

(2010) 03 CAL CK 0054
In the Calcutta High Court
Case No : F.M.A. 824 of 2009

Dr. Medha Kumari

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Citation : (2010) 03 CAL CK 0054

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Kishore Kumar Prasad, J

Bench : Division Bench

Advocate : Moloy Kumar Basu, Prahlad Chandra Ghosh, Kamalesh Bhattacharyya and Subir Hazra, Pulak Ranjan Mondal, for the Appellant;Ashim Kumar Halder and Anirban Saha, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—The appellant herein was appointed in Samsi College, Malda as Lecturer in Sanskrit pursuant to the appointment letter dated 16th July, 2008 and till date serving the said college as Lecturer.

2. In response to the advertisement No. 1/2007 issued by the West Bengal College Service Commission, appellant herein submitted application in prescribed form and manner for recommendation to the post of Lecturer in Sanskrit. Along with the said application form, appellant also submitted her bio-data. In the said bio-data, appellant did not correctly mention the percentage of marks obtained by her in the Higher Secondary Examination.

3. However, it is not in dispute that the appellant is the holder of Master's Degree in Sanskrit and has also obtained Ph.D. Degree in the said subject.

4. The appellant herein undisputedly, fulfilled all the conditions as per the advertisement issued by the West Bengal College Service Commission and, therefore, she was asked to appear at the interview for the purpose of preparation of panel of eligible candidates to the post of Lecturer in Sanskrit. The appellant duly appeared at the interview and was ultimately declared successful.

5. The West Bengal College Service Commission recommended the name of the appellant for appointment to the post of Lecturer in Sanskrit in Samsi College in the district of Malda. In view of the aforesaid recommendation of the West Bengal College Service Commission, Samsi College authority issued letter of appointment in favour of the appellant and the said appellant thereafter joined as Lecturer in Sanskrit in the said college.

6. Subsequently, the college authority informed the appellant in writing that there has been a disparity of percentage of marks in the Higher Secondary Examination mark sheet and Bio-data issued by the West Bengal College Service Commission and the college has already sent the papers to the said College Service Commission for necessary correction.

7. On 18th August, 2008, a prayer was made by the appellant before the Secretary, West Bengal College Service Commission in writing for correction in the application form with regard to the statement of percentage of marks in the Higher Secondary Examination. The West Bengal College Service Commission by the letter dated 3rd October, 2008 informed the Principal, Samsi College that the recommendation of the appellant for appointment as Lecturer in Sanskrit has been withdrawn.

8. The appellant herein challenged the aforesaid decision of the West Bengal College Service Commission regarding withdrawal of the recommendation by filing a writ petition before this Court which was finally disposed of by the judgment and order under appeal passed by the learned Single Judge.

9. It has been submitted on behalf of the appellant that the West Bengal College Service Commission at the time of interview verified all the original certificates of the said appellant in relation to her academic qualifications and the appellant herein was also asked to fill up the Information Sheet supplied by the said West Bengal College Service Commission wherein the said appellant correctly mentioned the percentage of marks obtained by her in the Higher Secondary Examination. According to the appellant, percentage of marks in the Higher Secondary Examination was erroneously mentioned in the initial Bio-data form submitted by her but the said error was rectified afterwards by mentioning the correct percentage of marks in the Information Sheet subsequently supplied by the West Bengal College Service Commission on the date of interview.

10. The learned Senior Counsel of the appellant submitted that the West Bengal College Service Commission in the Advertisement No. 1/2007 specifically mentioned about the qualifications of the candidates as hereunder:

Qualifications:

(A) General : (i) Consistently good academic record with atleast 55% marks (without any sort of grace or rounding off) or an equivalent grade in the Master's Degree with at least a 2nd Class 3 year Honours Degree in the relevant subject.

Relaxation : A relaxation of 5% from 55% of the marks at Master's Degree Level

is admissible to:

(a) candidates following to SC/ST/PH/VH category;

(b) candidates qualified in JRF examination conducted by UGC/CSIR only prior to 1989.

(ii) Must have qualified the eligibility test for JRF/Lectureship conducted by UGC/CSIR(NET) or UGC accredited State Level Eligibility Test (SLET) conducted by WBCSC. However, candidates who have awarded M.Phil/Ph.D. Degree are exempted from appearing in the NET/SLET.

(iii) Good power of expression in Bengali/Nepali.

