

(2013) 04 CAL CK 0037

In the Calcutta High Court

Case No : Writ Petition No's. 19690, 19953, 20113, 20323, 21082, 21446 and 21888 (W) of 2009, 2084, 4455, 4458, 4835, 4885, 5001, 7285, 7287, 9713, 12322, 12323, 12324, 12325, 12326, 12333, 12334, 12335, 12336, 12337, 12355, 12357, 12359, 12419, 12420, 12442, 1244

Dipankar Chakraborty

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

West Bengal Primary Education Act, 1973 — Section 106(1), 106(2)(k), 60(1)(k)

Citation : (2013) 2 CHN 715 : (2013) LabIC 3744 : (2013) 4 WBLR 571

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Advocate : Jayanta Mitra, Kishore Dutta, Idrish, Amit Kr. Barman, Saikat Chatterjee, K.K. Maity, Mujibar Rahaman, Musior Rahaman, Mehboob Rahaman, Swapan Banerjee, Lalit Mondal, Sumita Shaw and Sariful Islam Mallick, for the Appellant;Bimal Chatterjee, Sundarananda Pal, Tapan Kumar Mukherjee, Bikash Kumar Mukherjee, Nilotpall Chatterjee, Taraprasad Haider, Subir Sanyal, Debabrata Chatterjee, Ratul Biswas and Sumita Sen, for the Respondent

Final Decision : Dismissed

Judgement

1. Since the questions arise in the aforesaid cases are almost same, all the matters are being decided by this common order. For this purpose, we allow the applications for condonation of delay filed in connection with the appeals, which are time barred. The matter pertains to the appointment in the post of primary school teachers in various primary schools under the aegis of various District Primary School Councils.

2. The facts as projected in the W.P. 4455 (W) of 2010 are that the petitioners claimed themselves to be eligible for appointment as primary teachers. They were untrained. However, their names were registered with the employment exchange. The respondent Nos. 5, 6, 7 and 8 are holding PTTI certificates from

fake institutes and they got the benefit of their sponsorship from the employment exchange on the strength of fake certificates. It is further averred that the District Primary School Council Jalpaiguri, requisitioned the names from the employment exchange for recruitment of primary school teachers in accordance with the West Bengal Primary School Teachers Recruitment Rules, 2001. Pursuant thereto, the respondent District Employment Exchange Officer issued a notice published on 8.2.2006 fixing parameters for sponsoring the names of the candidates. The petitioners were within the ratio of 1:5 for participation in the written examination and the written examination was held on 29.11.2009. It is further averred that the respondents Nos. 5, 6, 7 and 8 were registered with the employment exchange as general category candidates. The respondent No. 5 was registered with the employment exchange in the year 1995, respondent No. 6 in the year 1996, respondent Nos. 7 and 8 in the year 2001. They were not holding certificates from the recognised institutions. The institutions from which the certificates were obtained were not affiliated by NCTE. The decision in *Tulsi Baksi and Another Vs. State of West Bengal and Others*, has been relied upon to contend that such institutions had no right to grant the certificates. As such, the certificates issued in favour of such candidates are liable to be cancelled and no credence can be given to such certificates. Large number of illegally sponsored persons have been favoured with the sponsorship on the basis of their certificates obtained from unrecognized institutions, 150 candidates were sponsored on the strength of PTTI qualification and not on the basis of the seniority in employment exchange, as a matter of fact, their names could not have been sponsored as a trained candidate. Hence, the writ petitions have been preferred. Prayer has been made to cancel the candidature of the persons who were sponsored by the employment exchange not on the basis of the seniority as indicated in the Memo dated 8.2.2006 but on the basis of training certificates issued by the unrecognized institutions.

