
(2002) 09 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 23139 (W) of 1997

Kanai Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-09-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2003) 1 CALLT 202 : (2002) 2 ILR (Cal) 527

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Dipak Banerjee, for the Appellant; Jamini Kumar Banerjee and Biswajit Banerjee for the Respondent Nos. 5 and 6, for the Respondent

Judgement

S.K. Mukherjee, J.—This is an application under Article 226 of the Constitution of India (writ petition in short) alleging inaction on the part of the District Inspector of Schools (S.E.), District: North 24 Parganas in not approving the panel for appointment of Assistant Teacher in language group in Ashoknagar Boys" Secondary School.

2. The facts relevant for disposal of the writ petition are as under:

(a) On account of retirement of Gour Kanti Ray, Assistant Teacher in language group of the said school, the District Inspector of Schools granted prior permission to the school authorities under Memo No. 1321/G dated November 11, 1995 towards preparation of panel for appointment to the said post. It is indicated in the prior permission that the said post was meant for general category candidates and the qualification prescribed was B.A., preferably trained; the school authorities were directed to follow first and second stages of the recruitment procedures simultaneously.

(b) The school notified the vacancy to the District Employment Exchange at Barasat and the Employment Exchange Officer on April 4, 1997 forwarded twenty names to the school authorities.

(c) The District Inspector of Schools, also, forwarded three names to the school authorities under Memo No. 1321/G dated May 5, 1997 from the category of approved non-teaching staff, who got their names enlisted in the register maintained by his office. One of the names sponsored by the said District Inspector of Schools was of Suvash Chandra Dutta, who was an approved clerk of the said school.

(d) However, the District Inspector of Schools nominated, on September 15, 1997, B.P. Halder, Assistant Inspector of Schools (S.E.) to act as the Administrator of the school.

(e) The Headmaster of the said school issued call letters dated September 20, 1997 to the candidates requiring them to appear before the selection committee on September 29, 1997 for selection in the said post.

(f) On September 23, 1997 the school authorities constituted a selection committee comprising of the Administrator, the Headmaster, a teacher's representative and Srikanta Biswas, external ex-parte.

(g) On September 29, 1997, before the selection committee started the selection process, the members of the selection committee gave declarations that they were not related to any of the candidates, who were to appear before the said selection committee.

(h) However, on September 29, 1997 a report was submitted and it was indicated that the selection committee was unable to prepare the panel on the allegations that none of the candidates appeared at the interview was fit for appointment. Surprisingly, the said report is not addressed to anybody and it is signed only by the Administrator, the Headmaster and the external ex-parte, but it did not contain the signature of the teachers' representative.

(i) The Headmaster of the school on October 3, 1997 forwarded the said purported report of the selection committee to the said District Inspector of Schools for his information.

3. In the aforesaid background the writ petitioner, who was one of the candidates for the said post, has come up with the present writ application.

4. Mr. Dipak Banerjee, learned advocate, appearing for the petitioner, argued that according to the recruitment rules the marks in educational qualifications are statutorily fixed and after holding interview of the candidates, the selection committee is required to prepare a panel consisting of three names in order or priority of marks obtained by them. Therefore, the selection committee is bound to prepare a panel and it is not permissible for the members of the selection committee to vaguely suggest that none of the candidates was suitable for appointment. Mr. Banerjee submits that the purported report of the selection committee is not signed by one of the members of the selection committee, that is, the teachers' representative. Under the recruitment rules the members of the selection committee are required to award marks individually in respect of the

candidates and the panel is prepared on the basis of the average marks awarded by the individual members of the selection committee. It is, further, argued that the selection committee illegally, arbitrarily and with mala fide object did not prepare the panel in order to accommodate the existing non-teaching staff (clerk) of the school in the said post.

5. Mr. Jamini Kumar Banerjee, learned senior advocate, appearing for the present Managing Committee of the school, however, submitted that since no panel was prepared by the selection committee, it was no possible for the management of the school to forward a panel to the District Inspector of Schools. However, Mr. Banerjee submitted that the report of the selection committee expressing their opinion that none of the candidates was suitable for appointment was forwarded to the District Inspector of Schools concerned, but, thereafter, the school authorities did not receive any communication from the District Inspector of Schools concerned.

