

(2010) 05 CAL CK 0070
In the Calcutta High Court
Case No : W.P.S.T. No. 121 of 2009

Dr. (Professor) Tapan Kumar Biswas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Citation : (2010) 05 CAL CK 0070

Hon'ble Judges : Kalidas Mukherjee, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Moloy Basu, Biswaroop Bhattacharya and Tanmoy Chakraborty, for the Appellant; Chameli Mazumder, Swarup Pani and Amrita Sinha, for the Respondent

Judgement

Ashim Kumar Banerjee J.

1. State wanted to fill up the post of Director, Bangur Institute of Neurology. The State invited applications from the eligible candidates. Altogether eight candidates participated in the selection process. They were-

1. Professor Tapan Kumar Biswas
2. Professor Parimal Tripathi
3. Professor Shyamapada Ghorai
4. Professor Subhas Chandra Mukhopadhyaya
5. Professor Prasanta Kumar Ganguly
6. Professor Shyamal Kumar Das
7. Professor Bhagabati Charan Mohanty
8. Professor Kalyanbrata Bhattacharya

2. Professor Shyamapada Ghorai was selected in the selection process being

successful therein.

3. Being aggrieved, professor Tapan Kumar Biswas, the applicant, above named, approached the State Administrative Tribunal *inter alia* questioning the selection process. The Tribunal vide judgment and order dated September 5, 2008 dismissed the said application. The Tribunal observed that the petitioner did not score any mark regarding second item of the score sheet and regarding item publication of journals the petitioner obtained only 0.5 marks whereas professor Ghorai obtained 14.5. The Tribunal also observed that mere omission in putting signature by the Selection Committee members could not permit the Tribunal to draw any adverse conclusion about the authenticity and transparency of the entire selection process. The Tribunal further observed that there was no reason to share the apprehension of the petitioner that his case was rejected on the ground of bias or any other ground not acceptable in law or equity.

4. Being aggrieved, professor Biswas approached this Court by filing the above writ petition being W.P.S.T. 121 of 2009 which was heard by us on the above mentioned date.

5. Mr. Biswaroop Bhattacharya, learned Counsel, being led by Mr. Moloy Basu, learned senior advocate and being assisted by Shri Tanmoy Chakraborty contended as follows:

i) The Selection Committee adopted a novel procedure of fixing the bench mark after perusing the credentials of all the candidates, such procedure was illegal.

ii) The post attached administrative function, hence publication of journal was not so much important that it would have an edge over the experience of the respective candidates.

iii) The Selection Committee did not have any expert which was a prime necessity in the process of selection.

iv) The Selection Committee was biased from the initiation of the process as would be *ex facie* apparent from the record.

6. Elaborating his argument, Mr. Bhattacharyay contended that the Selection Committee should have adopted a certain procedure to be followed every time when they would select an appropriate candidate for the said post. The records pertaining to the last selection would show that the present Selection Committee deviated from the earlier procedure and that too after considering the credentials of all eligible candidates. Mr. Bhattacharyay further contended that when the selection process started by making publication of notice inviting application for the post from the eligible candidates the selection process was put in motion and the Selection Committee was not authorised to change the selection process in transit which would immensely prejudice the eligible candidates who applied for the said post. Mr. Bhattacharya contended that division of marks was not made known to the candidates either by publication or by any other means and, in any event, such division was fixed after the candidates applied for the said post. Mr.

Bhattacharya prayed for quashing of the order of the Tribunal and interference by this Court in the matter of selection of the private respondent for the post of Director, Bangur Institute of Neurology.

7. In support of his contention Mr. Bhattacharya relied on two decisions, one of the Apex Court being reported in All India Reporter 1984 Supreme Court Page 363 (B.S. Minhas v. Indian Statistical Institute and Ors.) and the other of this Court reported in 2010 1 CHCN 565 (Sanchit Bansal and Anr. v. Joint Admission Board (JAB) and Ors.) Mrs. Chameli Mazumder, learned Counsel being assisted by Ms. Amrita Sinha and Mr. Swaroop Pani appearing for the State Administration while opposing the application contended as follows:

i) The petitioner appeared in the selection process without raising any objection. Hence, he was not entitled to question the selection process.

ii) The petitioner was unsuccessful in this selection process as he could secure seventh position out of eight candidates. Hence, he did not have any locus standi to question the selection process.

