
(1998) 11 CAL CK 0017

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Side W.P. No. 1092 of 1998
and G.A. No. 4227 of 1998

Krittibas Halder

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 CALLT 374

Hon'ble Judges : Mohemmad Habeeb Shams Ansari, J

Bench : Single Bench

Judgement

1. The Court: The present writ application is filed seeking the substantive relief in the nature of mandamus to cancel the panel prepared on 30.4.98 for appointment of a Bio-Science teacher of Abhoy Char an Vidyapith, P.O. Amgachla, Dlst. 24-Parganas (South) and to recast the panel in accordance with the qualification of the candidates and approve the panel accordingly.

2. Briefly stated, the facts of the case are that for filling up the post of Assistant Teacher (Bio Science) prior permission was granted by the District inspector of Schools (SE) by his order dated 29.6.93. The requisite qualifications specified therein for the post in question are B.Sc. (Bio-Science) preferably B.Ed.

3. Pursuant to the said permission, school authorities requested the employment exchange to sponsor the name of eligible candidates. The employment exchange sponsored the names of candidates by its letter dated 27th August, 1993. The petitioner as also the private respondent No. 6 are in that list. The date of interview was fixed on 23.1.94 but the same could not take place on account of certain litigation. Ultimately the matter has been disposed of by the Division Bench by order dated 10.3.98 being M.A.T. No. 3425 of 1997.

4. The petitioner on coming to know that a fresh panel has been prepared with the name of the petitioner at Sl. No. 3 and his marks for B.Ed, degree were

excluded and not taking into consideration. The petitioner has filed the present writ application.

5. On behalf the Managing Committee, the respondent No. 5 herein, an affidavit-in-opposition has been filed by the Secretary affirmed on 16th September, 1998.

6. Reference has been made to the order of the Division Bench in M.A.T. No. 3425/97 and it is stated that in pursuance of the said directions, a fresh interview was held on 30.4.98 and the Selection Committee in strict compliance of the Old Recruitment Rules of 1989 awarded marks to the candidates and a panel was prepared in order of merit wherein namely, Prakash Chandra Naskar secured first position in the panel and the Managing Committee after observing necessary formalities forwarded the panel to the concerned District inspector of Schools for approval and the District inspector of Schools after scrutinising the same accorded approval of the said panel and the Managing Committee in its turn Issued appointment letter to the first candidate of the panel. Mr. Prakash Chandra Naskar who joined in the post on 30.5.98 and has been working as such.

7. G.A. No. 4227 of 1998 Is filed by three guardian members of the Managing Committee seeking (o implead themselves as party respondents to the above writ petition.

8. The Managing Committee as already noticed above Is respondent No. 5 in the writ application and an affidavit-In-opposltion has been filed on its behalf by the Secretary. in the right of the averments contained in the said affidavit-in-opposition filed by the Secretary, the present application G.A. No. 4227/98 for impleading Is not maintainable and Is accordingly dismissed.

9. The foremost contention of Mr. Chakraborty, learned counsel for the writ petitioner is that the interview should have been taken under rules of 1993 and that as the interview has taken place according to Old Recruitment Rules, 1989, the same is illegal.

10. The aforesaid contention Is no longer res-Integra in view of the Division Bench Judgment in M.A.T. No. 3425/97 wherein the appeal was allowed in part modifying the Judgment and order passed by the learned trial judge and modifying the same to the extent that the recruitment process shall be completed in terms of 1989 Rules.

11. The next contention of the petitioner is that the petitioner has B.Ed, qualification which he acquired in the examination held in 1994 (annexure- "C") and the same ought to have been taken into consideration by the Selection Committee and credit ought to have been given to the petitioner for the said B.Ed. degree.

12. Reliance has been placed by Mr. Chakraborty to a circular No. 93(50)SC/S dated 6th January, 1972 wherein directions have been issued that no untrained teachers shall be appointed unless it can be established by the school authorities that no trained teacher was available. Learned counsel Mr. Chakraborty has also

relied upon a Division Bench Judgment in the case of *Bharatt Roy v. Shamat Mukhopadhyay & Ors.*, reported in 1997 (2) CLJ 386 wherein relying upon the judgment of Supreme Court in *Ashok Kumar Sharma & Anr. v. Chemdra Sekhar & Anr.* reported in 1993 Su (2) SCC 611. the Division Bench held that If the qualification of a particular candidate is not recorded in the employment exchange register but subsequently acquired before the interview and produced the same at the time of interview, the school authorities are bound to take into consideration of the same and award marks accordingly on the basis of the added qualification.

