

(2019) 09 CAL CK 0167
In the Calcutta High Court

Case No : Writ Petitions (WP) No. 19070, 19123 (W) Of 2010

Md. Abdus Sukur And Others

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

West Bengal Madrasah Service Commission Act, 2008 — Section 8, 10
West Bengal School Service Commission (Selection Of Persons For Appointment To The Post Of Teachers) Rules, 2007 — Rule 12(2)(a), 12(8)(2), 12(8)(4)
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 CAL CK 0167

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Md. Sarwar Jahan, Mousumi Mitra, Sahan Shah, Prosenjit Mukherjee, Madhurima Sarkar, Rituparna Ghosh

Final Decision : Disposed Of

Judgement

Protik Prakash Banerjee, J

1. In these two writ applications filed before this Court in its jurisdiction bestowed under Article 226 of the Constitution of India, the writ petitioners have challenged two several orders dated July 12, 2010 passed by the Chairman, West Bengal Madrasah Service Commission (the respondent no. 5 in this writ petition) wherein and whereby the respondent no. 5 rejected the representations made by the writ petitioners that their candidature as Assistant Teachers in the aided Madrasahs in West Bengal be recommended. The contents of the said two orders are almost identical except for the particulars of the petitioners, their roll number and rank in the list published on August 8, 2009 and May 20, 2009. The writ petitioners pray before this court to direct that the writ petitioners be treated as empaneled candidates for selection to the post of Assistant Teachers and to pass an order recommending the name of the writ petitioners for appointment to the post of Assistant Teachers in History (Hons./P.G.) in Madrasahs having the necessary vacancy. Since both these writ petitions being W.P. No. 19070 (W) of

2010 and W.P. No. 19123 (W) of 2010 raise common questions of law and fact, with the consent of the parties, I have consolidated them and heard them analogously.

2. It is the case of the writ petitioners in paragraph 13 read with paragraphs 10 and 11 of their respective writ petitions, that they participated in the State Level Selection Test, 2008 conducted by the West Bengal Madrasah Service Commission for recruitment to the post of Assistant Teachers in Bengali Medium Madrasahs in West Bengal. As part of the selection process, the result of the written examination and the personality test was declared on July 20, 2009 and a panel for the post of Assistant Teacher of History (Hons./P.G.) was published in which the writ petitioner in W.P. No. 19070 (W) of 2010 (Md. Abdus Sukur- v- State and Others.) was ranked 61st while the writ petitioner in W.P. No. 19123 (W) of 2010 (Amirul Islam-v-State and Others.) was ranked 63rd and were placed in the wait listed category of candidates on the 4th and the 6th place respectively. However, on August 08, 2009 the writ petitioners came across a list of vacancies titled "Vacancy List of 2nd SLST 2008" from the website of the West Bengal Madrasah Service Commission, the respondent no. 3 showing that as many as 70 vacancies existed in Madrasahs all over the state for the post of Assistant Teacher in History (Hons./P.G.) category. The writ petitioners claim that the counselling for selected candidates for recommendation of names towards appointment to the post of Assistant Teacher in History (Hons/P.G.) category was to be held soon thereafter i.e. on August 17, 2009 from the list of August 8, 2009 that is to say Annexure "P7" to the writ petitions, which they came to know on August 8, 2009 itself.

3. As a result, the writ petitioners approached the Secretary, West Bengal Madrasah Service Commission, the respondent no. 4 herein with a request to empanel the name of the writ petitioners in the list of candidates short-listed for counselling. Finally, the writ petitioners approached the Chairman, West Bengal Madrasah Service Commission, respondent no. 5 herein reiterating his request to be empaneled in the list of short listed candidates. When no relief came their way, the writ petitioners in W.P. No. 19070 (W) of 2010 and W.P. No. 19123 (W) of 2010 filed writ applications being W.P. No. 5097(W) of 2010 and W.P. No. 5095(W) of 2010 respectively, before this Court both of which were disposed of by separate orders both dated April 30, 2010 passed by His Lordship the Hon'ble Justice Aniruddha Bose (as His Lordship then was) directing the respondent authorities in both the matters matter to consider the case of the writ petitioners and pass a reasoned order, in each matter, after the giving the writ petitioners an opportunity of being heard.

