
(2019) 08 CAL CK 0079

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 11328 (W) Of 2013, Civil Application (CAN)
No. 7637 Of 2019

Lisa Banerjee (Dasgupta)

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 08 CAL CK 0079

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Debjani Sengupta, Shreya Bhattacharjee, T. M. Siddiqui, P. K. Basu

Final Decision : Allowed/Disposed Off

Judgement

Protik Prakash Banerjee, J

The Court: This application under Article 226 of the Constitution of India sought the cancellation of the letter dated March 1, 2013 being Annexure P/7 to the writ petition on a short point that the same was issued by the Director, Mass Education Extension Directorate on the ground that a reason given for the Directorate's inability to approve the said panel was not supported by any statutory rules. In this matter two affidavits in opposition were filed. The first affidavit in opposition which was filed was in respect of the writ petition as it had been filed and was affirmed by one Dilip Kumar Das on September 20, 2013. Subsequently, the writ petitioner filed a supplementary affidavit and an opposition was filed thereto by the District Mass Education Extension Officer, Kolkata under the same directorate and this was affirmed on August 5, 2019 by one Subhojit Mondal. I shall refer to these two as the first affidavit in opposition and the second affidavit in opposition. Replies have been filed thereto and I have considered all these materials before proceeding to judgment.

It appears that the deponent in the said affidavit in opposition was himself a part

of the selection committee which recommended the panel of candidates to the Director of Mass Education Extension at a time when the said person was the Deputy Director. In the said panel as initially framed the writ petitioner as also two other persons who were named after a due selection process figured as the three candidates. In the first affidavit in opposition it was alleged that none of the candidates had the appropriate qualifications of eligibility for the post of Principal of the Calcutta Blind School. In the supplementary affidavit Ms. Sengupta has shown that there is a judgment passed by the coordinate Bench in W.P. no. 20013 (W) of 2010 of July 30, 2015 after remand by the Hon'ble Division Bench.

Page 75 of the supplementary affidavit shows that on the basis of the finding of the Hon'ble coordinate Bench intra partes it cannot be said that the petitioner being the first candidate empanelled was not eligible. I am setting out a portion of the order of the coordinate Bench which supports the contentions of the writ petitioner.

"Mr. Gupta, learned Additional Advocate General and senior advocate has appeared on behalf of the State. He drew attention to a scheme for aid to recognized institutions for handicapped dated 21st December, 1998 with reference to Government Order no. 2839-Edn (MEE)/3'S' -57/98 that had been disclosed by the State in a supplementary affidavit filed on its behalf in the appeal preferred. He points out from that scheme that in the case of schools for the blind consisting of 100 students, staff pattern to be followed had been specified. Under the category of academic staff there were three sub-categories made, the first being the principal, the second teachers and the third supporting staff to include music teacher. Mr. Gupta submitted this distinction may have caused the State to act as it did but, in fairness he submitted, since the petitioner had been appointed as Assistant Teacher no such distinction could possibly be made in law. With reference to the said memo 33-Edn.(B) dated 7th March, 1990 in particular paragraph 16(3). Mr. Gupta submitted that since the distinction made by the scheme dated 21st December, 1998 was subsequent to the petitioner having been appointed as Assistant Teacher on 4th April, 1997, such could not be made or applied to her case. She was entitled to her claims under the sub-paragraph (3) of paragraph 16 of the said notification. He further submitted that there was a discrepancy in the matter of her obtaining higher qualification without prior grant of permission on her undertaking not to claim consequent enhancement in pay but such would not stand in the way of her being granted enhanced pay for improving her qualification as that was the policy of the Government. This discrepancy though disputed by Ms. Sengupta need not detain this Court as the petitioner appears to be entitled to her claims arising out of the said memo dated 7th March, 1990.

The distinction sought to be made on behalf of the State in disputing the claims of the petitioner on the basis of there being a sub-category of supporting staff in cases of schools for the blind while the same scheme did not make such

distinction between music teacher and assistant teachers in cases for schools for mentally retarded handicapped children appears to be a distinction without a difference on basis of which the claims cannot be resisted. Any other stand of the State would have been unfair. This Court finds the petitioner is entitled to graduate scale of pay from the time she was appointed, i.e., 4th April, 1997 and, thereafter, enhanced scale of pay on her having obtained post-graduate degree on 16th December, 2004. The respondent no.2 is directed to assess the arrear salaries payable as a consequence of this order and disburse the same to the petitioner within a period of eight weeks from the date of communication of a copy of this order obtained from the website of this Court to be made by the petitioner on the said respondent. The amount assessed as found payable in arrears to the petitioner will have adjusted to it the balance of the amount paid to the petitioner under orders in appeal. The deductions heretofore made are no longer to be made and the disbursement of the aggregate amount found payable to the petitioner after making the said adjustment be made to the petitioner expeditiously."

