

(2007) 06 CAL CK 0013
In the Calcutta High Court
Case No : F.M.A. No. 332 of 2006

Chairman, West Bengal School Service Commission and
Others

APPELLANT

Vs

Shobhit Kumar Singh and Others

RESPONDENT

Date of Decision : 29-06-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(3), 16

Citation : (2008) 1 CHN 194 : 111 CWN 851

Hon'ble Judges : Tapas Kumar Giri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Tapabrata Chakraborty and Tanima Sengupta, for the Appellant; A.B. Chatterjee, Taraprasad Halder, for State and U.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—West Bengal School Service Commission (hereinafter referred to as the "Commission") published an advertisement, inter alia, for filling up post of Hindi teacher in Western Region. Pursuant to such advertisement the respondent Nos. 1 and 2 applied and passed out in the regional level selection test. The result was published by the Commission as appears from page 147 of the Paper Book which would show that there were four male vacancies for Hindi which were to be filled up from the panel prepared out of the said selection test. In the panel the respondent Nos. 1 and 2 were empanelled at serial Nos. 5 and 6 whereas two female candidates having secured more marks than the respondent Nos. 1 and 2 were placed above the said respondents. All the four vacancies were filled up by first four candidates according to merits. Hence, the respondents No. 1 and 2 could not get any appointment. They approached the learned Single Judge by filing the writ petition. It was contended on behalf of the School Service Commission as well as the State that there was no illegality committed by the Commission in recommending the female candidates for the post as they secured higher marks

than that of the writ petitioners. Learned Single Judge, however, did not accept the contention of the Commission and allowed the writ petition by holding that since the vacancy was in the male category the lady candidates could not have been considered in the said post. His Lordship also rejected the contention of the Commission that the restriction imposed under Article 15(3) of the Constitution with regard to the girls school could not be said to be arbitrary. His Lordship observed that there could not be any discrimination on account of sex as to distribution of wealth under Article 39. Hence, this appeal by the Commission.

We heard the parties at length.

2. Tapabrata Chakraborty, Learned Counsel appearing for the Commission contended that Article 15(1) read with Article 15(3) empowered the State to make reasonable classification and make special provisions for the women and children. Making of such provision could not be said to be violative of the fundamental rights guaranteed to the writ petitioners under Article 14 or 15(1) of the Constitution. Mr. Chakraborty also contended that Article 39 being a directive principle could not have any precedence over Article 15(3) which is a fundamental right.

5. Mr. Chakraborty in support of his contention cited the following decisions:

- (i) Dattatraya Motiram More Vs. State of Bombay,
- (ii) G. Deendayalan Ambedkar Vs. Union of India (UOI) and Others,
- (iii) 2003 CWN 1001 Secretary, Vivekanandapally Kishore Bharati High School v. Munshi Mohammad Mansur and Ors.
- (iv) 2004(1) CHN 30 Vijay Lakshmi v. Punjab University and Ors.
- (v) Ekta Shakti Foundation Vs. Govt. of NCT of Delhi,

Mr. Taraprasad Haider, Learned Counsel appearing for the State adopted the submission made by Mr. Chakraborty.

3. Mr. A.B. Chatterjee, Learned Counsel appearing for the respondent/writ petitioners on the other hand contended that once the post was reserved for male category as appears from page 147 of the Paper Book the action on the part of the Commission acting contrary to such advertisement was illegal and His Lordship rightly quashed the said appointment.

We have considered the rival contentions of the parties. We have perused the judgment and order of His Lordship.

4. Article 15(3) being a fundamental right empowers the State to make reasonable restriction with regard to women and children. It is true that Article 39 cannot be applied contrary to Article 15(3) . We, however, wish to view this problem from a different angle.

5. Is the restriction imposed by the State in the instant case with regard to the

filling up of vacancy is reasonable or permissible within the meaning of Article 15(3) ? This question has to be answered in the facts and circumstances of this case.

