

(2011) 11 CAL CK 0080
In the Calcutta High Court
Case No : Writ Petition 18455 (W) of 2009

Ferhana Begum

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 11 CAL CK 0080

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Tapabrata Chakraborty and Mr. Subir Hazra, for the Appellant; Ekramul Bari, Shamimul Bari, K.M. Hossain For Respondent No. 7, Mr. Saibal Acharya For Respondents No. 4 and 5, Mr. Kamalesh Bhattacharya and Ms. Bratati Roy Chowdhury For State, for the Respondent

Judgement

Hon"ble Justice Harish Tandon

1. The petitioner has assailed the decision of the District Project Officer dated 23rd September 2009 by which engagement of the petitioner as Additional Para teacher was cancelled and the private respondent was directed to be engaged to such post.
2. Pursuant to the advertisement, inviting application from the aspirants for engagement to the post of Additional Para Teacher in Sayed Kulut Adarsha Vidyapith (Primary School), the petitioner and the private respondent, along with other aspirants, applied before the concerned authority. One of the eligibility criteria, as enshrined in the said publication, is that the aspirant should be a resident of the same village and/or the same Village Education Committee. It is further provided that in the event suitable candidates are not found from the said village and/or the Village Education Committee, the candidates of the adjoining village and/or the Village Education Committee shall be considered.
3. Last date of submission of application was also fixed by the Selection

Committee. One of the clauses of the said publication provides for submission of residential certificate, educational qualification and age certificate along with the application by the aspirants.

4. Admittedly, eight candidates applied for such post but only three candidates turned up and participated in the interview which was held on 4th October 2004.

5. Selection Committee, thereafter, prepared a panel where the private respondent was figured in first position and the petitioner was placed in the second position.

6. According to the petitioner, an objection was raised for inclusion of the name of the private respondent as the first empanelled candidate as she did not submit the residential certificate along with her application.

7. It is further contended that the Assistant Inspector of Schools, after hearing the petitioner, the private respondent as well as the Head Teacher of the said School, recasted the panel and approved the same wherein the petitioner figured as the first empanelled candidate. It is undisputed that the petitioner was, thereafter, engaged as Additional Para Teacher in the said School.

8. Thereafter, the private respondent filed objection against the approval of the said panel but the said objection was not initially considered by the District Project Officer which constrained her to move before this Court by filing a writ petition, being W.P. 8076 (W) of 2006, which was disposed of with a direction upon the District Project Officer to consider the same within a stipulated period.

9. The District Project Officer, by the impugned decision, has cancelled the engagement of the petitioner and directed the private respondent to be engaged to such post.

10. Mr. Chakraborty, learned Advocate appearing for the petitioner, submits that power to review germinates from statutory rules permitting administrative authority to review and/or revise its decision but the administrative authority cannot suo motu review its own order and/or decision in absence of conferment of any such power to review. In other words; he tried to contend that review is a creature of a statute; unless the same is provided, the authority cannot assume review jurisdiction on its own. He further submits that the life span of a panel expires the moment appointment is made and the authority cannot recall the said panel and recast the same. He strenuously argues that if eligibility criteria is provided in the publication, the same is to be strictly adhered to and non compliance thereof would render rejection of the candidature of the applicant.

11. Lastly he contends that the eligibility criteria, as enshrined in the said publication, must exist as on the date of submission of the application and not subsequent thereto. In support of the aforesaid contentions, following judgments have been relied upon by Mr. Chakraborty :

(1) State of Uttar Pradesh Vs. Vijay Kumar Misra,

(2) Shankar K. Mandal and Others Vs. State of Bihar and Others,

(3) Ashok Kumar Sonkar -vs- Union of India & Others, reported in 2007 (3) Supreme 956

(4) Subhendu Kundu -vs- State of West Bengal & Others, reported in 2010 CWN 638.

12. Mr. Shamim ul Bari, learned Advocate appearing for the private respondent, submits that the District Project Officer, upon finding illegality committed while recasting the panel, cancelled the said panel and has found the private respondent to be the eligible candidate for the post of Additional Para Teacher. He further submits that the first panel was cancelled on the basis of voters' list produced by the petitioner where the name of the private respondent was deliberately and consciously suppressed; in other words, he tried to contend that the voters' list, which was the basis of cancellation of the first panel, was tampered by the petitioner.

13. He submits that a beneficiary to a fraud should not be encouraged by the Court as fraud vitiates all solemn action and places reliance upon judgments of the Apex Court in the case of Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, and Bank of India and Another Vs. Avinash D. Mandivikar and Others,

14. Lastly he contends that the District Project Officer passed the impugned order on the basis of the direction of this Court and not suo motu, as has been contended by the petitioner.

15. Having considered the respective submissions, it is undisputed that in the first panel, prepared by the Selection Committee, the private respondent figured as the first empanelled candidate and the petitioner was placed in the second position. The Assistant Inspector of Schools, as it appears from the submission of the parties before me, recasted the panel as the private respondent did not submit the residential certificate at the time of submitting her application before the Selection Committee.

16. According to the private respondent, her application was accepted by the Selection Committee, which obviously lead to an inference that the application in all respect was in proper form otherwise the application would have been rejected.

