

(2008) 08 CAL CK 0051
In the Calcutta High Court
Case No : Writ Petition 3540 (W) of 2008

Jayashree Mahata

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 08 CAL CK 0051

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Gouri Sankar Dey and Mr. Rudra Nil De, for the Appellant; Abhijit Gangopadhyay for the Respondent Nos. 3 and 4, for the Respondent

Judgement

Indira Banerjee, J.—The question which has arisen for determination in this writ petition is, whether, candidate recommended by the Regional Service Commission, constituted under the West Bengal School Service Commission Act, 1997, for appointment to a school, who does not join that school to which he/she has recommended, is debarred from being re-commended for appointment to another school, under the West Bengal School Service Commission (Procedure for Selection of Persons for Appointment to the Posts of Teachers including Head Masters/Head Mistresses/Superintendents of Senior Madrasah in recognized non-Government Aided Schools and Procedure for Conduct of Business of the Commission) Regulations, 1998, and in particular Regulation 9 thereof.

2. Pursuant to advertisement issued by the West Bengal Central School Service Commission, inviting applications, inter alia for posts of Assistant Teachers of History of aided recognized non-Government schools in the Western Region, the petitioner applied, giving preference for a school in district of Purulia.

3. The petitioner duly appeared for the 6th Regional Level Selection Test conducted by the West Bengal Regional School Service Commission, Western Region, Bankura in 2005.

4. The petitioner cleared the written examination as well as the interview and was empanelled as a selected candidate.

5. The selection, empanelment and recommendation of candidates by a Regional School Service Commission constituted under the West Bengal School Service Commission Act, 1997, hereinafter referred to as the 1997 Act, is governed by the West Bengal School Service Commission (Procedure For Selection of Persons for Appointment to the Post of Teachers including Head Masters/Head Mistresses/ Superintendents of Senior Madrasah in Recognised Non-government Aided School and Procedure for Conduct of Business of the Commission), Regulation 1998 hereinafter referred to as 1998 Regulations.

6. Under Regulation 9(3) of the 1998 Regulations, the Regional School Service Commission is obliged, to the extent possible, to take the area wise preference given by a candidate into account, for the purpose of recommending candidates, subject, however, to the position of the candidate in the panel in order of merit.

7. An affidavit affirmed on behalf of the Regional School Service Commission pursuant to an order of this Court, reveals that the combined rank of the petitioner was 56th. The petitioner, however, stood first in the O.B.C. (Other Backward Classes) category.

8. 99 vacancies in the Western Region were reported to the Regional School Service Commission as per the particulars given hereinbelow:

Male

General Category..

37

Female

General Category..

5

Male

Scheduled Castes..

20

Female

Scheduled Castes..

2

Male

Scheduled Tribes.

18

Female

Scheduled Tribes..

5

Male

(O. B. C.) . .

7

Female

(O. B. C.)..

1

Male

Physically Handicapped.

2

Female

Physically Handicapped.

2

Total

99

9. The Regional School Service Commission has disclosed a list of all the candidates who have been recommended for appointment to Schools in the district of Purulia. Five General Category candidates have been recommended for vacancies at schools in Purulia of whom the last candidate 50th.

10. It is pointed out on behalf of the School Service Commission that when the petitioner's turn for recommendation came, there were no reported vacancies in Purulia in the O.B.C. category. The petitioner was, therefore, recommended for appointment to Radhakantapur High School at Daspur, in Paschim Midnapore, about 250 Kms. away from her home.

11. Subsequently, however, a vacancy in the OBC category was reported from Purulia, for which the Regional School Service Commission recommended one Bithika Dutta, who had ranked 77th in the general category and 6th in the OBC category.

12. This vacancy had, admittedly, never been offered to the petitioner even though, she had ranked higher than the petitioner in order of merit.

13. Mr. Gangopadhyay submitted that the vacancy had not been offered to the petitioner as she had earlier by a letter dated 1st March, 2006, been

recommended for appointment to Radhakantapur High School, Daspur in Pashim Medinipore.

14. By a letter dated 12th April, 2006 the petitioner had informed the Secretary of the Regional School Service Commission of her inability to join the said School on the ground of her difficulties, as an unmarried girl with an ailing mother, in working in a remote place, 250 Kms. away from her home.

15. The petitioner also appears to have written a letter informing the School concerned of her inability to join the School for personal reasons.