11. The learned Senior Counsel of the appellant also submitted that the said appellant did not supply any wrong information with regard to the percentage of marks in respect of the essential qualifications i.e. Honours Degree and Master's Degree. It is also not in dispute that the appellant had obtained Ph.D. Degree.

12. Mr. Moloy Kr. Basu, learned Senior Counsel of the appellant submitted that the said appellant never misled the selectors at the time of interview and the West Bengal College Service Commission also could not be misled in view of mentioning wrong percentage of marks in the initial Bio-data form by the said appellant since the same was rectified subsequently by mentioning correct informations in the Information Sheet supplied by the said College Service Commission before holding the actual interview apart from the fact that all original certificates were properly verified by the competent officer of the West Bengal College Service Commission.

13. Mr. Basu further submitted that the percentage of marks of a candidate in the Higher Secondary Examination was not a relevant consideration before the Selectors and, therefore, the appellant herein cannot have any ill-motive to supply any erroneous information with regard to the percentage of marks in respect of the Higher Secondary Examination. Mr. Basu specifically urged before this Court that the marks obtained by the appellant in the Higher Secondary Examination cannot have any bearing with her selection for the post of Lecturer in Sanskrit by the West Bengal College Service Commission since the said appellant is a Ph.D. degree holder.

14. Mr. Pulak Ranjan Mondal, learned Counsel representing the West Bengal College Service Commission authorities, however, submitted that the appellant herein deliberately mentioned wrong percentage of marks in respect of the Higher Secondary Examination in the Bio-data form as a result whereof the Selectors were misled at the time of interview. Mr. Mondal further submitted that in view of mentioning the wrong percentage of marks in the initial Bio-data form, appellant herein was benefited since marks were allotted by the members of the Selection Committee in the interview on the basis of the wrong percentage of marks as disclosed by the appellant in the said Bio-data form. Mr. Mondal further submitted that the said appellant was recommended for the post of Lecturer by

illegally depriving the other candidates. Mr. Mondal also submitted that the interview board did not check up the original certificates and only relied on the initial Bio-data submitted with the application form by the appellant herein.

15. It was submitted by Mr. Mondal that the West Bengal College Service Commission without verifying the original certificates produced at the time of interview recommended the name of the appellant for the post of Lecturer in Sanskrit to the said Samsi College. Mr. Mondal submitted that the appellant herein gave specific declaration in the application form submitted before the West Bengal College Service Commission to the effect that all the particulars and statements made in the attached Bio-data are true to the best of her knowledge and it was also specifically declared by the said appellant in the said application form that in the event of any detection of false/incorrect statements before or after the interview/empanelment/recommendation, the candidature is liable to be cancelled.

16. Referring to the aforesaid declaration of the appellant, learned Counsel representing the West Bengal College Service Commission submitted that the said Commission had rightly withdrawn its earlier recommendation made in favour of the appellant upon detection of the incorrect statements made by the said appellant with regard to the percentage of marks obtained in the Higher Secondary Examination.

17. It is not in dispute that before holding the interview Information Sheet was supplied by the College Service Commission which was duly filled up by the appellant like other candidates and submitted before actual holding of the said interview. It is also not in dispute that pursuant to the call letter issued by the West Bengal College Service Commission, appellant herein produced all the original certificates in relation to her academic qualifications which were duly examined and verified by the competent authority of the West Bengal College Service Commission before the interview.

18. Having heard the learned Counsel of both the parties and considering the available records and specially going through the advertisement notice we find that the percentage of marks in the Higher Secondary Examination was not at all a relevant consideration for recommendation and/or selection of any candidate to the post of Lecturer in Sanskrit.

19. In the present case, the appellant is a Ph.D. degree holder and percentage of marks in the Higher Secondary Examination was not a relevant consideration before the Selection Committee.

20. We are not inclined to accept the contentions made by the learned Counsel of the West Bengal College Service Commission authorities that the original certificates produced by the appellant at the time of interview were not examined by the College Service Commission authorities. We are also unable to accept that the Information Sheet filled up by the appellant was not taken into and the members of the Selection Committee at the time of interview only relied on the

initial Bio-data form submitted by the said.

21. The West Bengal College Service Commission in the call letter issued to the candidate concerned specifically mentioned as hereunder:

N.B. 1) Bring all original certificates /credentials/publications for inspection of the Board.