4. In pursuance of the aforesaid directions passed by this Court the respondent no. 5 heard the writ petitioners and passed the impugned order rejecting the representation of the writ petitioners. Hence these writ petitions.

5. Even though the learned advocates appearing for the parties attempted to take me through the statutory rules, being the West Bengal School Service

Commission (Selection of persons for Appointment to the post of Teachers) Rules, 2007, I find that applicability of the said rules or the violation of any one or more of the specified rules has not been specifically alleged in the order impugned. What the respondent no. 5 has alleged is very interesting, since he has alleged two wholly different and contradictory things at two separate times, which too is very material. Only one of them is on oath.

6. Let me take these in order: -

First, from the impugned Order dated July 12, 2010 (which is almost identical in respect to both the writ petitioners excepting their ranks in the 2nd SLST 2008), a few paragraphs are extracted: -

a. "After written examination held on 21.12.2008, the final vacancy list was declared on 21.05.2009. Thereafter, he was called for the Personality Test on 25.6.2009. after completion of all the formalities, the final result was declared on 20.7.2009 and a panel as well as the Waiting List was published in History (H/PG) and in other subjects wherein he ranked at Sl. No. 61 (Sl. No. 63 in respect to the writ petitioner in W.P. No. 19123 (W) of 2010) in the Combined List and at Sl. No. 4 in the Waiting List (Sl. No. 6 in respect to the writ petitioner in W.P. No. 19123 (W) of 2010). It is to be noted in this context that at the time of final publication of the vacancy list in "Aajkal" on 21.5.2009, total number of vacancy in History (H/PG) was declared as 59 out of which 54 for General/Male in Bengali medium, 3 for female in Bengali medium and 2 for female in Urdu medium.

b. The petitioner in his writ application alleged that he obtained an information from website of the Commission on 8.8.09 that there are 70 vacancies in History (H/PG) which is absolutely false in view of the fact that after publication of the exact and final vacancies on 21.5.09, there cannot be any question to publish any other vacancy list by the Commission in that subject.

c. However, the petitioner filed a writ application before the Hon'ble High Court at Calcutta in the month of March, 2010, inter alia, alleging that although there are 70 vacancies and he ranked Sl. No. 61 (Sl. No. 63 in respect to the writ petitioner in W.P. No. 19123 (W) of 2010) yet he was not empanelled and that too he was not called for counselling. Apart from the above, he further alleged that a candidate ranked at Sl. No. 59 had been called for counselling as an empanelled candidate.

d. On 30.4.2010, the above writ application was disposed of by His Lordship the Hon'ble Justice Aniruddha Bose and His Lordship was pleased to direct me to consider the grievance of the petitioner upon giving an opportunity of hearing to the petitioner.

e. Upon careful perusal of the records, I find that the actual vacancies in History (H/PG) and other subjects was published on 21.5.09 in "Aajkal" where the total number of vacancies in History (H/PG) was declared as 59 out of which 54 for General/Male in Bengali medium , 3 for female in Bengali medium and 2 for

female in Urdu medium.

f. The list of madrasahs annexed to the writ petition at page 37 (page 38 in respect to the writ petition in W.P. No. 19123 (W) of 2010) is not a valid document in view of the fact that after publication of the exact and final vacancies on 21.5.09, the Commission cannot publish such a void document any further and accordingly I say that the said document is a manipulated one." (emphasis supplied by me).