16. The petitioner filed a writ application in this Court being W.P. 20107 (W) of 2007, which was disposed of by Somadder, J. by the following order:

"After having considered the submissions made by the learned advocate appearing on behalf of the parties and upon perusing the writ petition, I am of the opinion that this is indeed a matter which can be looked into the Secretary, West Bengal Regional School Service Commission, Western Region, being the respondent No.4 herein, in a considerate manner, taking into account the plea of the writ petitioner as appearing from annexure P-8 at page 37 of the writ petition as well as from the contention of the writ petitioner which appears from the writ petition itself. However, before the respondent No.4 takes a decision in the matter, the writ petitioner is directed to join the School first and intimate the respondent No.4, the fact of her joining the concerned School. Only thereafter, the respondent No.4 shall consider her case in the light of the observation made in the instant order.

Since no affidavits have been called for, allegations made in the writ petition are to be treated not admitted by the answering respondents.

The writ application stands disposed of in terms of observation made herein."

17. The attention of His Lordship was apparently not drawn to several important and relevant facts including the fact that a vacancy in Purulia District, reported subsequently, had been offered to a candidate who had ranked lower than the petitioner in order of merit.

18. The attention of His Lordship was also not drawn to the fact that the vacancy for which the petitioner had been recommended had already been filled up, and the validity of the panel had expired by the time, the writ application was moved.

19. Be that as it may, the Regional Service Commission appealed against the aforesaid order. Mr. De, learned counsel appearing on behalf of the petitioner pointed out, that the appeal was filed on the sole ground, that the order of the learned single Judge could not be complied with, since another candidate had, in the meanwhile, been recommended to Radhakantapur High School. The Division Bench disposed of the appeal by the following order:

"Accordingly, we dispose of the present appeal and direct the Secretary, West Bengal Regional School Service Commission, Western Region to take up the

matter immediately and to consider the case of the respondent No.1/writ petitioner sympathetically keeping in view the case of other candidates, who were also considered in similar circumstances, after giving an opportunity of hearing to the respondent No.1/writ petitioner. The Secretary, West Bengal Regional School Service Commission, Western Region will pass a reasoned order within a period of four weeks from the date of communication of this order and communicate the decision to the concerned teacher/respondent No.-1 within a period of one week thereafter.

The appeal and the application for stay are thus, disposed of. There will be no order as to costs."

20. Significantly the attention of the Division Bench was also not drawn to the material fact of subsequent recommendation of a candidate, who had ranked lower than the petitioner, to a school in Purulia.

21. The Division Bench directed the Secretary of the Regional School Service Commission to consider the case of the writ petitioner sympathetically, keeping in view the consideration shown to other candidates in similar circumstances and after giving an opportunity of hearing to the petitioner. The Secretary was directed to pass a reasoned order within the time stipulated in the order of the Division Bench.

22. In pursuance of the aforesaid order of the Division Bench, the Secretary of the Regional School Service Commission passed an order dated 22nd January, 2008 impugned in the writ petition, the relevant part whereof is extracted hereinbelow for convenience:

"This commission is governed by the Rules and Regulations framed in the West Bengal School Service Commission Act, 1997 and also framed by the Government in School Education Department. I being the Secretary of this Commission am also under statutory obligation to abide by the Rules and Regulations contemplated therein in the instant matter.

As per her submissions I feel her difficulties and have sympathy upon her but at the time of consideration of her case I have to keep my limitation of authority in view.

There is no subsisting vacancy and panel related to 6th RLST (A.T.) 2005 from which she can be recommended for appointment to the post of Assistant Teacher in her subject and category to a more convenient School located near to her residence.

In fine, on careful consideration of the facts and submissions of the respondent No.01/writ petitioner and on application of mind I hold that the present circumstances of the case do not permit me to recommend her for appointment to the post of Assistant Teacher in her subject and category in any School which will be nearer to her residence because of the fact that the panel of 6th RLST (A.T.) 2005 is dissolved as per rule and there is no subsisting vacancy for her

subject post and category relating to 6th RLST (A. T.), 2005. Hence I complied with the order of Hon"ble High Court, Calcutta passed on 17.12.2007 in this matter.

This case is, accordingly, disposed of. Let a copy of this order be communicated to the respondent No.01/writ petitioner."

23. There can be no doubt at all that the School Service Commission and its office bearers including the Secretary are governed by statutory rules and regulations and are obliged to abide by the same.

