

(2000) 02 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition no. 11268 (W) of 1999

Md. Mefiz

APPELLANT

Vs

District Primary School Council, Burdwan

RESPONDENT

Date of Decision : 14-02-2000

Acts Referred:

Citation : (2001) 1 ILR (Cal) 542

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Advocate : Subrata Ganguly, for the Appellant;

Final Decision : Dismissed

Judgement

M.H.S. Ansari, J.—The grievance of the Petitioner in the instant writ application is that the Respondent district Primary School Council Burdwan has acted in gross violation of the Rule of Recruitment by not awarding to the Petitioner marks in training qualification, which qualification had been obtained by the Petitioner from the recognized institution.

2. The Petitioner seeks a direction in the nature of mandamus commanding the Respondent council to award marks in respect of the training qualification on the basis of the Certificate of Primary Teachers Training Mark Sheet and Certificate issued by the Director of School Education, West Bengal and a further consequential direction to include the name of the Petitioner in the panel in the order of merit and to issue appointment letter to the Petitioner in the post of Primary School Teacher.

3. The averments made in the writ application show that the Petitioner enrolled his name with the employment exchange in 1988. By that time, the Petitioner had not obtained Primary Teachers Training Certificate and as such, in the Employment Exchange Register there was no entry of his training qualification.

4. The Petitioner had passed secondary examination in 1972. Therefore, the

Petitioner passed Primary. Teachers Training Final Examination in 1996.

5. The Primary Teachers Final Examination was held in June, 1996, the certificate, however, was issued from the training institute on or about March 13, 1997.

6. In his representation to the Chairman, Burdwan District Primary School Council, the Petitioner made a prayer for taking cognizance of the primary teachers training final examination and therein, he has stated:

..... The result of the above training exam. was not out on 20.11.96 when I was screened by the Exchange for primary school teacher ship, as a result of which my name was forwarded in the category of untrained candidates. Now, at the time of screening by the Council on 16.7.97. the result is out and I have obtained a First Division. I request you to treat me as a trained candidate and oblige.

7. From annex. "C" at. page 23, it is seen that the qualification of primary teachers training examination, qualification was entered on July 22, 1997, in the

8. From annex. "D", it is seen, that by a letter dated October 31, 1996, the Petitioner was requested to call at the office of the Employment Exchange on November 20, 1996, in order that he may be considered for the post.

9. From annex. "E", it is seen that the Burdwan District Primary School Council informed the Petitioner that as the Petitioner's name has been sponsored by the Employment Exchange, he was requested to appear before the appropriate authority of the Council on July 16, 1997.

10. From the above it is clear that when the vacancy was notified and names were called for from the employment Exchange in 1996, the Petitioner had been called to the employment exchange on November 20, 1996, and by the date, the result of the Primary Teachers Training Final Exam. 1996 had not been declared. Therefore, by the time, the names were sponsored by the employment exchange, the Petitioner was not having the qualification of training and the Petitioner's name was, therefore, sponsored in the category of untrained candidate. The Petitioner had been issued the identity card by the employment exchange marked with his qualification of both academic and training on July 22, 1997, i.e. after the date fixed for interview (16.7.97) before the appropriate authority of the District Primary School Council, Burdwan.

11. The short question for consideration, therefore, is whether the said qualification of training obtained by the Petitioner can be taken into consideration.

12. A Division Bench of this High Court in Sankar Das v. Arup Kumar Das and Ors. 1999 (1) C.L.J. 11, considered a similar question in the light of Rule 6A of the Recruitment Rules of Teachers, 1993 and construed the expression "mentioned by the Employment Exchange" as under:

..... However, when this Rule refers to the expression "mentioned by the Employment Exchange", such "mentioning" relates to an act validly and properly

done by the Employment Exchange. If the Employment Exchange is seized of an information with regard to a candidate being possessed of a particular qualification and yet does not mention the same in the sponsoring communication, this cannot be called a valid or proper "mentioning" by the Employment Exchange and merely because by such improper or invalid "mentioning" the qualification of the candidate has been emitted, he cannot be deprived of the credit in respect thereto. Similarly therefore, if the candidate has done all that was required of him to be done and, for no fault of his, the Employment Exchange concerned because of some Systems Failure, or otherwise does mention the qualification, this cannot be construed to be of any disadvantage of the candidate concerned and the candidate cannot be deprived of the credit in respect of such qualification, if he is otherwise possessed of the same as on, or before the cut-off date and had taken all due steps to inform the Employment Exchange concerned regarding his having obtained such qualification.

