
(2019) 08 CAL CK 0220

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 1149 (W) Of 2018

Dr. Shanta Moulik

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0220

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Pratik Dhar, Vivekananda Bose, Arka Kumar Nag, Pulak Ranjan Mondal, Bandana Das, Subhranshu Panda, Hirak Kumar Mitra, Soumya Majumder, S. Chatterjee, M. K. Seal,, Abhrotosh Majumdar, T. M. Siddiqui,, Nilotpal Chatterjee

Judgement

Protik Prakash Banerjee, J

The State of West Bengal, represented by the learned Additional Advocate General, submits that there is a report on record signed by the Hon'ble Vice-Chancellor of the West Bengal University of Teachers' Training Education, Planning and Administration, the Controller of Examination, WBCSC and Senior Law Officer of WBCSC, which is accepted by the State. According to the said report the respondent no.13 has submitted false information and due to human error the College Service Commission recommended the respondent no. 13 for the post of Principal. Learned Additional Advocate General also submits that the only responsibility for the State of West Bengal had in this matter was verification of the documents, but they were bound by the recommendation of the Commission and could not asses independently the merits of the candidates or their recommendations. He very rightly points out that he has relied upon the report as annexed to the exception taken by the respondent no.13. He also submits on the question of law relating to an information in the nature of quo warranto.

Mr. Majumder also submits that so far as the allegation that the report was

prepared by the DPI without any direction by the Court has been made without considering the factual aspect in the case once the Commission had given a report to the State of West Bengal, the Director of Public Instructions had no option but to bring it before the Court for the interest of transparency. I accept such submission. At any event, since an exception has been taken to the report by the respondent no.13 and the Court has considered the said report along with the exception, this may not be a ground to invalidate the report.

Mr. Pulak Ranjan Mondal, learned advocate commences his submission on behalf of the respondent nos. 5 to 7/College Service Commission. He has two limbs of submissions - one is on the fact relating to liability of the respondent no.13. He very fairly admits that in law the respondent no. 13 did not have the eligibility criteria to have applied for the post of Principal with those to be recommended for the post. Mr. Mondal further submits that it is because of human error that this has happened. He has also produced before me a report which was forwarded to the Director of Public Instructions by a letter dated October 24, 2017 which is the basis of the report filed by the Director of Public Instructions and which has already been made a part of the records and has been responded to by the respondent no.13 by way of an exception. The exception to the report taken by the respondent no.13 also discloses this report dated October 24, 2017 from page 12 onwards. This report has been signed by Professor Dr. Mita Banerjee, Dr. Ramapada Bera and Sri Deb Kumar Acharya being the Vice-Chancellor of West Bengal University of Teachers' Training Education, Planning and Administration, the Controller of Examination of the College Service Commission and the Senior Law Officer of the College Service Commission, respectively. In the said reports furnishing of false information by the respondent no.13 have been clearly mentioned along with the case of human error on the part of the respondent/Commission. It is true that in the affidavit in opposition filed on behalf of the Commission the same Senior Law Officer has maintained conspicuous silence about the finding of false allegation by the respondent no. 13 though he has been forced to admit at paragraph 13 that the respondent no.13 did not disclose true percentage marks which was obtained by her in E. ed. Examination and that she did not obtain the Masters in Education degree before filing the application in terms of the advertisement. However, the case of human error on the part of the Commission has been affirmed on oath in the affidavit in opposition. On the question of maintainability of the writ petition a writ of or in the nature of quo warranto Mr. Mondal submits that at paragraph 3 of the affidavit in opposition he has pleaded how the writ petitioner did not apply for the post of Principal even though she was the senior most whole time teacher of Nandadulal Bose B.T. College. He submits that she is not a person aggrieved to enable her to move this Hon'ble Court and thus it is to be deemed that she has no locus to move any writ petition far less quo warranto. In addition he submits that in the event that the Court holds that any information in the nature of quo warranto does not require strict interpretation of the rules of locus-standi in that case he will point out that the admitted violations are of the eligibility criteria of

advertisement and not statute. He submits that only if the qualifications are statutory then any information in the nature of quo warranto arise. He does not rely upon any further judgment but submits that the judgments relied upon by the writ petitioner in their true and proper perspective would support his case.