8. She prayed for dismissal of the writ petition.

9. In support of her contention Mrs. Mazumder cited the following decisions:

i) Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others,

ii) Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others,

iii) J. Ranga Swamy Vs. Government of Andhra Pradesh and Others,

iv) National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others,

v) Madan Lal and Others Vs. State of Jammu and Kashmir and Others,

vi) The Commissioner, Corporation of Madras Vs. Madras Corporation Teachers' Mandram and others,

vii) Kuldeep Chand Vs. State of H.P. and others,

9. We have considered the rival contentions. We have carefully perused the judgment and order of the Tribunal. We are unable to accept Mrs. Mazumdar's contention to the effect that the petitioner was not entitled to question the selection process in view of his participation. The decisions cited by Mrs. Mazumder in the case of Om Prakash Shukla (Supra) and Madan Lal (Supra) would not be applicable herein. In the present case, admittedly the candidates were not informed about the procedure to be followed by the Selection Committee. The procedure adopted by the Selection Committee appears from the undated minutes of the meeting which selected professor Ghorai appearing at pages 80-81 of this petition. It would thus show that the candidates did not have any idea either about the division of marks or the detailed procedure to be followed by this Selection Committee. The petitioner came to know about such

procedure once he was served with the copy of the minutes of the proceeding on being asked for it after the selection was held. Hence, he was entitled to challenge the selection process and his right to challenge was justified. On that score we respectfully differ with the Tribunal.

10. We, now intend to deal with the first issue raised by professor Biswas. The Medical Council of India prescribed eligible qualification for appointment of teacher in medical institutions. In super speciality stream where teaching is extended to the students at the post-graduate level the faculty members should possess eight years" teaching experience out of which at least five years" teaching experience as Assistant Professor/Lecturer gained after obtaining Post Graduate degree to become a post-graduate teacher. The Bangur Institute of Neurology was a super speciality institution undertaking various post-graduate courses in Neurology. Its Director must have appropriate qualifications required therefore.

11. We have carefully examined the last selection process held in 2003 when the first Director of the Institute was selected. From the xerox copy of the note sheet it appears that a list of ten professors was prepared noting respective dates since when they were holding the post of professors on regular/ad hoc basis. Considering such list Dr. Trisitananda Roy was appointed as Director vide order dated July 9, 2003. After his selection the selection process started as would appear from the note sheet. The Selection Committee was constituted. Initially it was suggested that the said committee would have an expert. Such proposal was negated and a Selection Committee was constituted having Director Medical Education, Director, Health Service and Health Secretary. The Selection Committee made a division of marks which was as follows:

i) Tenure of professorship @ one mark per year - 20 marks ii) Papers published in National/International Journals @ two marks per year - 50 marks iii) Total period of teaching experience @ one mark per year - 30 marks
----- Total - 100

12. The credentials of the candidates were examined and professor Roy was selected and he was given ex post facto approval by the Chief Minister. This novel procedure was unheard of. Be that as it may, nobody challenged such procedure. Doctor Roy completed his tenure when he retired from service. Both professor Ghorai and professor Biswas were also considered in 2003 when doctor Roy was selected. This time out of those ten candidates, six candidates applied for the post including two new candidates being professor Bhagabati Charan Mohanty and Professor Kalyanbrata Bhattacharya. The credentials of all six candidates were already had with the authority. Their updated credentials were filed along with their respective applications. The new two entrants also filed application. The Selection Committee was constituted consisting of Director, Health Service; Director, Medical Education and the Health Secretary. This time also, no expert was called to participate in the selection process. In our view, since the State was selecting appropriate person for an important post State should have been

cautious and extra cautious if possible, in conducting the selection process not only by fair way but also demonstrating that it was done in a fair manner having a complete transparency in that regard.

13. If we look to the recruitment notice we would find that the State intended to fill up the post in terms of the circular dated July 8, 2003. The said circular merely provided the recruitment criteria and did not speak of the selection process which would be adopted for the said purpose.

14. The decision in the case of Om Prakash Shukla (Supra) was cited by Mrs. Mazumdar to support her contention that the petition was not maintainable as the petitioner participated in the selection process and then questioned the selection process. Similarly in the decision in the case of Madanlal and Ors. (Supra), the apex Court observed that merely on the basis of the petitioner's apprehension or suspicion that they were given deliberately less marks would not vitiate the process of assessment. In our view, the situation in the case of Madanlal (Supra) or Om Prakash Shukla (Supra) was not similar to the present one. In the instant case, the petitioner did not know about the selection process or the division of marks until he was favoured with a copy of the minutes of the proceeding. Hence, his challenge to the said process even after the selection was over could not be brushed aside relying on the said two Apex Court decisions referred to above. Rather the Division Bench decision in the case of Sanchit Bansal (Supra) would be applicable. Paragraph 11.1.1 being relevant herein is quoted below :