13. In the same judgment de hors the said r. 6A, the Division Bench also considered the reasoning and logic of common law and common sense and observed as follows:

..... on the reasoning and logic of common law and common sense, if a person has acquired a qualification before the cut-off date and if such qualification is to be counted for the purposes of either determining the eligibility or giving credit to the candidate, and the selection panel is convinced of the authenticity of the information regarding the qualification, the candidate concerned cannot be deprived of the benefits flowing therefrom. No Rule can take away such benefit from the candidate.....

14. The above observations, in my view, clearly lay down the law that if a person has acquired a qualification before the cut-off date the candidate concerned cannot be deprived of the benefits flowing therefrom.

15. In the light of the above, if the Petitioner has obtained the training qualification before the cut-off date, then undoubtedly he is entitled to be given the benefit of the said qualification. He cannot be deprived of the benefits flowing therefrom. The reference to cutoff date is obviously to the last date when the applications have to be submitted for the post in question. When the names are to be sponsored by the Employment Exchange, the last date would be the date when the employment exchange sponsors the names of the candidates.

16. In *Pintu Achariya v. State of West Bengal* 1997 (2) C.L.J. 428 another Division Bench held that the qualification (B. Ed) which could not have been recorded by the Employment Exchange as the same was acquired after the names had been sponsored by the Employment Exchange, could not be taken into consideration for awarding of marks.

17. It must be stated here that in the case of *Bharati Roy v. Shamal Mukhopadhyay and Ors.* 1997 (2) C.L.J. 386, another Division Bench relying

upon the judgment of the Supreme Court in Ashok Kumar Sharma and Anr. v. Chandra Sekhar and Anr. 1993 Suppl. (2) S.C.C. 611, held that if the qualification of a particular candidate is not recorded in the Employment Exchange Register but subsequently acquired before the interview and produce 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.

18. The aforesaid judgment of the Division Bench in Bharati Roy's(supra) case, was considered by another Division Bench in the case of Ainur Rahaman Khan (Md.) v. State and Ors. 1998 W.B.L.R. (Cal.) 201 and it was held as under:

The judgment of the Division Bench of this Court in Smt. Bharati Roy v. Shyamal Mukhopadhyay, reported in (1997) 2 Cal. L.J. 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 Bharati Roy's case was rendered per-incuriam 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 application, 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,

19. The controversy as to whether a candidate has to fulfill the criteria of eligibility on the date of notification or on the date of selection, is no longer res integra. The judgment of the Supreme Court in Ashok Kumar Sharma v. Chandra Shekhar (supra), was reviewed by the Supreme Court and in its judgment in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, the following two questions were post for consideration:

1) Whether the view taken by the majority (Hon"ble Dr. Thommon and V. Ramaswamy, JJ.) that it is enough for a candidate to be qualified by the date of interview even if he was not qualified by the last date prescribed for receiving the applications, is Correct in law and whether the majority was right in extending the principle of Rule 37 of the Public Service Commission Rules to the present case by analogy ?

2) Whether in the facts and circumstances of the case would it not be just to

restore the direction of the Division Bench with respect to the inter se seniority between the two sets of candidates, namely those who were qualified as on the last date for receiving applications and those who were not so qualified. In other words, the question is whether the direction of the Division Bench to treat the candidates who were not qualified by the last date of receipt of applications as juniors, as a class, to those who were qualified, was not a just one ?

20. In the instant writ application, we are concerned with the answer to question No. 1. The Supreme Court declared that the law laid down by the majority opinion in Ashok Kumar Sharma's case (4) was not sustainable in law. It further held as under:

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. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/ published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and infect was not doubted or disputed in the majority judgment.

21. The Petitioner in the instant case, in the light of the judgments cited supra, is not entitled to the relief as claimed in the instant writ application. The Petitioner had not obtained the qualification of training as the results had not been declared by that time, when the names had been sponsored by the Employment Exchange. That being the cut off date, the Petitioner cannot claim advantage of the said qualification.

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