
(1998) 11 CAL CK 0031
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction A.S.T. No"s. 2364 and 2379 of 1998

Deboram Manna and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226
Recruitment and Leave of Teachers of Primary Schools of West Bengal Rules, 1991 — Rule 8, 9

Citation : (1999) 1 CALLT 199 : (1999) 82 FLR 376

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Mr. Balai Lal Sahoo, Mr. Ajit Panja and Mr. Tushar Kanti Hore, Mr. S. Bhuiya and Mr. A. Maity, for the Appellant; Mr. Manju Sinha, Mr. Sumit Kr. Panja and Mr. Tapan Banerjee, for the Respondent

Judgement

M. H. S. Ansari, J.—As the two matters raise similar questions for consideration the above writ applications have been taken up analogously and are being disposed of by this common Judgment and order :--

In AST 2379 of 1998 ; about eleven petitioners have claimed that their names have been sponsored by the District Employment Exchange in the District of Midnapore for appointment to the post of Primary Teachers. The petitioners state that they have requisite qualifications for holding the said post and that they have been denied the opportunity of participating in the interview although they have submitted the requisite certificates as called for by the respondent Primary Council pursuant to the letters issued in that behalf. The petitioners have not been called in the interview which is proposed to be held on 29.11.98 for the purpose of preparation of panel of eligible Primary Teachers to be appointed in the vacancy of Primary Schools in the District of Midnapore. The petitioners have not been informed of the reasons as to why they have not been called for the interview and that the aforesaid action of the respondent-Primary Council, is, therefore, discriminatory and violative of the rights guaranteed under Article 16

of the Constitution of India. The petitioners have prayed for cancellation and/or setting aside the interview proposed to be held on 29.11.98 and in the alternative a writ in the nature of Mandamus directing the respondent Primary School Council to issue interview letters to all of the eligible candidates including the petitioners.

In AST 2364 of 1698; the petitioner therein has prayed for similar relief of a writ in the nature of Mandamus for directing the respondent Primary Council to issue interview letters in the written test which is scheduled to be held on 29.11.98.

2. On behalf of the respondents Sri S. Bhulya, learned senior counsel along with Mr. A. Maity appeared for the Primary Council and Mr. S.K. Panja and Mr. S. Banerjee appeared on behalf of the State and made their oral submission.

3. Mr. Bhuiya on behalf of the respondent Primary Council made oral submissions upon instructions.

4. It is the contention of Mr. Ajit Panja, the learned Senior Counsel of the petitioners that the petitioners' constitutional right to be considered for employment has been arbitrarily and illegally infringed. The petitioners have been duly sponsored by the Employment Exchange and being eligible for the post in question are entitled to be called for in the interview/written test scheduled to be held on 29.11.98 when certain candidates having similar qualifications have been called for the said purpose. By not affording the petitioners an opportunity of participating at the said oral interview/ written examination, the petitioners are unlawfully discriminated against and illegally denied their constitutional right to be considered for appointment to the post in question. The entire process, it was contended, is vitiated and is contrary to the Rules.

5. The learned counsel appearing for the respondents, however, contended that the respondent Primary School Council is proceeding with the selection process strictly in accordance with the Rules relating to Recruitment and Leave of Teachers of Primary Schools of West Bengal (for short the 1991 Rules).

6. It was further submitted that all eligible candidates including the petitioners who have been sponsored by the employment exchange have been asked to produce their respective certificates of academic qualification, Training and Co-curricular activities and thereafter letters have been prepared and issued to the candidates eligible to be called for at the written test/interview as per Rule 9(c) (ii). The said Rule prescribes that the number of candidates for interview shall be five times the number of vacancy. The petitioners, it was submitted, did not qualify for the oral interview and were, therefore, not issued letter asking them to appear at the written test/ interview. The cut off marks determined on the basis of the academic qualification and co-curricular activities is 414 out of 900 and 460 out of 1000 i.e. 46% whereas the petitioners have secured less than the said marks and thereby disentitled themselves "for being called for the written test/ interview. They have, therefore no locus standi to file the present writ application nor can this court grant any relief to the petitioners' interrogation of

the Rules.

7. It may be appropriate at this stage to refer to the relevant Rules.

8. Rule 8 of the 1991 Rules prescribes the manner in which a Primary School Council should fill up the vacancies. Such procedure provides that a panel for eligible candidates be prepared and for the said purpose, the employment exchange shall be requested to send the names of the candidates who have requisite qualifications in the order of seniority.

9. Rules 9 provides selection process in great details. The procedure prescribed therein lays down the manner in which marks will be awarded to the applicants as also the screening process.

10. The District Primary School Council, needless to say, is bound by the said Rules for filling up the vacancies in question and has no option to deviate from the Rules as stated above.

11. To the extent necessary relevant provisions of Rule 9 may now be referred to. Rule 9(b) (ii) reads as under;

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

1. Academic qualification 65 marks 2. Training 20 marks 3. Written Test/ Oral interview 10 marks 4. Co-curricular activity 5 marks Total 100 marks"

Rule 9(c) (i) and (ii) read as order: "(c) (i) The total marks obtained by each candidate for academic qualification, training and co-curricular activities shall be computed in the manner prescribed in clauses (iii) (iv) and (vi) and a list of names of all candidates of each category, namely, Schedule Caste, Schedule Tribe physically handicapped and others shall be prepared in descending order of total marks obtained by them.

(ii) The Staff Selection Committee in its meeting shall finalise the total number of candidates from the top of the lists mentioned in Clause (i) of sub-rule (c), to be called for interview shall be five times the number of vacancy unless the total number of candidates is insufficient for the same."