We have carefully perused the rival stand of the parties on the issue. We have also carefully examined the reports. We are not fully sure why the Board adopted a difficult method instead of a simple method that was adopted in subsequent years. In the subsequent years the total marks obtained by the students divided by their numbers helped the Board to get the mean marks. That was done after eliminating the negative markings. After the mean mark was found out standard deviation was subtracted and the result was rounded to the nearest integer to fix the cut-off mark. This procedure was also known earlier as would appear from page 304. This procedure was followed in the subsequent years i.e. in 2007 and 2008. Why in 2006 a difficult procedure was adopted, we do not know. The learned Judge observed that 11 the students having participated in the selection process could not have any grievance. With deepest regard we have for His Lordship, we wish to join issue. When the candidates sat for the examination the cut-off mark was not fixed. Hence, it could not be made known to the students before hand. The "declaration" referred to by His Lordship cannot preempt a candidate to question the preparation of the merit list by fixing a particular method after the examination was over, if the student is otherwise entitled to.

15. The decision in the case of Kuldip Chand (Supra) and Commissioner, Corporation of Madras (Supra) were cited to support the contention that the administrative decision of the State should not be interfered with by the Court. Such abstract proposition of law is prevalent for a long time and is beyond any

criticism. We are only to find out whether such administrative decision was taken in a process which was fair and transparent and free from any element of bias. On perusal of the 2003 selection process we have already observed as to how the selection process was had. However, such selection process was not under challenge. Hence, we do not wish to deliberate any further. This time also the authority adopted almost identical procedure which was unknown in law and contrary to the principle laid down by the Court of law in the field of administrative law.

16. If we look to the 2008 selection process which is the subject matter of the present controversy we would find that the proforma of the application as contained in the circular for appointment to the post of Director prescribed that the authority wanted to have the academic records of the candidate as well as the details of the experience as medical teacher in medical teaching institutions. It also required details of publications in journals at the national/international level. Clause 14 inter alia provides that Clinical, Managerial/Administrative service and research performance during last two years should be given. However no indication was given as to how those details would be considered by the Selection Committee by appropriate assessment of such credentials. If we look to the minutes of the proceeding appearing at page 80-81 we would find that on an unspecified date the Selection Committee considered the candidates. The Selection Committee observed that as per "existing terms and conditions" in terms of circular dated July 8, 2003 the post would be filled up. We have already observed that the circular dated July 8, 2003 did not prescribe any procedure and/or criteria. The Selection Committee fixed the criteria as under-

Criteria

Marks

Academic career including chances lost in postgraduate / postdoctoral qualifications

15

Experience as Professor or Head of a department

10

Research Publication in indexed journals

15

Total

40

17. Before fixing the criteria the Selection Committee already considered the candidature of eight professors listed therein. Such method is contrary to the well-settled principle of fair play. The selection committee had all credentials with them. They must have considered those and thereafter fixed the criteria to have

the desired result. In this regard, we may add that the Selection Committee did not follow the criteria prescribed in 2003. Had that criteria been followed we would not have made any remark on that score. It is true that applying the criteria professor Biswas obtained seventh rank out of eight candidates meaning thereby he was hopelessly at the bottom of the list. As observed by us hereinbefore the process lacked transparency. It is not important whether professor Biswas was selected by the process or not. It may not also be important who would be selected for the said post. What is important is whether the decision making process was transparent and free from all element of bias and/or arbitrariness. We are constrained to say that such test was proved negative.

18. Question thus comes is what relief professor Biswas is entitled to. From the score sheet it appears that professor Biswas was at the bottom of the list. Even we apply the 2003 criteria he would not be in a position to come within the zone of consideration. Hence, we do not wish to set aside the appointment of professor Ghorai at the instance of professor Biswas. At the same time we cannot be a mere on looker when we find patent illegality and/or irregularity committed by the State Administration while conducting the selection process.

19. We direct the State Administration to constitute Selection Committee in the matter of filling up vacancy of such high important portfolios. Such committee must have an expert on the subject. The Administration and/or the Selection Committee must declare details of the process including fixing of bench mark as also division of marks in each and every criteria before hand so that the candidates must know before they apply as to how they would be considered for appointment.

20. In course of hearing Mr. Bhattacharya contended that had it been known to professor Biswas that publication of journal would have a final say in the matter he would think twice before making such application and getting it rejected on that ground. We fully appreciate and share the agony of Mr. Bhattacharyay. Distinguished professors applying for a high post should be given some protection so that they are not ridiculed in the process of selection. When candidates are selected solely on the basis of their credentials they must know the details of the division of markings before hand to avoid unnecessary embarrassment. The State Administration must take note of this observation and must see that it is not repeated in future.

21. With these observations we dispose of this application without any order as to costs.

22. Urgent xerox certified copy would be given to the parties, if applied for.

Kalidas Mukherjee, J.

23. I agree.