
(2011) 06 CAL CK 0041
In the Calcutta High Court
Case No : Writ Petition No. 13637 (W) of 2009

Lakshmi Narayan Bhar and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 06 CAL CK 0041

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Srikanta Dutta, for the Appellant; Kamal Uddin, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—This writ petition is filed challenging an action on the part of the Respondent authorities in discriminating the Petitioner with the other similar circumstanced person in not giving appointment to the post of a primary teacher even after securing the higher marks.

2. Brief facts of this writ petition is that the Petitioner's candidature was sponsored by the concerned employment exchange to the District Primary School Council, Hooghly for consideration for appointment to the post of assistant teacher. Pursuant to such sponsorship the Petitioners were called to submit their testimonials and were found eligible for an interview. It would be noteworthy that the names of the Petitioners were sponsored under OBC category by the concerned employment exchange. The Petitioner contends that after the interview the panel was prepared by the District Primary School Council, Hooghly incorporating the names of the successful candidates in different categories and also showing the highest and lowest marks obtained by the candidate in different category. It is a further case of the Petitioner that they have obtained higher marks than the lowest mark fixed for an OBC category and as such their names should have been included in the said panel.

3. Challenging the aforesaid action, the Petitioner filed writ petition being WP No.

23365(w) of 2005 which was disposed of on 6th March 2008 directing the Respondent authorities to dispose of the representation made by the Petitioners in accordance with law by passing a reasoned order within a period of six weeks from the date of communication of the order.

4. Pursuant to the said direction the Respondent No. 4 rejected the claim of the Petitioners being not entitled for appointment.

5. It is contended that another candidate who was similarly circumstanced and who obtained lessor marks than the Petitioner No. 1 was given an appointment. In this writ petition prayer is made for directing the Respondent authorities to appoint the Petitioner No. 1 to the post of assistant teacher and to produce the necessary scripts of the Petitioner No. 2 as the marks allotted to the Petitioner No. 2 could not have been the marks shown to have been allotted to him.

6. The learned Advocate appearing for the Petitioner submits that by an order passed by this Court in case of Partha Banik WP 15290(w)/2000 it is held that a more meritorious candidate under the reserved categories who obtained higher marks than the lowest marks set up under the general category should be considered under the general category so as to leave the room for the other less meritorious candidate under the reserved category. It is further argued that in case of Bimal Kanti Sen and Ors. who filed writ petition before this Court being WP 19810(w)/2004 the authorities were directed to notionally adjust the panel after putting the OBC candidates who secured more than lessor marks fixed under the general category, into the general category.

7. By referring these two orders the Petitioner contends that after the notional adjustment of the panel the lowest mark has been further decreased and the Petitioners are eligible having secured higher marks than the lowest marks set up after adjustment of the panel.

8. The learned Advocate appearing for the Council submits that the Petitioners have not offered any explanation about their delay in approaching the court and as such the writ application should be dismissed on the ground of delay alone. It is further contended that the aforesaid orders sought to be relied upon were passed as far back as in the year 2001 and 2005 respectively and the aforesaid orders were restricted to the Petitioners of those applications and as such the Petitioners are not entitled to take shelter under the aforesaid orders.

9. Having considered the respective submissions made by the learned Advocate of the parties, the gamut of this writ application rests upon two orders passed by this Court in different writ petitions filed by the candidates who appears in the same selection process. Initially the Petitioner moved the writ petition before this Court being WP No. 23365(w) of 2005 which was disposed of directing the authorities concerned to consider the representation of the Petitioner. Pursuant to the said order, the Respondent No. 4 considered their representation and rejected the contentions of the Petitioners.

10. It appears that the writ Petitioners were sitting idle and did not oppose or raise objection to the panel which was prepared by the concerned authority.

11. It is only after an order passed by this Court in a different writ petition in the year 2001 and 2005 the Petitioner made a representation to the concerned authority. The Petitioner should have been more vigilant in approaching the court for vindicating their grievance that they have been unreasonably and/or illegally kept out of the panel though their names should be included in the panel. A fence sitter should not be encouraged otherwise the issue which raised shall be reopened. The apex court has time and again laid down that a person cannot be allowed to raise the dispute or challenge the validity of an order after its conclusion. No party can claim the relief as a matter of right as one of the ground for refusing the relief is that the person approaching the court is guilty of delay and laches. The stale claim should not be encouraged where the right of a third party crystallized in the interregnum [see Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others, . and (2011) 4 SCC 374 Bharat sanchar Nigam Ltd. v. Ghanshyam Dass (2) and Ors.]

12. Thus, the claim of the Petitioner is not tenable and they are not entitled to any relief claimed in this writ petition.

13. The writ petition is, therefore, dismissed. However, there shall be no order as to costs.

14. Urgent photostat certified copy of the judgment, if applied for, be given to the parties on priority basis.