of the Panels strictly in accordance with the provisions of the 2005 Rules. If the District

Inspectors are satisfied that the respective schools have complied with and/or adhered to the requirements if they are of the considered opinion that any or all the panels that have been forwarded do not deserve approval, their reasoned decisions shall be communicated to the Managing Committees of the schools as well as the first empanelled candidates, being some of the petitioners herein. This exercise shall be completed as early as possible but not later than three weeks from date of receipt of copy of this judgment and order.

6. Therefore, the above ground for withdrawal of the order approval is not sustainable in law.

7. So far as the second ground is concerned, the fact of tendering resignation of the Secretary of the Managing Committee of the above school was taken into consideration by the respondent No. 4. It is an admitted position that the resignation of the Secretary of the Managing Committee of the above school was accepted by the Managing Committee of the above school in its meeting dated January 7, 2009. But the Managing Committee was not dissolved due to the resignation o(sic) the Secretary of that Managing Committee. That apart it appears from the affidavit-in-opposition filed on behalf of the respondent Nos. 5 and 6 that the Managing Committee of the above school adopted resolution in favour of sending the panel under reference to the competent authority for its approval on January 7, 2009. Therefore, the selection process under reference was conducted adhering to the provisions of Rule 8 of the West Bengal Schools (Recruitment of Non-Teaching Staff) Rules, 2005. So the second ground of the impugned order cannot be sustained in law.

8. So far as the third ground of the impugned order is concerned, on the basis of the admitted position that the Headmistress of the above school forwarded the panel to the respondent No. 4, I find that the panel was forwarded to the respondent No. 4 on the basis of a resolution adopted in the meeting of the Managing Committee of the school under reference. The Headmistress of the school simply forwarded the same in compliance of the resolution adopted in the meeting of the Managing Committee. Therefore the above ground is also not sustainable in law.

9. In view of the discussions and observations made hereinabove, the impugned order is quashed and set aside.

10. The respondent authority is directed to release the remuneration and other benefits due and payable to the petitioner in connection with his appointment to the post of Laboratory Attendant of Durgapur Girls' High School, District-Burdwan, within May, 31, 2013 along with all arrears with interest @ 9% per annum on arrears for the period when the same was due and payable till the date of its actual payment.

11. The rate of interest is fixed at 9% taking into consideration the highest prevailing rate of interest payable by a nationalised bank on fixed deposit.

12. The respondent authority is directed to pay the above interest to the petitioner from the public exchequer together with the arrears to the petitioner within the period mentioned hereinabove. The respondent authority is directed to take steps or realisation of the above interest from the salary of the erring officer or by way of raising public demand in case of his retirement within a period of three months from the date of communication of this order.

13. This writ application is, thus, disposed of. There will be, however, no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, subject to compliance with all necessary formalities.