Learned advocate for the respondents accepted this position.

As such, the original objection taken by the respondents that none of the candidates was eligible is no longer available to the respondents. That is why they filed the second affidavit in opposition where they alleged as follows:

"iii) That panel of 9 candidate was short listed and accordingly they were asked for appear in an interview. Out of them, I candidates 6 appeared in the said interview. The said Selection Committee, in their meeting dated 19.07.2012, prepared a panel of three candidates, the names of those said 3 candidates are mentioned below:

1. Lisa Banerjee
2. Arun Kumar Manna
3. Gouri Sankar Bera

The copy of the said notice of panel list of 3 candidates is annexed hereto and marked with letter "R-2".

iv) That it was found the candidate No.2 of the abovementioned panel, possessed 7 years 1 months experience as a lecture in Teaches Training Centre for the blind. The candidate, at the sl. No.3 of the above panel, possessed 6 years 11 months experience as a lecturer in Teachers Training Centre for the blind.

v) That it is stated and submitted the experience require for the said course clearly state that the candidates should have 5 years teaching experience in a school for the blind vide G.O. No.552-Edn(MEE) dated 20.04.1995.

The copy of G.O. is annexed hereto and marked with the letter "R-3".

vi) Thus as per the abovestated facts two candidates, as mentioned above, do

not have the requisite qualification, as required by the Recruitment Rules because they had the experience of teaching the teachers, not teaching the blind students. In this state of affairs if the Directorate would have vitiated the extant of the Recruitment Rules.

vii) In view of above, this Directorate did not approve the said panel and communicated its decision vide number DMEE/G-53 dated 01.03.2013 and instructed to start the process of filling up the vacant post of Principal strictly in accordance with the procedure and extant rules. But the authorities of the school did not abide by the said instruction of this Directorate and the post of Principal is still lying vacant, the worst suffers being the blind students of the school."

Therefore, the clear stand, changing the original stand of the respondents, is that the statutory rules do not allow any panel to be approved where out of three, two are ineligible. Before proceeding to examine this as a question of law perhaps it would be better to first consider what are the statutory rules in respect of procedure for appointment of a Principal in such a school for the handicapped particularly visually impaired.

I take the second affidavit in opposition and rely on the Annexure R/3 thereto where the notification prescribing the rules and procedures relating to recruitment to the posts of teaching and non-teaching employees in various government sponsored Institutions for the handicapped under the Mass Education Extension department has been given. I am quoting the rules in their entirety hereunder.

"1. Method of Recruitment:

By Selection (direct recruitment) from amongst candidates to be sponsored by Employment Exchange. 2. Qualifications for the Employees (both teaching and non-teaching of-

- a) Schools for the Deaf;
- b) Schools for the Mentally/Multiple Handicapped;
- c) Schools for the Blind.

Shown in the annexed enclosure."

Part of the enclosure annexed to the said rules is the qualification for a Principal of a school for the visually impaired id. est. Blind School like the present respondent no.3 in which the petitioner is seeking appointment as a Principal. The qualifications for the said post are as follows:

"Qualifications:

"Essential:

(A)

Hons. Graduat Degree or Masters Degree

(B)

Diploma/Certificate in teaching the Blind from a Recognised Institute.

(C)

5 years Teaching experience in a school for the blind

Desirable:

(A)

Knowledge in office Administration.

(B)

Knowledge of Bengali.

Age Limit:

45 years: Relaxable for highly qualified candidate.

N.B.

Hearing handicapped and visually handicapped persons are not eligible for the post.

A bare perusal of the said rules will show that there is no statutory provision or rules made under the statute for a panel containing two or more names to be submitted to the respondent no. 2 for approval. Therefore, for the alleged reason that none of the candidates mentioned in the panel is eligible when on the face of the records as I have quoted above, a coordinate Bench has held that the qualifications of the petitioner must be held to be sufficient, the respondent no.2 could not reject the approval sought by way of Annexure P/7. As admitted in paragraphs 3(iii) to (vii) of the second affidavit in opposition quoted above it is clear that at least the petitioner was duly eligible in all respects for the said post and only the second and third empanelled candidates were ineligible.

