

(2009) 05 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 3919 (W) of 2009

Gautam Chandra Ghosh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2009) 3 CALLT 522

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Anjan Bhattacharya, for the Appellant; Fazlul Haque and Mr. Supriyo Roy Chowdhury for State and Mr. Sabyasachi Mukhopadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Let affidavit of service filed in Court today be kept with the record.

2. Heard learned advocates for the parties.

3. By order dated 17th October, 2008 in W.P. 26682 (W) of 2008, the District Inspector of Schools (SE) concerned was directed to consider the representation dated 1st October, 2008. The said representation is as follows:

To

1) The District Inspector of Schools (SE), Burdwan, P.O. + P.S. Burdwan, Court Compound, District - Burdwan.

2) The Secretary, Managing Committee Shiblool ACM High School P.O. Shiblool, P.S. Ketugram, District - Burdwan.

Sir,

Sub: Non granting of appointment in my favour in spite of being topped the list of candidates.

I Goutam Ch Ghosh S/O. Late Ananda Gopal Ghosh of village & (sic) Shibloon, P.S. Ketugram, District - Burdwan like to state that I participate in the interview for the post of grade - "D" (General) on 17.08.2008 after obtained an order from the Hon"ble High Court.

I moved a writ application being W.P. 12785 (W) of 2008 before the Hon"ble High Court and on 10/07/2008 the Hon"ble Justice S.K. Gupta directed the School authority not to hold interview until it is advertised. (Copy annexed)

After the said order when I approached the School I was allowed to participate in the selection process.

It is pertinent to mention herein that inspite of obtaining higher marks in all the examinations and having good academic result, I was not considered! for the said post, one Mr. Brindabon Das S/O Satya Narayan Das Vill-Begunkhola, P.O. Katwa, P.S. Ketugram, District - Burdwan was-

It is my grievance that the school authority inspite of examining the testimonials of both me and Brindabon and after coming the conclusion regarding the misdeed committed by them favoured Brindabon because of the reason best known to them. (My testimonials enclosed).

It is my grievance that there has been a foul play in preparing the said panel for Group-D for which an enquiry is required.

Hence I pray before you to conduct an enquiry and also verity the testimonials of both me and Brindabon and after the same is over take appropriate decision in that regard.

It is humbly requested to you not to approve the panel so placed by the school authority before verifying the issue raised by me in this letter.

Thanking you,

Yours faithfully, (Goutam Ch. Ghosh)

4. On the basis of that representation the matter was heard and the same was disposed of by the District Inspector of Schools (SE) concerned which reads as follows:

A.S.T. 2052/2008

W.P. 26682 (W) of 2008

Pursuant to the order of the Hon"ble High Court, Calcutta passed on 17.10.2008 by the Hon"ble Justice S.P. Talukdar in the mater stated above, a hearing was taken on 12.01.2009 at the Chamber of the District Inspector of Schools (SE), Burdwan.

The petitioner Gautam Chandra Ghosh, the Headmaster and Secretary of Shibloon A.C.M. High School, P.O. Shibloon, District. Burdwan were present at

the time of hearing.

The representation dated 1.10.2008 the petitioner was read out thoroughly. The petitioner stated that he appeared at the interview for the post of Group "D" Staff on 17.8.2008 (General Category) at Shibloon A.C.M. High School. He did well in the interview. He stated that inspite of higher marks in all examinations and having good result he was not considered for the said post one Brindabon Das of Vill. Begunkhola, P.O. Katwa, Dist. Burdwan was favoured with. It was his grievance that the school authority inspite of examining the testimonials of him and Brindabon Das and after coming the conclusion regarding the misdeed Committee by them favoured Brindaban Das because of the reason best known to them. He also stated that it was his grievance that there had been a foul play in preparing the said panel for Group "D" (General Category).

The Secretary of Shibloon A.C.M. High School states that the panel for the post of Group "D" (General Category) was prepared as per recruitment rules framed by the Government. Thirty five candidates sponsored by the concerned Employment Exchange and sixty one candidates by the advertisement in the Gana Shakti Patrika dated 3.8.2008 were called for interview on 17.8.2008 for the post of Group "D" (General Category) of the school. The interview was taken as per rules. There is no any foul play in preparing the said panel. The Headmaster of Shibloon A.C.M. High School states that the advertisement for the post of Group "D" Staff (General Category) was published on 3.8.2008. Ninety six candidates (Exchange sponsored plus paper advertisement) were called for interview. As the post was meant for Group "D" post there is no provision for counting any score beyond Class VIII pass from any recognised Secondary Schools. Interview has been maintained as per norms and rules.