17. The dispute which emerges is whether the private respondent submitted her residential certificate along with her application or not. This is essentially a question of fact which requires an elaborate enquiry and investigation.

18. On perusal of the order passed by this Court in a writ petition instituted by the private respondent, it appears that consideration was directed on the allegation that a less meritorious candidate has been appointed by the Selection Committee.

19. There is no dispute with regard to the proposition that review is a creature of

a statute, unless there is conferment of such power, the authorities should not review its own decision. But that does not mean that the administrative authorities are denuded of their power to correct their mistake, if detected, at a later point of time. However, in this case the District Project Officer considered the issue in terms of the order passed by this Court in the writ petition filed by the private respondent and not suo motu. Thus, the point taken by Mr. Chakraborty that the District Project Officer should not have considered the objection of the private respondent in absence of power to review, is not sustainable.

20. There is no quarrel to the proposition that fraud vitiates all solemn action and beneficiary to such fraud is not entitled to claim any right and/or benefit obtained by practicing fraud. What the private respondent is now trying to contend is that she was not given an opportunity to look at the voters' list submitted by the petitioner before the Assistant Inspector of Schools at the time of cancelling the first panel. Person alleging fraud cannot escape from his responsibility of narrating the particulars of the fraud as the same has serious consequences. I am afraid, that the private respondent has narrated any particulars relating to any fraud in her pleadings. This Court has noticed that a direction was given for consideration of the representation in a writ petition filed by the private respondent as the private respondent, being a better candidate, has been excluded from being appointed as Additional Para Teacher. It would be profitable to quote the order passed by this Court in an earlier writ petition, which runs thus :

The writ petition is disposed of directing the District Project Officer, Murshidabad to look into the petitioner's grievances that the candidate who was selected for the post of para teacher in the institute in question was admittedly a less meritorious candidate and that according to the rules and regulations governing the selection the selection committee was to select the candidate better in terms of academic results. After examining the allegations and making necessary inquiry and hearing all concerned including the petitioner the district project officer shall give an appropriate decision regarding the allegations within eight weeks from the date of communication of this order to him. The decision shall be communicated to all concerned without any delay. There shall be no order for costs.

21. Thus, this Court directed the District Project Officer to examine the allegations, after making necessary enquiry and also upon giving an opportunity of hearing to all the concerned, within the stipulated period.

22. The purport of the order, as it appears, was that the District Project Officer was directed to consider all the allegations which have been levelled by the affected candidates, including the point whether the private respondent submitted the residential certificate at the time of submission of her application as well as the point whether the less meritorious candidate has been appointed to the exclusion of the better candidate. The Apex Court in the case of Ashok

Kumar Sonkar (supra) held that requisite educational qualification must exist as on the date of application and acquisition of qualification, subsequent to the cut-off date, does not entitle a candidate to be considered for the post. There is no dispute with regard to the educational qualification of either the parties.

23. The dispute hinges on whether the private respondent submitted the residential certificate along with her application. If a particular criterion is provided for considering the candidature of the aspirants then such criterion is to be adhered to and any departure therefrom would render the process unsustainable and liable to be cancelled.

24. As already indicated, the question of non-submission of residential certificate is essentially a question of fact and the Court, in exercise of its judicial power under Article 226 of the Constitution, cannot reappraise such factual disputes. It is further seen from the impugned decision that the District Project Officer has not considered such aspect; at least it does not reflect from the said decision that the District Project Officer has come to a positive finding that the private respondent submitted the residential certificate along with her application. Operative portion of the impugned order of the District Project Officer is quoted below, which reads thus:

After hearing all the parties and verifying all relevant papers as produced by the parties and after making a spot enquiry it is found that Safiun Nessa Begum is a genuine candidate. Not only that a hearing was held on 13-01-2006 in the office of District Project Officer, Sarva Shiksha Mission, Murshidabad on the basis of complaint lodged by Ferhana Begum and the said hearing was taken by Assistant Inspector of Schools (Secondary Education). When after hearing he cancelled the candidature of Safiun Nessa Begum the instant petitioner. However, after hearing today the panel be recast after considering the candidature of Safiun Nessa Begum and the Secretary of concerned VEC is hereby instructed to engage 1st empanelled candidate of the recast panel in place of Ferhana Begum within ten working days and send back a compliance report within seven days thereafter. The recast panel is enclosed herewith. Thus the matter is disposed of and all concerned are informed accordingly.

25. Therefore, this Court is of the opinion that the District Project Officer should reconsider the issue as to whether the private respondent submitted the residential certificate along with her application and whether a less meritorious candidate has been appointed to the exclusion of the better candidate. Such consideration shall be completed within six weeks from the date of communication of this order.

26. It has been informed that both the petitioner and the private respondent are working in the said School, although it has been submitted by the private respondent that she is not getting any honorarium and/or remuneration even after rendering service. Let such position be maintained till a final decision is taken by the District Project Officer.

27. The impugned decision is, thus, set aside in the light of the observations made hereinabove.

28. The writ application is disposed of. However, there will be no order as to costs.

29. Urgent photostat certified copy be supplied to the parties, if applied for, on priority basis.