Mr. Mitra, learned senior advocate appearing on behalf of the respondent No. 13 commences his submission today. He made a two-fold submission. The first limb of submission is that till now neither the Commission nor the petitioner has placed the qualifications of the advertisement in their true perspective. According to him, the qualifications admit the modification by asterisk such that the requirement of 55% to a master degree in Education is qualified by the condition that the relaxation of 5% from 55% to 50% is admissible. He submits that the Form submitted at page 58 of the affidavit indicates that his client has honestly disclosed that she had B.Ed. percentage of marks 54.67 and that the M.Ed was of 55.13% and therefore, even after this it cannot be said that she furnished false information. He continues to draw my attention to the time line of the litigation and the strange incidents of volte face committed by the commission which he alleges was due to the influence by the petitioner who has participated all along in the selection process and was in fact, teacher in charge of the college in question and, therefore, had complete knowledge of the entire proceeding. Despite the aforesaid in respect of the appointment made in 2015 the present petition was not taken out before 2018 and his representation appears to have been made in 2017. Though the delay is not fatal to the application for information in the nature of quo warranto he submits that this sheds some light on the conduct of the petitioner and that the things are not as transparent as they are made out to be.

On a very fundamental aspect Mr. Mitra has quoted the judgment in the case of Sashi Bhusan Ray vs. Pramathanath Banerjee and Others reported in 72 CWN 50 . In this decision Their Lordships of the Hon'ble Division Bench have been pleased to hold as follows:

"41. What we have to determine in this application is whether the office of the Principal of the University Law College is a public office. Mr. N.C. Sen for the petitioner, submits that the Calcutta University is imparting education with State aid. One of the functions of the Government therefore, has been delegated to the University. And any officer under the University is a public officer. This argument appears to be far fetched. It does not seem to us that the office of the Principal of the University Law College involves a delegation of any of the solemn functions of Government either executive or legislative or judicial to be exercised by the Principal for public benefit. The Principal of the Law College is the head of an institution maintained, as we shall see later, by the Calcutta University and engaged in imparting legal education to those who are the students of that college. He may have administrative and pedagogic duties to be discharged in the interest of the students of his college; but we do not see how those duties can be said to be the duties of a public nature which Ferris has hinted at in the

passage quoted above. If there is failure or neglect on his part to perform his duties, his students or their guardians and in some cases even the staff of the college may be affected; but the public as such are not interested in the due observance of the obligations of his employment. In any event, the interest of the public, if any, is so remote that his office does not become a "public office" as explained by Ferris. From this point of view we are unable to hold that the Principal of the Law College is a public officer vested with any portion of the sovereign functions of the Government to be exercised by him for public benefit. In the premises, we are of opinion that a writ in the nature of Quo Warranto does not lie at the instance of a private relator in regard to the office of the Principal of the University College Law."

If the position of the principal of a college is not held to be public office and if the Division Bench has been pleased to hold that a writ in the nature of quo warranto does not lie at the instance of a private relator in regard to the said office despite after the University having been established by a statute and despite the statutory conditions including those stipulated by the University Grants Commission and the regulation of the College Service Commission are involved naturally no information in the nature of quo waranto is also maintainable. If I accept this submission of the respondent No. 13 then the petition would fail as a whole. Therefore, I have invited him to pause at this stage so that I can hear the petitioner on this question. Mr. Mitra however, reiterates he has not completed his submissions. But he has accepted my suggestion to pause at this stage because if this preliminary issue is decided in favour of his client, no more submission on behalf of his client may be required.

The matter shall appear on August 29, 2019 at 2 P.M. for Mr. Dhar, learned counsel appearing for the petitioner to respond to the preliminary issue whether any information in the nature of quo warranto lies against the office of the principal of the college.