
(2010) 12 CAL CK 0054
In the Calcutta High Court
Case No : AST 405/10

Mahadev Mahato and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

West Bengal Primary School Teachers Recruitment Rules, 2001 — Rule 9

Citation : (2010) 12 CAL CK 0054

Hon'ble Judges : Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Lalit Mohan Mahato and Monoranjan Mahato, for the Appellant; Balai Chandra Ray, Joydip Kar, Tapabrata Chakraborty, Subhaya Banerjee and Avijit Basu for the State and Anindya Mitra and Jayanta Mitra for the Council, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—All these three Mandamus-Appeals were taken up together as the same question of law arises for determination in these three appeals preferred against three different orders passed by the same learned Single Judge on 13th May, 2010, thereby dismissing three separate writ-applications filed by the respective Appellant.

2. Being dissatisfied, the three unsuccessful writ-Petitioners have come up with these mandamus appeals.

3. The following facts are not in dispute:

a. The writ-Petitioners applied for the post of primary teacher before the District Primary School Council, Purulia, by duly filling up the prescribed application-form thereby describing themselves as the members of "other backward classes" (hereinafter called OBC).

b. According to the writ-Petitioners, they obtained more than 60; marks in the Madhyamik Examination but they have not been called for written test and

interview although it appears that persons obtaining less than the marks obtained by the writ-Petitioners in general category have been called for such written test and interview.

c. According to the writ-Petitioners, while shortlisting the candidates for the purpose of issuing admit cards for the written test and the interview, the council has not followed the prescribed Rules framed in that behalf with regard to the policy of reservation for Scheduled Caste, Scheduled Tribe and OBC candidates.

d. It is alleged that the council has fixed 67.8% mark in the Madhyamik Examination as the cut off marks for calling a candidate under OBC category to the written test and interview, whereas such marks for general category is fixed at 60%.

e. The writ-Petitioners, therefore, prayed for quashing the process of shortlisting and for passing direction for preparation of a fresh list for sending admit cards for the written test and the interview by following the Rules framed in that behalf.

f. The learned Single Judge, without asking the Respondents to file affidavit, dismissed the writ-application filed by the Appellants on the ground that there was no violation of the concerned West Bengal Primary School Teachers Recruitment Rule, 2001 (as amended) and the cut off mark fixed for OBC candidates for shortlisting, i.e. 67.88% was prepared in accordance with the procedure laid down in Rule 9 of the West Bengal Primary School Teachers Recruitment Rules, 2001 and the various sub-rules thereunder.

4. Being dissatisfied, the writ-Petitioners have come up with these appeals.

5. In view of the aforesaid allegation of fixing cut off marks alleged by the writ-Petitioners, in these appeals, we called for an affidavit from both, the State Government and the Primary School Council, Purulia, for explaining the aforesaid position.

6. Both the State Government and the Purulia District Primary Council have admitted the position that the minimum cut off marks obtained in the Madhyamik Examination by a candidate for which the Admit Card was issued for those in the general category was 60% whereas for the candidates in the OBC category, the same was fixed at 68%. It is further admitted that for the candidates belonging to the SC category, the minimum cut off marks is 50.38; whereas for those in the ST category, it was 54.13% marks in the Madhyamik Examination.

7. The District Primary School Council, however, in its affidavit has justified their stance by contending that there should be separate list for General, SC, ST and OBC categories even at the stage of shortlisting and the Admit Card should be issued to the total number of candidates which should be 15 times the number of vacancy available under each category.

8. It is asserted that in the district of Purulia, there were 70 available vacancies for OBC candidates in Bengali Medium as per 100 point roster. Therefore, the

total number of OBC candidates who should get admit cards for the written test and interview should be $70 \times 15 = 1050$ whereas the total number of applications received from the candidates of the OBC category was 17,218 and from those 17,218 candidates, the first 1050+ additional 5 having obtained same mark at the bottom = 1055 candidates have been called and in that process, the candidate who obtained the 1055th position was the last candidate in the list under the OBC category for issue of Admit Card for written test and interview and the said candidate obtained 67.88% marks in the Madhyamik Examination. According to the District Primary School Council, in the general category, on the other hand, the number of vacancy being 616 for Bengali Medium, the total number of $616 \times 15 = 9240 + 39$ additional having obtained the same marks at the bottom = 9279 persons were called for written test and interview and the person obtaining 9279th position in the general category had obtained 60% marks in the Madhyamik Examination.

9. The Respondents, therefore, contended that there was nothing illegal for fixing higher cut off marks for OBC candidate than those fixed for the candidates of the general category having regard to the fact that the admit cards for the written examination and the interview can be issued to candidates 15 times the number of vacancies for each category under the Rules.

10. So far, the categories of SC and ST are concerned, since those are not the subject matter of these writ-applications, we are not dealing with the cut off marks fixed for SC and ST candidates and we propose to restrict our scrutiny only to the OBC candidates.

11. Therefore, the sole question that arises for determination in these appeals is whether having regard to the fact that out of total number of vacancies of 1078, the quota for OBC was 70, there was any scope for fixing higher cut off mark for OBC candidates than the one fixed for under general category under the provision of the Rules.

12. At the very outset, we keep on record that the none of the learned Counsel for the parties has disputed the position of law that if a candidate of SC, ST or OBC category secures selection on merit without taking aid of the quota of reservation, those candidates, although belonging to the reserved category, should be treated to have been selected under the general category and his selection should not be taken into consideration as having been filled up from the quota of that particular reserved category. In other words, although there are 616 posts under the general category, if any of the first 616 candidates based on merit come within any of the categories of the SC, ST and OBC, in that event, those should be treated to be selected under General category and the remaining posts reserved for those categories should also be filled up from those three categories. Thus, the term "general category" does not necessarily means "other than reserved categories" and the quota of the general category, in a given situation, may be even exhausted fully by the candidates of the reserved categories if all of them figure in the first 616 ranks on merit.