12. Mr. A Panja, learned senior counsel appearing for the writ petitioners contended that the Rule in question i.e. Rule 9(c) (ii) upon which reliance has been placed by the respondents has no relevancy in the instant controversy as the respondents have chosen to conduct the written examination. There is no reference to written test, it was submitted, and for that reason the said Rule has got no manner of application in the instant case. If the respondent authorities have decided to conduct the written test then all the eligible candidates including the petitioners are entitled to be afforded an opportunity of appearing for the written test. Rule 9(c) (ii), it was contended, cannot be used as tool to deny the petitioners' right to appear in the written examination which shall be kept open

to all the candidates.

13. Mr. S. Bhuiya, learned counsel appearing for the respondent-Primary School Council however, submitted that in lieu of oral interview candidates who are found eligible for being called for in the said oral interview, a written test has been decided to be held for them. Only those candidates who are eligible to be called for interview are being subjected to the written test instead of conducting the viva voce. This, it was submitted, was to avoid any arbitrariness or any complaint in relation thereto. According to Mr. S. Bhuiya, power has been conferred upon the Board either to conduct the written test or viva voce and it is absolutely in the discretion of the respondent Primary Council to choose either of the two. The power for the same is traced to Rule 9(b) (ii) which prescribes 10 marks. For written test/oral interview and to Rule 9(c) (ii) which prescribed the manner of screening candidates to be called for interview.

14. Under Rule 9(b) (ii) 90 marks are prescribed for academic qualification (65 marks), training (20 marks), co-curricular activity (5 marks), the remaining 10 marks are prescribed for written test/interview.

15. A plain reading of the said Rules would show that only 10 marks are prescribed for "written test or oral interview." Rules do not show or prescribe any other marks separately for written test/interview, who have to be called for the interview has however, been laid down in Rule 9(c) (ii).

16. Under Rule 9(c) (ii) Staff Selection Committee is to finalise the total number of candidates to be called for in the interview from the list prepared as prescribed in clause (c) (1) of the said Rules. The number of candidates to be called for in the interview shall be five times than the number of vacancy.

17. That part of Rule 9(b) (ii) which provides for awarding 10 marks for "written test/oral interview" shows that option has been conferred upon the respondent authority to conduct either written test or oral interview, who have to be called for oral interview, the procedure is prescribed in Rule 9(c) (ii). There is no mention of written test in Rule 9(c) (ii). However, if instead of oral interview, a written test is to be conducted as has been decided by the respondent authority, then in terms of Rule 9(c) (ii) only such persons who are qualified or eligible to appear for interview can be called upon to appear at the written test. Any other interpretation would render the option conferred upon the authority in term of Rule 9(b) (ii), meaningless. It must be kept in mind that 5,400 persons have been sponsored by the employment exchange for filling up 2700 posts of Assistant Teachers. Rule 9(c) (ii) provides the screening process, limiting the number of candidates to be called for interview. It is no where stipulated that apart from the written test referred to in Rule 9(b) (ii) any other written test is to be conducted for the sponsored candidates. There is, therefore, no power to conduct written test otherwise than in exercise of the option provided in Rule 9(b) (ii).

18. A reading of Rule 9(b) (ii) harmoniously with Rule 9(c) (ii) would show that

after computing the total marks obtained by each candidates for academic qualification, training and co-curricular activity the list is to be prepared and from out of that list, as prepared under Rule 9(c) (ii) only such candidates are to be called for interview as may come in the zone of consideration i.e. five times number of vacancy. These candidates alone can be called for interview. In other words if instead of interview written test is to be conducted in exercise of the option then only such candidates who have qualified themselves for being called for interview can be subjected to the written test or be entitled for sitting in the written examination.

19. The council can in its discretion either subject the eligible candidates to written test or for oral interview but not to both. The decision of the Primary School Council to conduct the written test in lieu of and in place of oral interview cannot in the circumstances be said to be contrary to the law. Any effort to eliminate the scope of arbitrariness in oral interview cannot be found fault with when the power to conduct the written test can be traced to the Rules.

20. At first blush the interpretation commended for my acceptance by the learned counsel for the petitioners with respect to Rule 9(c) (ii) which only refers to interview and prescribes the number of candidates to be called for in the interview appeared attractive. But on a closer scrutiny I feel that such interpretation may lead to tenuous result. No doubt Rule 9(c) (ii) does not refer to written test. Marks, however, have been prescribed in Rule 9(b) (ii) for written test/oral interview. The candidates eligible for oral interview alone are being subjected to written test. In other words, candidates who are found eligible as per Rule 9(c) (ii) alone are being subjected to written test instead of viva voce. No oral interview is thereafter permissible nor contemplated.

21. If the interpretation as suggested by learned counsel for the petitioners" is accepted the entire screening process contemplated in Rule 9(c) would be rendered meaningless and all the 54000 candidates would have to appear at the written examination which is neither contemplated nor postulated by the Rules.

22. In the circumstances, keeping in view that the petitioners have not qualified for being called for in the interview they cannot insist that they shall also be permitted to participate in the written test which is being held only for those candidates who have qualified themselves for being called for in the interview, when the written test is in lieu of oral interview.

23. For the aforesaid reason, these two writ petitions deserve to be dismissed and are hereby dismissed, but in the circumstances there will be no order as to costs.

24. As no affidavit-in-opposition has been utilised by the respondent authorities, the averments made in the writ petition are deemed to be not admitted.

Let urgent certified xerox copy of this order be handed over to the learned advocates for the appearing parties, if the same is applied for.

25. Petitions dismissed