Now we come to the second reason given by the respondent no.2 by way of the second affidavit in opposition defending the rejection of the panel. At paragraph 7 of the second opposition, the respondents have alleged as follows:

"7.* * * *

(a) Once a panel is approved by the appropriate authority, it becomes sacrosanct.

(b) If the first empanelled candidates doesn't join, the second empanelled candidate is entitled to join and so on.

(c) Thus in the situation of refusal of first empanelled candidate, the second empanelled candidate who didn't have requisite qualification, as mandate in

Recruitment Rules, would have joined.

(d) Thus the entire situation would have been illegal and bad in the eye of law if the panel was approved by this Directorate."

Therefore, it is clear that on the basis of the contingency which had neither occurred nor was likely to occur the panel was not approved, but rejected. The ground of rejection that the panel contained three names of which at least two were ineligible (in terms of the above finding of the coordinate Bench in the order dated July 30, 2015 about the eligibility of the petitioner) is clearly not supported by the statutory rules, which do not require that a panel containing three eligible names will have to be submitted. I hold that the contingency envisaged by the respondents in paragraph 7 of the second affidavit in opposition is unlikely because the petitioner herself has come to court seeking approval of that panel and therefore, the question of her not joining as the first candidate empanelled does not arise.

A subsidiary point was raised by the respondents that the petitioner took no steps to have the vacancy of the Principal filled even though she was the teacher in charge. I am satisfied from the records and the documents produced that the writ petition was affirmed two days before she was appointed as teacher in charge and shortly thereafter an administrator was appointed by the competent authority and so the petitioner was no longer in a position to take steps to fill the vacancy.

Now I come to the question whether even without a statutory provision a panel of three names all of whom are eligible has to be submitted before the respondent no.2. It is submitted on behalf of the respondents that the practice of submitting a panel gives a choice to the approving authority and also provides an opportunity to the employer to have alternatives in case the first empanelled candidate does not join; this opportunity passes on in turn to the next empanelled candidate in case of the empanelled candidate in a higher position not joining the post. I have no hesitation in rejecting the first limb of this submission since it is nobody's case that even an eligible candidate who is higher in position than another can be ignored by the approving authority at the time of approving the panel and so the argument on purported choice though attractive at first glance is deceptive on deeper scrutiny and therefore, it is rejected. I have already recorded my reason for holding that the second limb of submission that a panel is required of eligible candidates only to ensure that the vacancy can be filled if the first empanelled candidate does not join, is not applicable to the present case.

I am fortified in my decision by the Judgment of a coordinate Bench in the case of Durga Charan Ghosh-v-The State of West Bengal and Others reported in 2000 (1) CHN page 117 where at paragraphs 9 and 11 the following has been found by the said coordinate Bench:

"9. In my opinion all rules should be given a meaning which is logical and easy to

be worked upon. Preparation of three-men panel is nothing but an option given to the District Inspector of Schools for consideration of the relevant credentials of the persons named in the panel to avoid unnecessary criticism of discrimination. In the instant case when it is an admitted position that the writ petitioner is the only suitable candidate found out, the question of preparation of three-men panel is nothing but an impossible task. Hence I feel that such rule should be given a liberal construction in the given facts and circumstances. Hence, I hold and obviously being promoted by the order of the Division Bench, the District Inspector of Schools is wrong in rejecting the contention of the writ petition on this score.

11. In these circumstances, the writ petition succeeds. The order impugned dated August 3, 1999 is set aside. The District Inspector of Schools concerned is directed to approve the said one-man panel if he finds it otherwise lawful and made in accordance with the relevant rules in terms of the order of the Division Bench forthwith.

I am also fortified in this matter by a decision of another coordinate Bench reported in the case of Uttam Kumar Mahato-v- State of West Bengal reported in 2006 (1) CHN page 650 where in such a case a panel was directed to be recast and approve the same to give appointment to a candidate who was eligible after recasting of the panel to the first candidate who are eligible.

In such view of the matter and recording the change of the stand of the respondents I hold that the writ petitioner is entitled to an order in terms of prayers (a). There shall also be an order commanding the respondents to recast the panel as a single member panel approved on July 19, 2012 and sent under the signature, inter alia, of the then Deputy Director of the Directorate of Mass Education Extension and to grant a letter of appointment with effect from July 19, 2012 and give consequential benefits to the petitioner within a period of fortnight from the date of communication of this order. The writ petition is thus allowed to the above extent. There shall be no order as to costs.

As a consequence the application being CAN 7637 of 2019 is also disposed of.