3. W.P. 19255 (W) of 2009 was filed before the Single Bench on the ground that the petitioners were registered in the employment exchange from 1982 to 1992. In 2006, Birbhum District Primary School Council initiated recruitment process for filling up 691 posts of Assistant Primary Teachers under general category and 296 posts of Assistant Primary Teachers under the exempted category in different primary schools. Names were called from the employment exchange. Names of 21804 untrained candidates and 1423 trained candidates were sponsored in May, 2006. On 6.8.2009 fresh advertisement was issued after amendment of the Rules. Additional 22 marks were awarded to the trained candidates in the Rules called West Bengal Primary School Teachers Recruitment Rules, 2001. In the year 2009 amendment was brought. It was not notified in the fresh advertisement that candidates who were sponsored by the employment exchange pursuant to the advertisement in the year 2006 can also apply pursuant to the advertisement dated 30th August, 2009 and age relaxation would be given to them for the period process has been kept pending. The petitioners requested the Primary School Council not to consider the candidature

of the trained candidates in the written test who were not having a training from the recognised institutions. Written examination was proposed to be held. Interview letters were issued. Hence, the petition was filed with the prayer that the respondents be restrained from considering the candidature of trained candidates who were sponsored in 2006 and applicants who applied in the year 2009 for filling up the vacant posts of Assistant Primary School Teachers in different schools in the District of Birbhum for the vacancies for which the selection process was initiated in the year 2006. Prayer was also made to complete the selection process for filling up the vacancies for which the selection process was initiated in the year 2006 as per the prevailing Rules considering the candidatures of the untrained candidates who were sponsored in the year 2006.

4. It appears that pursuant to the interim order passed by a Single Bench of this Court in bunch of writ applications the State Government was ordered to undertake the process of recruitment with respect to the vacancies of 2006 under the prevailing Rules and the vacancies of 2009 to be filled in accordance with the amended Rules. The State Government has complied with the interim order as it attained finality with the modification that the concerned Councils shall consider, if not already considered, all candidates who are eligible according to law to participate in the selection process in the year 2006 for filling up those vacancies in respect thereof, requisitioned were sent to the concerned employment exchange strictly in accordance with the law from the date the same was initiated. The order passed in W.P. 16211 (W) of 2009 has not been questioned and has attained finality.

5. It is submitted that for District Birbhum, total vacancies for recruitment process in the year 2006 were 987 and total vacancies for recruitment process for the year 2009 were 1020. Written examinations were held separately for the vacancies in the year 2006 and 2009. Written examination for the year 2006 was held on 11.12.2009 for which the sponsored candidates appeared. Written examination for the vacancies of the year 2009 was held in March, 2010. Accordingly, appointments were made.

6. In W.P. No. 19255 (W) of 2009 before the Single Bench, out of which M.A.T. 331 of 2010 arises, it is contended in affidavit-in-opposition that pursuant to the interim order passed by his Court, the examination was proposed to be held on 15.11.2009 rescheduled to 11.12.2009. Pursuant to the request of the Council on 21.2.2006, no candidates who have applied in the year 2009 pursuant to the advertisement/notification dated 30th August, 2009 and 6th August, 2009 have been called for written test which were declared to be filled up by the Council in the year 2006. Even if the qualification of the respondent is invalid in view of the judgment of this Court in *Tulsi Baksi & Anr. (Supra)*, they were also entitled to be considered for appointment as Assistant Teachers in Primary Schools without giving weightage to their training qualifications and ignoring sponsoring the names by the employment exchange simply extending the zone of consideration on merit basis. The same has not affected the rights of the petitioners. The

action had been taken in terms of the order of this Court and the petitioners cannot complaint of violation of any of their rights.

7. The learned Single Judge by the order impugned in F.M.A. 701 of 2010 decided W.P. 19255 (W) of 2009 along with W.P. 25714 (W) of 2006 and W.P. 23920 (W) of 2006 as also several connected applications by a common order dismissed the writ applications. Being aggrieved with the order of dismissal the appeal being F.M.A. 701 of 2010 has been preferred.

8. Mr. Jayanta Mitra, learned senior advocate appearing on behalf of the appellants in F.M.A. 701 of 2010 and Mr. Kishore Dutta, learned advocate appearing in support of the petitioners/appellants have submitted that the candidature of those incumbents, who are holding the certificates from the unrecognized institutions, could not have been considered. Even the names of those incumbents were sponsored as trained candidates, who were not holding the requisite certificates from the recognised institutions. The action is, thus, discriminatory and bad in law. The selection process which was initiated in the year 2006 was required to be governed by the unamended rules. The decision of this Court in the case of Tushi Baksi (supra) has also been relied upon. The candidature of the candidates, who were wrongly sponsored by the employment exchange, has been illegally considered. The names of the petitioners were registered with the employment exchange, but they were untrained candidates as stated by the learned advocates appearing for the writ petitioners/appellants.

9. Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader as also the learned advocates appearing for the different District Primary School Councils have submitted that the action has been taken in accordance with law and as a matter of fact the petitioners/appellants could not be said to have any grievance when they could not succeed in the written examination held for the vacancies of the year 2006. They have not raised any grievance with respect to the Amended Recruitment Rules, 2009. They have not also questioned the advertisement published in 2009. Thus, there is no merit in their case. The decision of this court in the case of Tushi Baksi & anr. vs. State of West Bengal & ors. has been duly observed and implemented. No illegality has been committed in the selection process. The writ petitions, in fact, have become infructuous in view of the implementation of the interim order, which was passed in the aforesaid matter. The petitioners/appellants are themselves untrained teachers and, thus, cannot question the selection process by way of a written examination in which they could not succeed.

10. Before dealing with the submissions raised by the learned advocates appearing on behalf of the writ petitioners/appellants, it would be appropriate to note the provisions contained in the rules. In exercise of the powers conferred under sections 106(1) and 106(2)(k) read with section 60(1)(k) of the West Bengal Primary Education Act, 1973, the West Bengal Primary School Teachers Recruitment Rules, 2001 was framed. Rule 6 of the said Rules of 2001 deals with the eligibility criteria. The main provisions of Rule 6 are as follows:-

R. 6(2). The educational qualifications for the post of a teacher shall be--

(a) School Final/Madhyamik pass under the West Bengal Board of Secondary Education of equivalent with training or

(b) Erstwhile Higher Secondary pass (XI class) under the West Bengal Board of Secondary Education, or equivalent with training.

(3) Training qualification may not be compulsory for appointment on compassionate ground against the vacancies prescribed under clause (b) of sub-rule (2) of rule 8.

11. Rule 9 of the Rules of 2001 deals with the selection process for which Rule 9(2)(b) is relevant and the same reads as follows:-

9(2)(b) Out of 100 marks, 90 marks shall be computed and allotted in the following manner:

The remaining 10 (ten) marks shall be allotted for written test.

12. Initially, the training was necessary along with the educational qualifications. However, the training part was given a go bye by way of amendment made in the rules on December 16, 2005. The words "with training" have been omitted from Rule 6(2) with effect from December 16, 2005.

13. Thereafter, in the year 2009, another amendment was made. The 22 marks allotted for training prescribed in rule 9 of the said Rules of 2001 were also deleted. After the amendment made in the year 2009, Rule 6 of the Rules of 2001 reads as under:-

6. Qualification.--(1) No person shall be appointed by the Council as a teacher unless he--

(a) is a citizen of India;

(b) has completed the age of 18 years and has not completed the age of 40 years on the 1st January of the year of publication of employment notification:

Provided that the maximum age limit of the candidates, whose name have been sponsored by the employment exchange between the periods of 1st January, 2003 to 31st December, 2008 by virtue of the requisition made by the respective Councils against the vacancies notified during that period but could not be considered for the reasons of non-completion of the recruitment by the Councils due to pendency of Court cases with respect to such recruitment, shall be relaxed for such period by which such recruitment process have been kept pending.

(c) possess the pass certificate in the School Final/Madhyamik examination, or erstwhile Higher Secondary Pas (XI class) examination, under the West Bengal Board of Secondary Education or its equivalent qualification.

(2) The Government shall have power to decide the equivalence of the qualification referred to in clause ? of sub-rule (1) and its decision thereon shall be final.

(3) For removal of doubt it is hereby declared that no extra marks shall be given for higher academic qualification at the time of selection of a teacher.

14. Rule 9 of the Rules of 2001 dealing with the selection process has also undergone an amendment on 2009. Out of total marks, the marks which were awarded for training have also been deleted. Rule 9(2) of the amended rules reads as follows:-

9(2) Total marks for assessment of a candidate shall be of 50 marks as under:-

15. The various district primary school councils issued advertisement on August 30, 2009 in the newspaper in which the amended qualification was provided and as the selection process for the year 2006 could not be completed by the time the amendment was made in the Rules. A provision was made in the amended rule 6 itself while prescribing the age relaxation to be given to the candidates, whose names have been sponsored by the employment exchange between January 1, 2003 and December 31, 2008 by virtue of the requisition made by the respective councils against the vacancies notified by that period but could not be considered for the reasons of non-completion of the recruitment by the councils due to pendency of the Court cases with respect to such recruitment, maximum age limit shall be relaxed for such period by which such recruitment process has been kept pending. Similar provisions were made in the advertisement issued by giving age relaxation to the candidates, whose names have been sponsored in the year 2006.