The parties are heard on verification of records and submissions it appears that the school authority called for interview for the post of Group "D" (General Category) within thirty five Exchange Sponsored candidates and sixty one candidates from advertisement in the Ganashakti Patrika dated 3.8.2008. As per G.O. No. 904-SE (S), dated 15.7.2007 total 9 marks are allotted in the selection process for interview for the post of Group "D" in the following manner:

- i) Full marks for hand writing in both English and Bengali - 3 marks.
- ii) Full marks for spelling both in Bengali and English - 3 marks.
- iii) Full marks for interview - 3 marks.

There is no marks for academic qualification. The qualification for Group "\\d" post is Class VIII pass from any recognized Secondary School. The petitioner does not show any paper in support of foul play.

Under the circumstances, the complains of the petitioner is not justified.

The decision is being informed to all concerned accordingly.

District Inspector of Schools Sec. Edn., Burdwan.

5. Having regard to such position the Court is not finding any illegality in the impugned decision, passed by the District Inspector of Schools concerned as the petitioner never urged age bar issue in the earlier writ petition. The petitioner now intended to urge that point for the first time in the present writ petition against respondent No. 6. Accordingly, that issue is attracted by principle of constructive res judicata.

6. It is settled position of law that either any defence or any claim, whatever it may be, is required to be agitated for the first time in a proceeding and unless it is not done that issue cannot be raised further. Reliance is placed to the judgment passed in the case of Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, wherein it has been held "An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. Thus, the principle of res judicata underlying exclamation IV of section 11 of CPC is applicable in this writ proceeding also."

7. Reliance is placed to the judgment passed in the case of Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, and Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), The same view has been taken by the English Court also in the case of The Indian Endurance Republic of India & Others v. India Steamship Co. Ltd. reported in (1993) 1 All ELR 998. The same view has been expressed by the Apex Court in The Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another, wherein it has been held "when any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided." The principle of constructive res judicata as regards to the relief which was sought for but not granted by the Court in the previous proceedings is also attracted. Reliance is placed to the judgment in the case of Mysore State Road Transport Corporation Vs. Babajan Conductor and Another, . It appears that in earlier writ petition the issue of age bar has not been raised by the appointee concerned. The principle of constructive res judicata, accordingly, is squarely applicable. It appears that there is a Rule of West Bengal Schools (Recruitment of non-teaching staff) Rule, 2005. Under Rule 4(1) (b) it provides on age bar point as follows:

has completed the age of eighteen years and has not completed the age of thirty seven years on the first January of the year in which the requisition is made to the employment exchange for sponsoring by the employment exchange names of the candidates:

Provided that for a candidate belonging to a reserved category or a candidate

who is a member of the family of a deceased teacher or non-teaching staff, the upper age-limit shall such as is specified for such a candidate in the relevant Government Order.

8. The requisition was sent to the Employment Exchange for sponsoring the names of eligible candidates. The signature of the Employment Exchange officer-in-Charge, Katwa, Burdwan, putting the date of 30th May, 2008, appears from page 25 of the writ petition. Hence, on 1st January, 2008 Brindabon Das, the respondent No. 6, the appointee concerned, should have to qualify the age bar issue, i.e., below 37 years. Admittedly, the date of birth of Brindabon Das, the respondent No. 6 has been recorded in the Employment Exchange as 1st February, 1971. Hence, as on 1st January, 2008 the age of Brindabon Das was exactly 36 year 11 months. Accordingly, Brindabon Das, the respondent No. 6, was below 37 years. Considering that aspect, this writ petition has no merit for consideration.

9. The writ petition, accordingly, stands dismissed with a cost of Rs. 5000/- to be paid to Brindabon Das, the respondent No. 6, within two weeks from this date, failing which the said respondent shall take appropriate step for realization of money.

10. Since the writ petition is disposed of at the admission stage without calling for affidavits, the allegations are deemed to have not been admitted by the respondents.

There will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties on priority basis.