24. It is also axiomatic that the authority of a statutory body and/or its office bearers cannot be unlimited. The office bearers are bound to act within the four corners of law, in compliance with statute and/or statutory rules and regulations.

25. The question in this case is, whether the respondent authorities have proceeded in accordance with statutory rules and regulations. The answer to the aforesaid question is in the negative for reasons discussed hereinafter.

26. In the order impugned, it is stated that there is no subsisting vacancy relatable to the "6th Regional Level Selection Test" of the year 2005, located near the residence of the petitioner, to which the petitioner might be recommended.

27. In course of arguments, however, counsel appearing on behalf of the Regional School Service Commission, submitted that there was no vacancy at all relatable to the "6th Regional Level Selection Test" held in 2005 which the petitioner had cleared.

28. The life of the panel prepared pursuant to the "6th Regional Level Selection Test" had long expired. It was thus, no longer possible to recommend the petitioner to any school, whether near or far away from the residence of the petitioner.

29. It is true, that under Regulations 8 of the 1998 Regulations, framed in exercise of power u/s 18 of the 1997 Act, a panel is valid for a limited period of one year from the date of approval of the panel by the Regional School Service Commission.

30. It is equally true that recommendations from the panel can be made for filling up vacancies relatable to the "Regional Level Selection Test" of the year in question and may be vacancies which arise and are reported during the period of validity of the panel.

31. This case, however, is exceptional, inasmuch as there was an order of a Division Bench of this Court, which had assumed finality and is binding on all parties. Though the Regional School Service Commission was the appellant before the Division Bench, it did not draw the attention of the Division Bench either to the unavailability of a vacancy nearer the petitioner's home or to the expiry of the panel. It was not even argued that all the vacancies relatable to the

"Regional Level Selection Test" in question had been filled up.

32. What is most important is, that the attention of the Division Bench had not been drawn to the injustice done to the petitioner by recommending a candidate, who had ranked lower than the petitioner in order of merit, for appointment to a school in Purulia District. The petitioner obviously had no knowledge of the recommendation, which was within the special knowledge of the Regional School Service Commission.

33. Injustice was done to the petitioner, while the panel was valid. A candidate who had ranked lower than the petitioner had been recommended for a vacancy in Purulia, which should legitimately have been offered to the petitioner.

34. After leading the Hon'ble Division Bench to pass an order directing consideration of the case of the petitioner, long after expiry of the panel and after accepting and acting upon the said order of the Hon'ble Division Bench, the respondent authorities cannot now turn around and argue that there is no vacancy relatable to the "Regional Level Selection Test" which the petitioner had cleared.

35. On behalf of the School Service Commission, Mr. Gangopadhyay argued that the petitioner had to be recommended to a school in Paschim Midnapore since there was no vacancy in Purulia, at the material time when the recommendation was made. In any case, no vacancy had been reported.

36. Mr. Gangopadhyay argued that the petitioner chose not to join the school to which she had been recommended on the purported ground of inconvenience and personal problems. Mr. Gangopadhyay also tried to argue that a candidate who had once been recommended to a school, could not be re-recommended, except in contingencies contemplated in Regulation 9(4) and 9(5) of the 1998 Regulations, that is, when the candidate was thrown out of employment on the ground of the vacancy ceasing to exist or when the candidate was denied appointment by the Management of the school, notwithstanding recommendation of the Regional School Service Commission.

37. The manner of selection of candidates, preparation of panels and recommendation of candidates is as stated earlier, prescribed by the 1998 Regulations and in particular Regulations 7, 8 and 9.

38. There is no provision in the West Bengal School Service Commission Act, 1997, the West Bengal School Service Commission Rules, 1997, the 1998 Regulations or the statutory procedures framed from time to time whereunder a candidate who does not join a school to which he/she has been recommended, might be debarred from re-recommendation to another school.

39. The argument of possible chaos by reason of constant requests for change of recommendation is patently conjectural and misconceived. Once a candidate accepts appointment to the school to which he/she has been recommended, there can be no question of re-recommendation to a different school except in

exceptional cases of illegality. However, if a candidate chooses to take the chance of foregoing his/her turn and waiting for opportunity of being recommended to a more conveniently located school, the Regional School Service Commission cannot refuse to re-recommend the candidate.

40. Under Regulation 9 of the 1998 Regulations, the Regional School Service Commission might recommend only one candidate for a vacancy. The Regional School Service Commission is obliged to recommend the topmost candidate in the panel in order of merit.