6. Let us first deal with the cases cited by the parties.

(i) Dattatraya Motiram More Vs. State of Bombay, In this case question of reservation of seats for women in the Jalgaon Municipality was called in question. The Apex Court while answering the question held that Article 16 dealt with the matters of public employment and it had no nexus with the reservation of seats in municipality. Their Lordships were of the view that Article 15 was the relevant provision which would be applicable in the said case. Their Lordships held that Article 15(1) did not permit any discrimination on the ground of sex. However, under Article 15(3) the Legislature was empowered to make special provisions for women. Their Lordships held that the reservation of seats for women in the concerned municipality did not offend any of the provisions of the Constitution.

(ii) G. Deendayalan Ambedkar Vs. Union of India (UOI) and Others, In this case the railway administration wanted to reserve the post for Enquiry-cum-Reservation Clerk for the women which was called in question. The Apex Court held that such reservation did not offend any of the provisions of the Constitution. Their Lordships held that since Articles 15(1) and 15(3) go together the protection of Article 15(3) would be applicable to employment under the State falling under Articles 16(1) and (2) of the Constitution.

(iii) 2003 CWN 1001 Secretary, Vivekanandapally Kishore Bharati High School v. Munshi Mohammad Mansur and Ors. The Division Bench of this Court while dealing with the issue of validity of panel held that despite that the fact that grave injustice had been caused to the writ petitioner/respondent no relief could be granted to them in absence of appropriate legal provision. The writ petitioner in the said case approached the Court after expiry of the life of the panel and hence such relief was denied.

(iv) 2004(1) CHN 30 Vijay Lakshmi v. Punjab University and Ors.: Here, reservation of the post of Principal in a girls college for women was the subject-matter of controversy. Their Lordships considering Articles 14, 15 and 16 observed that there could be classification between male and female for certain posts and such classification could not be said to be arbitrary or unjustified.

(v) Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, This decision was relied on the scope of judicial review. The Apex Court in the said case held, while exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their Constitutional limits or statutory power.

7. Article 14 of the Constitution guarantees right of a person to be treated equally having equal protection of the laws of the country. Article 15(1) provides, inter alia, that the State would not discriminate any citizen on the ground of sex. Article 15(3) provides that nothing in Article 15 would prevent the State from making any special provision for women and children. Article 16(1) provides that equal opportunity must be given to all citizens in matters relating to employment or appointment to any office under the State. Article 16(2) , inter alia, provides that no citizen shall, on the ground of sex be ineligible for, or discriminated against in respect of, any employment or office under the State.

8. In the instant case we find that as per the advertisement appearing at page 147 the subject posts were shown as male vacancy. Hence, ordinarily male candidates should have been considered for the said post. It was sought to be contended on behalf of the appellant/Commission that earlier to avoid occupational hazard lady candidates were recommended in girls school and male candidates were recommended in boys school as well as in co-educational schools. This came up for consideration before a learned Single Judge of this Court wherein His Lordship was of the view that lady candidates should also be given equal opportunity in the co-educational schools. His Lordship's view is supported by Article 15(1) of the Constitution. The State, however, in deference to the desire of His Lordship issued administrative circulars for consideration of the candidates for the boys school as well as co-educational schools. In such view of the matter at the end of the day the lady candidates are given opportunity to be considered for boys school, girls school as well as co-education schools whereas males are considered only for boys school and co-educational schools. Hence, they are getting less opportunity than women because of the administrative circulars issued by the State. We do not intend to go into the question whether those circulars are offending Articles 14, 15 and 16 of the Constitution or not. We, however, feel that since as per the advertisement vacancies were notified for male category placement of the private respondents being lady candidates in such vacancy was irregular. His Lordship approached the problem from that angle and we do not find any scope of interference. The appeal thus fails and is hereby dismissed.

9. There would be no order as to costs. There would be stay of operation of this judgment and order for four weeks from date.

Tapas Kumar Giri, J.

10. I agree.