16. However, as the interim order which was passed by a learned Single Judge of this Court, which was later on made final also, the State Government and various district primary school councils in the State have followed the same in conducting different written examinations for the vacancies of the years 2006 and 2009.

17. The petitioners, who are untrained candidates and in fact whose names have been sponsored by the employment exchange, cannot raise any grievance as they have not been able to clear the written test, which was held in the year 2006. It is not the case of the writ petitioners/appellants that the candidates for the year 2006, whose names were wrongly sponsored on the basis of the certificates obtained from the unrecognized institutions, had been given the benefit of 22 marks meant for trained candidates. It is submitted by Mr. Kishore Dutta, learned advocate appearing for the petitioners, that no such benefit has been given to those candidates. Thus, the petitioners having succeeded in their prayer that the recruitment process for the year 2006 should be held separately and should not be considered together with the recruitment process for vacancies of the year 2009. They cannot now come up and allege violation of their rights in aforesaid manner.

18. When we test the submissions raised in petition with respect to the advertisement issued in 2009 and relaxation which had been given, in our opinion, as the earlier selection process had not been completed, it was open to the State Government to issue fresh advertisement as per amendment made in 2009 by giving relaxation of the age limit to the incumbents, whose names have been sponsored by the employment exchange for the vacancies of the year 2006. However, the interim order passed in the matters also attained finality, and the appointments were made throughout the State acting upon order of this Court aforesaid submission with which petitioners came to Courts stands satisfied, we are not inclined to disturb the aforesaid course and the appointments made nor that has been questioned before us. The incumbents, who have been given appointment, are also not before us.

19. As a matter of fact the petitioners have succeeded in their prayer that recruitment process for the year 2006 should be taken to logical conclusion without considering advertisement of 2009 and the amendment made in the rules in 2009.

20. It is also apparent that the rule in the matter of sponsoring the names of the candidates only from the employment exchange has been held to be ultra vires by a division bench of this Court in the case of Biswajit Das Vs. State of West Bengal, . In the said case, various decisions of the Hon'ble Supreme Court, namely, Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, ; Union of India (UOI) and Others Vs. N. Hargopal and Others, Arun Kumar Nayak Vs. Union of India (UOI) and Others, and Union of India (UOI) and Others Vs. Miss Pritilata Nanda, as also various other decisions of this Court have been taken into consideration.

21. In the case of Biswajit Das & ors., same procedure was not interfered with by the division bench of this Court, though the rule with respect to consideration of names of those candidates sponsored by employment exchange under Recruitment Rules of 2001 was held to be ultra vires. Merely by the consideration of candidature of those incumbents, who were not holding the requisite certificates from the recognised institutions as marks of trained candidates have not been awarded to them and once written examination had been held, it cannot be said that the petitioners have been subjected to discrimination and their candidature could not have been considered.

22. It was submitted by Mr. Rabindra Nath Paul, learned advocate appearing in support of the writ petition being W.P. 23053 (W) of 2010 appearing as item No. 66 of today's list, that his client was not called for in the interview. In our opinion merely the fact that the petitioner was not called for in the interview will not make any difference case stands on similar footing on the aforesaid reasons.

23. The petitioners/appellants themselves are untrained candidates and they could not clear written examinations or failed to qualify for interview and in view of the decision of this Court in Biswajit Das (supra) in which the appointments

given and selection held on similar manner with respect to the vacancies which arose in 2006 and 2009 were not interfered with, we are not inclined to do so in these matters.

24. No other argument was raised on behalf of the parties before us.

25. Some of the persons have come before us by way of filing interlocutory applications in connection with the writ petitions and the appeals claiming that they are similarly circumstanced with the petitioners/appellants. Their cases are also governed by the judgment and order passed by us as aforesaid.

26. In view of the aforesaid decision, we find no merits in the writ petitions and appeals filed in connection with the matter in question and those are hereby dismissed.

27. There will be, however, no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the appearing parties upon compliance of necessary formalities.