2) This "Call Letter" is provisional. If any material error/discrepancy or wrong information furnished in/with the Application is detected before or after interview/empanelment, your candidature will be rejected.

22. There is no dispute that in terms of the aforesaid direction, appellant herein produced the original certificates in support of her academic qualifications. Therefore, it cannot be said that the appellant had any intention to misled the selectors. As a matter of fact, the Selectors could not be misled since the original certificates were produced by the appellant like other candidates and the same were duly examined by the competent officer of the West Bengal College Service Commission. Furthermore, the candidature can be rejected in the event any material error or discrepancy or wrong information is detected before or after the interview.

23. In the present case, since percentage of marks in respect of Higher Secondary Examination was not a relevant consideration for the selectors, we are not prepared to accept that any material error has been committed by the appellant in the facts of the present case.

24. It is true that the appellant herein acted in a most casual manner while filling up the initial Bio-data form and thereby committed certain mistakes and/or errors while filling up the Biodata form initially. However, considering the nature of mistakes we have no doubt that the appellant herein had no malafide intention to mislead the West Bengal College Service Commission about her eligibility or credential for the said post of Lecturer in Sanskrit since the percentage of marks in the Higher Secondary Examination was not at all a relevant consideration in view of the admitted fact that the appellant herein is a Ph.D. degree holder.

25. Mr. Mondal, learned Counsel representing the West Bengal College Service Commission also admitted before us that the appellant herein is otherwise eligible for the post of Lecturer.

26. There is no doubt that the appellant herein fulfilled the eligibility criteria in view of obtaining Honours degree/Master's degree apart from holding the Ph.D. degree in the concerned subject which were correctly disclosed by the appellant on the date of interview specially in the Information Sheet. As mentioned earlier, the original mark sheets were also verified by the competent officer of the West Bengal College Service Commission.

27. The members of the Selection Committee must have considered only those records which were relevant for the purpose of selection i.e. the original mark

sheets of Master's Degree and the original certificate in respect of Ph.D. degree. Nothing wrong has been detected with regard to the Master's Degree or Ph.D. degree of the appellant herein.

28. It has also not been demonstrated before us how the appellant herein got any advantage even by mentioning wrong percentage of marks in the Higher Secondary Examination in the initial Bio-data form.

29. The respondents-West Bengal College Service Commission authorities failed to establish that the appellant herein earned any benefit or got any advantage by furnishing erroneous percentage of marks in respect of Higher Secondary Examination in the initial Bio-data form.

30. For the mere casual approach, the appellant herein suffered a lot and we hope and trust that in future, the said appellant will be more cautious and careful. In any event, considering the nature of the error committed by the appellant and further considering the fair conduct of the said appellant in view of correct disclosure of the informations in the Information Sheet submitted before the actual holding of the interview and production of the original mark sheets before holding of the said interview, we are not prepared to accept that the appellant herein with any mala fide intention furnished wrong information in the original Biodata form with regard to percentage of marks specially when we are satisfied that in view of the aforesaid wrong information mentioned in the initial Bio-data form, the appellant herein did not earn any benefit nor there was any scope to earn any benefit.

31. Since the appellant herein is undisputedly qualified and eligible for the post of Lecturer in Sanskrit and by committing the aforesaid unintentional error/mistake with regard to furnishing the wrong percentage of marks in respect of the Higher Secondary Examination did not earn any benefit or deprived the interest of any other candidate, we are not inclined to award severe punishment to the appellant by approving the decision of the West Bengal College Service Commission regarding withdrawal of its earlier recommendation in respect of the appellant herein.

32. For the aforementioned reasons, we do not approve the impugned decision of the West Bengal College Service Commission regarding withdrawal of the recommendation in respect of the appellant herein and quash the said decision as communicated by the Assistant Secretary, West Bengal College Service Commission to the Principal, Samsi College, Malda by the written communication dated 3rd October, 2008. We specifically hold that the recommendation made by the said West Bengal College Service Commission in favour of the appellant for appointment to the post of Lecturer in Sanskrit in Samsi College, Malda stands valid and operative.

33. For the identical reasons, the judgment and order under appeal passed by the learned Single Judge also cannot be sustained and the same are accordingly set aside.

34. In the facts of the present case, there will be, however, no order as to costs.

35. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Kishore Kumar Prasad, J.

36. I agree.