g. Therefore parsing each of these carefully it will be seen that the date of receipt of the list of the vacancies before the publication of the advertisement for the selection process, the first stage under Rule 12(2)(a) has not been cited by the respondent no. 5, and therefore it cannot be said that the publication on May 20, 2009 was to be taken as the final - or that any future list would be carried over to next regional selection test. On the other hand, the only reason why the said list of August 8, 2009 has been held to be manufactured is that it was dated after May 20, 2009 though nothing was said about how and why it was published on August 8, 2009 on the website. I have referred to the said rule 12(8)(2) and rule 12(8)(4) of the said Rules, 2007 only to show where the respondent no. 5 could get the idea of the finality of any particular list. He did care to refer to any statutory rules or that this bound him.

h. Therefore, it is also clear that as on July 12, 2010 when the impugned order was passed, there was a finding by the respondent no. 5 that the list as in Annexure P7 was manufactured and could not be relied upon. Yet nothing was done to remove it from the website or take steps to find out how it had happened.

The Affidavit of the respondent no. 5, affirmed on October 17, 2010 clearly affirms as true to the knowledge of the deponent, the respondent no. 5 the following:-

i. Paragraph 3: "That I say that list of 70 vacancies annexed in the writ petition though given in the website of Madrasah Service Commission was by mistake and so it was withdrawn on August 10, 2010 and a correct list of Madrasahs as per the publication of the exact and final vacancies was given in the website of the Commission on that date. (even the document was not annexed to the affidavit of the respondent no. 5) (emphasis supplied by me).

7. It is needless to mention that what the respondent no. 5 has stated on oath, taking responsibility, before this Court under Article 226 of the Constitution of India, in response to an order to bring his stand on oath about the said list, must be given the most solemn effect and held to be sacrosanct. So if I take it, as I must, that the stand taken by the respondent no. 5 in the affidavit is correct, that this was a mistake, then certainly until August 9, 2010, the list published on August 8, 2009 was still in force, and not withdrawn and certainly it was not a manipulated one. The respondent no. 5 decided the representations only on July 2010, when the said list as in Annexure P7 was still in force and was not alleged

to have been cancelled by the respondent no. 5 and/or anyone and no statutory rule prohibited the respondents from giving effect to it. Therefore, the finding as on July 12, 2010 that the said notice was manufactured was contrary to the materials on record and also for which there was no material on record, rendering the entire decision-making process perverse to the extent of vitiating the decision itself. Therefore, nothing else is required to be decided.

8. Accordingly, the decision dated July 12, 2010 as in Annexure P12 to both the writ petitions is quashed by way of judicial review being perverse on the face of the records extant and brought before the Court. The matters are sent back on remand to the respondent no. 5 as the Chairman of the respondent no. 3 to decide it afresh, after considering the above observations and the materials on record and after giving a full opportunity of being heard to the petitioners and other concerned parties, within a period of one month from the date of communication of the order and any recommendation, if made after such fresh consideration, shall abide by the result of the challenge to the vires of some of the provisions of the West Bengal Madrasah Service Commission Act, 2008, now pending before the Hon'ble Supreme Court in Civil Appeal No. 5808 of 2017 in Sk. Md. Rafique-v-Managing Committee, Contai Rahamania High Madrasah & Another and any appointment made under an interim order passed by the Hon'ble Supreme Court shall not be affected by this order. The reason for which I cannot pass any mandatory order for appointment or recommendation except in the form as above is because it appears to me from a bare reading of section 8 and 10 of the Act of 2008 that that the authority which is to make recommendation for the appointment to the post of Assistant Teachers is, in accordance with the Act of 2008 as amended, the said Madrasah Service Commission. It is, therefore, difficult to reach any conclusion at this stage or pass any directions to the appointing authority in respect of the claims of the writ petitioners in the absence of a determination made by the Hon'ble Supreme Court of India so far as the constitutionality of the Madrasah Service Commission is concerned.

A server copy of this order, duly certified by the principal officer of this court shall be kept with the records of WP No.19123(W) of 2010. The parties shall bear their own costs.