

(2019) 08 CAL CK 0133

In the Calcutta High Court

Case No : C. Appeal From Order (FMA) No. 682 Of 2019, Civil Application (CAN)
No. 5553 Of 2019

Md. Noor Alam & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0133

Hon'ble Judges : Biswanath Somadder, J;Tirthankar Ghosh, J

Bench : Division Bench

Advocate : Krishnendu Banerjee, Md. Idrish, Banhajit Prasad Basu, Pradip Kumar Roy, Shraboni Sarkar, Raja Saha, Bibekananda Tripathi

Final Decision : Dismissed

Judgement

Biswanath Somadder, J

Deficit Court fees deposited with the department vide memo no.A-13338 dated 1st August, 2019.

By consent of the parties, the appeal is treated as on day's list and taken up for consideration along with the application for stay.

The instant appeal arises out of a judgment and order dated 26th April, 2019, passed by a learned Single Judge in WP No. 144 (W) of 2019 (Md. Noor Alam & Ors. vs. The State of West Bengal & Ors.).

By the impugned judgment and order, the learned Single Judge was pleased to dismiss the writ petition for reasons stated therein.

The instant appeal has been preferred by the writ petitioners.

The issue before the learned Single Judge was in respect of a selection process wherein the writ petitioners participated pursuant to an advertisement, bearing no.02/2017, which was issued by the West Bengal Cooperative Service

Commission, which is being represented before this Bench by its Secretary, being the respondent no.2 in the instant appeal.

The appellants/writ petitioners had applied for the post of clerk. The educational qualification required for the post - as stated in the advertisement - reads, "Graduate in any discipline with 50% marks in HS plus DCA or IT or equivalent accredited by AICTE". As per the advertisement, DCA meant Diploma in Computer Applications with minimum one year duration, IT meant Information Technology, AICTE meant All India Council for Technical Education. All the writ petitioners were issued admit cards. They appeared in the written test and were selected for the computer test and interview. They qualified in the computer test as well as the interview. A list of recommended candidates on the basis of merit-cum-preference was published. The writ petitioners' names figured in the said list. The respondent no.2 in the instant appeal, i.e., the Secretary, West Bengal Cooperative Service Commission, forwarded the list of candidates recommended by the Selection Committee to the Managing Director of the West Bengal State Cooperative Bank Limited, being the respondent no.3 in the instant appeal, with a request to issue appointment letters in their favour. It was informed that the service would be guided by the relevant Service Rules of the Bank. Inter se seniority of the recommended candidates was required to be observed irrespective of their date of joining.

In spite of their names being recommended for appointment to the post of clerk, no formal appointment letters were issued in favour of the writ petitioners. No reason whatsoever was communicated to the writ petitioners for non-issuance of the letters of appointment. The writ petitioners, through their learned advocate, served notices upon the respondent no.4 herein, namely, the West Bengal State Cooperative Bank Limited as well as the West Bengal Cooperative Service Commission, demanding justice. The said letter was not replied to. The writ petitioners also lodged applications invoking the provisions of Right to Information Act, enquiring whether any step had been taken for issuance of appointment letters in their favour. No response was forthcoming. In such circumstances, the writ petitioners filed the writ petition, being WP No.144 (W) of 2019, with a prayer for issuance of a writ in the nature of mandamus upon the respondent cooperative bank to accord appointment to the writ petitioners who were the recommended candidates as per the list prepared by the Selection Committee of the West Bengal Cooperative Service Commission.

Before the learned Single Judge, the respondent authorities, namely, the West Bengal Cooperative Selection Commission as well as the West Bengal State Cooperative Bank Limited filed their respective reports in the form of affidavits disclosing their stand with regard to non-issuance of the letters of appointment in favour of the writ petitioners in spite of their names being enlisted in the list of recommended candidates. The stand taken by the respondent-cooperative bank before the learned Single Judge was that since the writ petitioners did not possess the requisite educational qualification for being appointed to the post of