6. I must record that in spite of service none appeared for the State/ Respondents at the hearing of this writ petition.

7. The Director of School Education, West Bengal, by Memo No. 2066-G.A. dated October 27, 1995, prescribed the procedures for recruitment of teaching and non-teaching staff of the secondary schools and the said procedures were made effective from December 1, 1995. Under paragraph 6 of the said procedure, the procedure as to how the selection committee should allot the marks for training and professional qualification has been prescribed. It is recorded that marks awarded to each candidate in each individual item are to be recorded separately in the score sheets and the copies of such score sheets in respect of all the candidates appearing in the interview along with the tabulation sheets shall be sent to the District Inspector of Schools (S.E.) along with the panel. It was, further, provided the total marks awarded to each of the candidates on the items shall be computed and a panel consisting of three candidates in order of merit shall be prepared for submission to the managing committee/ad-hoc committee/administrator. It is incumbent on the part of the selection committee, after preparing the panel on the date of interview, to submit the same to the managing committee/ad-hoc committee/administrator of the school and after examining the said panel the managing committee/ad-hoc committee/administrator is to forward the said panel with the relevant papers to the District Inspector of Schools (S.E.) for approval within 15 days from the date of Interview and the said District Inspector of Schools shall convey his decisions within one month from the date of the receipt of the panel.

8. It is surprising that in the present case the selection committee did not prepare a panel, I am not suggesting for a moment that the selection committee was bound to select even if the members of the selection committee find that none of the candidates is suitable for the post. My reading of the recruitment procedures is that the individual members of the selection committee will allot marks item wise separately in score sheets and a panel is to be prepared in order

of merit on the basis of the average marks awarded by the members of the selection committee. Therefore, the selection committee is bound to prepare a panel. However, the selection committee may opine that none of the candidates appeared in the interview is suitable for the post, but the selection committee must give a short reason of its opinion. A blanket or a vague certificate expressing the purported opinion signed by some of the members of the selection committee that none of the candidates is suitable for the post is not enough. The selection committee, thereafter, will submit the panel and relevant papers including their opinion expressing their inability to select any of the candidates to the managing committee/ad-hoc committee/administrator of the school. Thereafter, the managing committee/ad-hoc committee/administrator of the school will consider the panel including the relevant papers and the opinion of the members of the selection committee and in the event the school authorities concur with the opinion of the selection committee that none of the candidates is suitable for the post, the school authorities will forward all the papers to the District Inspector of Schools seeking his guidance and for further direction in the matter. It will be incumbent on the District Inspector of Schools (S.E.) to convey his decision within one month from the date of the receipt of the papers. In the event, however, the managing committee/ad-hoc committee/administrator does not agree with the opinion of the selection committee, the said authority will then also forward the papers including the opinion of the selection committee to the District Inspector of Schools along with the opinion of the managing committee/ad-hoc committee/administrator, as the case may be, supported by reasons as to why they are unable to concur with the opinion of the selection committee. It will then also be incumbent on the District Inspector of Schools (S.E.) to convey his decision in the matter within one month from the date of the receipt of the papers from the school authorities. In both of the matters, however, the decision of the District Inspector of Schools will be final and the school authorities will be bound to comply with the directions of the District Inspector of Schools.

9. In this connection we may recall of the observations of the S.G. Jaisinghani Vs. Union of India (UOI) and Others, where the Supreme Court of India observed "in this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

10. In this matter the recruitment process has already started with the invitation of the candidates to appear before the interview and, therefore, the erstwhile recruitment procedure is required to be followed for the purpose of selection in

the post. I, therefore, dispose of the writ application with the following directions:

(1) The Managing Committee of the school, within one month from this date, will constitute a selection committee for the purpose of selection in the said post of Assistant Teacher in language group on account of retirement of Gour Kanti Ray. In constituting the selection committee it will be desirable not to include the external expert, who was appointed as a member of the selection committee to hold the interview on September 29, 1997.

(2) The school authorities will issue call letters to the candidates, who were sponsored by the employment exchange and the District Inspector of Schools, fixing a date of the interview in terms of the recruitment procedures. The interview must, however, be held within three months from this date.

(3) The selection committee, constituted by the Managing Committee of the school, will hold the interview of the candidates, who will appear before the said selection committee, and they will follow the procedures as prescribed in the procedures for recruitment.

(4) On the receipt of the panel, If any, the managing committee of the school will forward the panel and relevant papers to the District Inspector of Schools (S.E.), Barasat, District: 24 Parganas (North) within 15 days for his decision/approval and the District Inspector of Schools, District: 24 Parganas (North) will give his decision in the matter within one month from the date of receipt of the panel and the relevant papers.

The writ application is, thus, disposed of without however any order as to costs.

Xerox certified copy of this order, if applied for, is to be supplied within seven days from the date of making requisition for the same.