41. Moreover, in making recommendations, the area-wise preference of the candidates is to be taken into account, to the extent possible, depending on his/her position in the panel in order of merit.

42. Had it been the intention of the regulations to debar candidates who refused to join schools from re-recommendation to other schools, the regulations would have made specific provisions to that effect.

43. Where a school does not appoint a candidate recommended by the Regional School Service Commission, the Regulations empower the Regional School Service Commission to refuse to recommend candidates to that vacancy, or to any other vacancy in future.

44. The very fact that no specific provision has been made debarring recommendation of a candidate who does not join the school, pursuant to a recommendation, shows that this was not intended by the Regulations.

45. Once, a candidate is appointed to a school, the name of that candidate is to be deleted from the panel. Such a candidate cannot be re-recommended to another school except in circumstances contemplated in the Regulations, for example, loss of employment by reason of the vacancy ceasing to exist and in cases of patent illegality in the recommendation.

46. In case of a candidate who does not join the school, there is no restriction at all. The name of the candidate would necessarily continue in the panel till date of expiry of the panel and the candidate would be entitled to be considered for the next available vacancy in the area of her preference.

47. The submission that candidates once recommended cannot be re-recommended is legally unsustainable in the absence of any provision to that effect, in the Regulations.

48. It is true, that there has to be some finality somewhere. Once a candidate accepts the appointments made pursuant to the recommendation of the School Service Commission and joins service, the candidate cannot seek re-recommendation for a vacancy has arisen and/or is reported subsequently. However, if a candidate takes the chance of not accepting appointment and waiting, that candidate cannot be overlooked for all subsequent vacancies.

49. Mr. De relied on the judgments in *Reena Rani Roy v. State & Ors.*, reported in

2005 (2) CLJ 490, Purnendu Mukhopadhyay v. V. K. Kapoor, reported in (2008) 1 CLT 22, T.H. Musthaffa Vs. M.P. Varghese and Others, ; Ashutosh Gupta Vs. State of Rajasthan and Others, , (paragraph 6); and R.S. Mittal Vs. Union of India (UOI), .

50. None as the aforesaid judgments are applicable in the facts and circumstances of the case, even though the proposition of law laid down therein may be well established.

51. In Reena Rani Roy's case (supra) a learned single judge directed the authorities to consider the joint applications of two teachers of two different schools for mutual transfer.

52. In Gayatri Devi Pansari (supra) the Supreme Court held that reservation of identified day and night medical shops for appointment of ladies, in pursuance of a Government Policy to give preference to ladies, did not disarm the Government from giving preference to eligible ladies for unreserved medical shops.

53. There can be no doubt that the concept of equality in Article 14 does not contemplate equal treatment of unequals, as reaffirmed by the Supreme Court in Ashutosh Gupta (supra). The relevance of the judgment in the facts of this case, was not explained by Mr. De.

54. In the case of R.S. Mittal (supra) the Court held as follows:

"It is no doubt correct that a person on the selection panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him; keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to, talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murglod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

55. Even though there can be no dispute with the proposition laid down by the Supreme Court in R.S. Mittal (supra) the judgment is distinguishable on facts. This is not a case where an empanelled candidate was not at all considered for appointment. The petitioner was recommended for appointment but to an inconveniently located school, which the petitioner could not join.

56. This Court cannot pass any order, that is, inconsistent with or contrary to the statutory regulations. This Court is thus unable to pass orders directing the

Regional School Service Commission to show special consideration to a young unmarried woman.

57. The petitioner was entitled to be recommended to the OBC category post that had fallen vacant in Purulia and had been offered to a candidate who had ranked 6th in the OBC category. However, since the petitioner has not challenged the appointment of the concerned candidate, this Court is not inclined to interfere with the same.

58. However, having regard to the special circumstances of this case where injustice has been done to the petitioner by not recommending her to the OBC category vacancy that was available in Purulia District, the Secretary Regional School Service Commission is directed to recommend the petitioner for appointment in any OBC vacancy in Purulia District and if no OBC vacancy is available in Purulia, to any available vacancy in the region, even though the vacancy may have arisen after expiry of the panel in question.

59. The writ application is disposed of.

Xerox certified copy of this order, if applied for, be supplied to the learned advocates appearing on behalf of the parties subject to compliance of requisite formalities.