13. Therefore, the explanation given by the council that the admit cards for written test and interview for the general category should be sent to $616 \times 15 = 9240$ persons and those 9240 persons should not be of any of the reserved categories is patently illegal. Thus, the concept of the council that general category does not include any of the reserved categories is not in conformity of the law of the land relating to reservation.

14. In our opinion, having regard to the Rules framed for recruitment, for the purpose of shortlisting, 15 times the total number of vacancies, i.e. $1078 \times 15 = 16,170$ candidates should be called for written test and interview by fixing the cut off marks by going in the descending order and the percentage of marks obtained by the 16170th candidate in the Madhyamik Examination should be the cut off marks and in the process some additional persons obtaining the same number as that of the 16170th rank holder should be tentatively called. If it appears that among those 16170 candidates, sufficient number of the candidates belonging to each of the reserved categories numbering to 15 times the vacancies of that reserved category is not available, in that event, the council is duty bound to call further candidates from each of the reserved categories so long the 15 times the vacancy of that category have not found place in the list by further going down in the descending order. If, however, within the first 16170 candidates each of the reserved categories has the representation of 15 times the reserved vacancies of that category, in that situation, the above exercise for further calling the candidates for the reserved categories would not arise.

15. We, therefore, find that the council did not follow the norms of reservation by misinterpreting the Rules and consequently, deviating from the law of reservation.

16. The learned Advocate General at the time of hearing of these appeals realized the aforesaid mistake committed by the council and thus, fairly conceded that there was wrong application of the relevant Rules. However, the learned Advocate General submitted before us that as the entire process of selection is over and even appointments have also been given to a huge number of persons who are working for quite some time, we should, instead of quashing the entire process of selection, give an opportunity only to the candidates of the OBC category who have obtained equal to or more than 60% marks in the Madhyamik Examination and have not been given admit cards for the written test and interview. In this connection, the learned Advocate General on behalf of the State Government gave the following proposals in writing to solve the problem without setting aside the entire process of selection:

1. The reserve candidates (OBC) under Purulia District Primary School Council who have secured marks between 60% and 68% but was not considered for issuance of admit card will be allowed the highest marks in the written Examination (of 30 marks) obtained by a General Candidate (who have obtained between 60%- 68% marks in the Madhyamik Examination) and those candidates will thereafter be called for interview /aptitude test.

2. After interview/aptitude test, the successful candidates will thereafter be empanelled.

3. For the purpose of appointing these successful candidates, the State will first utilize available posts of Primary Teachers for which recruitment process stands completed in the year 2009 but in respect of which the candidates have either not joined or they have resigned and gone for better prospect.

4. If after accommodating the successful candidates in these posts it transpires that further posts are necessary for the purpose of giving appointment to the left over candidates, the State Government shall create such number of posts only for the purpose of accommodating the left over candidates. Such posts however shall stand abolished in the event the successful candidates do not join the said posts or they resign and or retire. These additional posts will not be added to the sanctioned posts but these posts will be created on a one-time basis and will be personal to the candidates who will be appointed to those posts.

5. The State shall not encroach upon the current vacancies, which were not the subject matter of 2009 Recruitment process.

17. After hearing the learned Counsel for the parties and after going through the materials on record we, thus, hold that the candidates belonging to the OBC category who had obtained between 60% and 68% marks in the Madhyamik Examination have been illegally excluded in the process of shortlisting and thus, the Appellants being candidates of that category should get opportunity of appearing at the written examination and the interview.

18. However, after taking into consideration the fact that the entire process of selection is over and a substantial number of candidates have been given appointment and are working, we, instead of quashing the entire process of selection, accept the proposal of the learned Advocate General given on behalf of the State Government mentioned above.

19. We, therefore, direct the Respondents to immediately send admit cards to the Appellants and all the candidates of the OBC category in the district of Purulia who have obtained marks between 60% and 68% in the Madhyamik Examination but were not given admit cards for appearing at the interview/aptitude test to be conducted by January 31, 2011. Those candidates will not be required to sit in the written test and as suggested on behalf of the State Government, they should be given the highest marks in the written Examination (of 30 marks) obtained by a General Candidate among those having obtained between 60%- 68% marks in the Madhyamik Examination and thereafter, those candidates should appear at the interview/aptitude test.

20. After the interview/aptitude test, the persons who will obtain the total marks i.e. (highest mark obtained by a general candidate among the candidates obtaining 60%- 68% marks in the Madhyamik Examination + marks to be obtained in interview/aptitude test) which is equal to or exceeding the marks

obtained by the last successful candidate of the general category, should be declared as successful and will thereafter be empanelled.

21. For the purpose of appointing these successful candidates, the State will first utilize the available posts of Primary Teachers for which recruitment process stands completed in the year 2009 but in respect of which the candidates have either not joined or they have resigned and gone for better prospect.

22. If after accommodating the successful candidates in these posts it transpires that further posts are necessary for the purpose of giving appointment to the left over candidates, the State Government shall create such number of posts only for the purpose of accommodating the left over candidates. Such posts, however, shall stand abolished in the event the successful candidates do not join the said posts or they resign and/or retire. These additional posts will not be added to the sanctioned posts but these posts will be created on a one- time basis and will be personal to the candidates who will be appointed to those posts.

23. The State shall not encroach upon the current vacancies, which were not the subject matter of 2009 Recruitment process.

24. The appeals thus succeed. The orders impugned in these appeals are set aside. The writ-applications are consequently disposed of in terms of our above directions.

25. In the facts and circumstances of the cases, there will be, however, no order of costs.

26. I agree.