clerk, appointment letters were not issued in their favour. It was also stated by the respondent-cooperative bank that though the writ petitioners possess diplomas in computer application but the same was not accredited by AICTE. The primary contention of the respondent-cooperative bank - which was also taken note of by the learned Single Judge - was that at the time of verification of the documents of the writ petitioners it was detected that the diplomas obtained by the writ petitioners were not accredited by AICTE, which was the requirement mentioned in the notice of advertisement. In the absence of accreditation of the diplomas by AICTE, the writ petitioners were not eligible to be appointed for the post of clerk. It was stated further by the respondent-cooperative bank that in the advertisement it was categorically mentioned that the candidates were required to possess either a diploma in computer applications or information technology or equivalent and such qualification was required to be accredited by AICTE. The learned Single Judge, in the judgment and order which is impugned before us, noted further, the submission advanced on behalf of the respondent-cooperative bank with regard to the writ petitioners - as candidates - having suppressed information or having provided wrong information about their candidatures in their application form and, as such, their candidatures were liable to be cancelled. It was contended before the learned Single Judge on behalf of the respondent-cooperative bank that the writ petitioners - although fully aware that an accreditation was mandatorily required for getting the job - intentionally and deliberately suppressed the fact that their diplomas were not accredited by AICTE. The bank, therefore, rightly refused to issue appointment letters in favour of the writ petitioners as they did not possess the requisite qualification. The respondent-cooperative bank also informed the learned Single Judge that it had intimated the Commission that due to mismatch of educational qualification, appointment letters were not issued in favour of the recommended candidates. The respondent-cooperative bank had requested the Commission to forward names of the candidates whose qualifications were in conformity with the advertisement as published.

So far as the West Bengal Cooperative Service Commission is concerned, it was submitted by the Commission that it had published the advertisement and recommended the names of candidates as per the requirement of the bank. It was further submitted before the learned Single Judge that the applications were invited online and before the written examination the Commission did not have the scope to verify the documents with the originals. Based upon the information given by the applicants, the Commission had issued admit cards for written examination. After evaluation of the answer scripts of the written test, a merit list was prepared. The candidates were then required to submit the attested photocopies of their testimonials in support of their age and education qualification. A final common merit list was prepared on the basis of merit-cum-preference. The names of the writ petitioners were included in the list of recommended candidates with intimation to the bank for issuance of formal letters of appointment.

A plain reading of the impugned judgment and order clearly reveals that the learned Single Judge considered the very issue sought to be raised in the writ petition as to whether the diploma prescribed for appointment to the post of clerk required accreditation by AICTE or not.

Following are the reasons provided by the learned Single Judge before proceeding to dismiss the writ petition:-

"The Oxford dictionary meaning of the term 'accreditation' means the action or process of officially recognising someone as having a particular status or being qualified to perform a particular activity.

The Cambridge dictionary meaning of the term 'accreditation' means the fact of being officially recognised, accepted, or approved of, or the act of officially recognising, accepting or approving or something.

The qualification that was prescribed for appointment was "Graduate in any discipline with 50% marks in HS plus DCA or IT or equivalent accredited by AICTE".

The Id. Advocate for the petitioners contend that the "or" mentioned in between the subjects indicate that the diploma of computer applications and information technology was not required to be accredited but only the diploma in the equivalent subject required accreditation. The said submission is fallacious. What was required to be accredited is the 'diploma' and not the subject. The subject may have been computer applications, information technology or any other equivalent subject.

The explanation provided by the petitioners that a diploma in computer applications with minimum one year duration was enough and there is no requirement of the said diploma to be accredited by AICTE is certainly not the proper explanation.

According to the bank the candidate should possess either a diploma in computer applications or information technology or equivalent but the diploma should have been accredited by AICTE.

Alternatively, it can be said that, if the diploma in any subject equivalent to computer applications or information technology is required to be accredited by AICTE then the diploma in computer applications or information technology is also required to be accredited by AICTE otherwise the education level of the candidates will not be at par.

It can never be the explanation that only the diploma in the equivalent subject is required to be accredited and not the diploma in computer applications or information technology. The All India Council for Technical Education is the body which provides accreditation to the degrees and diplomas granted by the private institutions. A candidate aspiring for a job with the cooperative bank is necessarily required to possess a diploma which is duly accredited by the said

body. In the absence of such accreditation the said diploma will not be in accordance with the requisite educational qualification prescribed in the said advertisement.

As the petitioners' qualification of diploma in computer applications is not accredited by AICTE they cannot be held to be eligible as per the advertisement published for recruitment. The Commission misread and misinterpreted the expression and meaning of the term accreditation and erroneously forwarded the names of the petitioners for the post of clerk even though they did not possess the requisite educational qualification. Forwarding of names under mistaken understanding did not create any legally enforceable right in favour of the petitioners. The bank rightly did not issue the appointment letter in favour of the petitioners.

Accordingly no relief can be granted in favour of the petitioners in the instant case".

In an Intra-Court Mandamus Appeal, no interference is usually warranted unless palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. We do not notice any such palpable infirmity or perversity on a plain reading of the judgment and order. That apart and in any event, the impugned judgment and order is supported with cogent and justifiable reasons.

In such circumstances, the appeal and the application for stay are liable to be dismissed and stand accordingly dismissed.