13. In the instant case, it is not in dispute that when the name of the petitioner was sponsored along with respondent No. 6 and others by the employment exchange by letter dated 27.8.93, the petitioner had not acquired the B.Ed. degree qualification. The said B.Ed. degree qualification was acquired by the petitioner in 1994. The second interview pursuant to the order of the Division Bench was held on 30.4.98. It is thus apparent that the qualification of B.Ed. obtained by the petitioner was not recorded nor the said qualification could have been recorded and sent by the employment exchange as the petitioner had required the qualification only subsequently though before the second interview pursuant to the order of Division Bench.

14. On identical facts, a Division Bench Judgment of this court in *Shri Pintu Achariya v. State of West Bengal & Ors.*, reported in 1997 (2) CLJ 428 considered the question as to whether the B.Ed. qualification of the writ petitioner in that case could have been taken into consideration by the Selection Committee. in that case, the local employment exchange sponsored the name of the writ petitioner having merely B.Sc. (Hons.) qualification. His qualification of B.Ed, although could have been recorded in the local employment exchange was not so recorded nor the said qualification could have been sent as employment exchange admittedly sponsored the names of the candidates much prior to his acquisition of the said qualification.

15. The Division Bench referred to the various provisions of the West Bengal Board of Secondary Education Act as also the Rules and Notifications Issued by the Director of School Education in exercise of his power conferred upon him under Clause (I) and (II) and sub-rule (1) and Clause (i) of sub-rule (2) of Rule 28 of the Rules of Management of Recognised Non-Government institutions (Aided & Unaided), 1969. Reference has been made to the various circulars issued upto October, 1992 wherein it was stated that for preparing the panel marks should not be awarded on the qualification which was not reported to the employment exchange and recorded by them. The Division Bench, in that case has also referred to the directions issued in 1993 and Rule 6(a) which is in the following terms;

"No credit shall be given to the qualification other than the qualification mentioned by the D.I.S. (SE) in the prior permission and mentioned by the employment exchange."

16. In paragraph 30 of its said judgment, the Division Bench posed a query that can it be said that the qualification of M.A. and B.Ed, held by the writ petitioner was relevant in the sense that even though the same could not have been considered for the purpose of sponsoring his name by the employment exchange, the same can be considered for other purpose? it answered the same in the following terms;

"The answer in our opinion should be rendered in negative....."

17. In coming to the said conclusion reference has also been made to several Judgments of the Supreme Court as also of this High Court.

18. In the light of the said Division Bench Judgment in Ptntu Achartya case, the contention of the petitioner that his B.Ed, qualification which was obtained subsequently and had not been reported to the employment exchange, nor recorded by it when it sponsored the names of candidates in August, 1993 ought to be taken into consideration has to be rejected.

19. As regards the Judgment in Smt. Bharati Roy's case, reported in 1997 (2) CLJ 386 relied upon by Mr. Chakraborty, learned counsel for the petitioner, it must be stated that the same was considered by a Division Bench judgment of this court in Md. Ainur Rahaman Khan v. State & Ors. 1998 WBLR (Cal) 201.

20. In Rahaman Khan's case (cited supra), the Division Bench observed that Ashok Kumar Sharma v. Chandra Sekhar (cited supra) was subject matter of a review application before three (3) Judges Bench of the Supreme Court and it was held that the majority judgment rendered by Dr. T.K. Thommen and V. Ramaswami, J.J. is untenable in law. The learned Judges of the Supreme Court affirmed the proposition of law enunciated in Rekha Chaturvedi v. University of Rajasthan. 1993 Su (3) SCC 168.

21. In their said Judgments, the Division Bench of this court observed that Bharati Roy's case proceeded solely on the basis of Ashok Kumar Sharma's case (supra) and that in the light of the latter Judgment of the Supreme Court in its review Jurisdiction. The Judgment in Bharatt Roy's case does not create any binding precedent. The Division Bench held as under:

"The judgment of the Division Bench of this court in Smt. Bharati Roy v. Shyamal Mukhopadhyay, reported in (1997) 2 Cal. LJ 386 proceeded solely on the basis of Ashok Kumar Sharma case (supra). The earlier decision of this court as also the Supreme Court of India had not been taken into consideration therein. This court is bound by the earlier decision of a Division Bench of this court as also the earlier decision of the Supreme Court of India. The Judgment in Bharatt Roy's case was rendered per-incurium and does not create any binding precedent. There cannot be any doubt whatsoever that eligible candidate should be appointed. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date

alone, is a well-established one. This proposition rests on the fact that had such fact been brought to the notice of the concerned candidates at the time of advertisement, those who had appeared in the other examination and expected publication of their result prior to interview. A candidate who acquires prescribed qualification subsequent to such prescribed date cannot be considered at all. This aspect of the matter is clearly covered by a decision of the Supreme Court of India reported in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

For the reasons aforesaid, the above writ petition must fail and is accordingly dismissed but in the circumstances without any order as to costs.

22. Petition dismissed