
(1998) 05 CAL CK 0021

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction Second Appeal No. 565 of 1994

Miss Gouri Rani Pahari

APPELLANT

Vs

Basudevpur Girl's High School

RESPONDENT

Date of Decision : 13-05-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (1998) 2 CALLT 530

Hon'ble Judges : Debi Prosad Sarkar-II, J

Bench : Single Bench

Advocate : Mr. Ashok Banerjee, for the Appellant;

Judgement

D.P. Sarkar-II, J

1. This Second Appeal is directed against the Judgment and Decree passed by the Assistant District Judge, 2nd Count, Contal in Title Appeal No. 30/1992 on 20.7.1992 affirming thereby the decision dated 9.1.92 passed by the Munsiff 2nd Court. Contal in Title Suit No. 30/1990.

2. The facts leading to this appeal are, in short, as follows :--

3. That the present appellant was a candidate for the post of an Assistant teacher in Basudevpur Girls' High School. The Interview took place on 17.4.1988 and the appellant was placed In the third position in the panel. But she made a complaint to the District- Inspector of Schools against the Interview Board for not allotting marks strictly according to the recruitment rules. The District Inspector of schools made an Inquiry through the Assistant Inspector of Schools and on the basis of the report of Inquiry cancelled the panel prepared on the basis of Interview taken on 17.4.88 and directed fresh marking according to the recruitment rules. But it is alleged by the present appellant, that without following the direction the school authority called for fresh interview and new Selection Committee was appointed. The second interview took place on 5.10.89. It is submitted that although the present appellant was excluded first but under

the direction of this Hon"ble Court she was given the chance of Interview and under protest the appellant appeared before the Interview Board but unfortunately there was no Improvement In her lick. In the meantime, the present suit was filed by the present appellant before the court of the Munsiff challenging the legality of the act of calling a fresh Interview, Ignoring the direction of the District Inspector of Schools.

4. On the basis of the second Interview which took place on 5.10.1989 the first candidate in the panel viz. Miss Tapati Rani Khatua who was defendant No. 3 in the suit was appointed as an assistant teacher and had been acting in that capacity but-she has died recently and the vacancy has occurred again.

5. The appellant filed the suit with two prayers--the second interview was illegal as it was not unconformity with the direction of the District Inspector of Schools and secondly for appointment In the present vacancy. The learned trial court as well as let appellate court rejected both the pleas and the Suit and the Appeal both were dismissed.

6. On being aggrieved the present appellant has filed the Second Appeal.

7. So far as the second interview is concerned, it is alleged that it was taken Ignoring the direction of the District Inspector of Schools. A direction in the form of administrative order has got no force of law and as such the violation of that direction cannot be said to be an act illegal. That apart. when the second Interview was taken and the panel prepared on the basis of the second interview was sent to the District Inspector of Schools for approval under the Rules. District Inspector of Schools duly approved that panel. Not only that after appointment of Tapati Khatua out of that panel the District Inspector also approved that appointment. Therefore, the subsequent conduct of the District Inspector i.e. the Administrative Authority makes it quite clear that the earlier direction was waved or at least District Inspector had no mind to implement the earlier direction.

8. Besides, the present appellant also appeared In the second Interview without any protest and as such she was estopped from challenging the validity of such interview. The learned trial court has rightly decided the question relying on the decision of the Hon"ble Supreme Court reported in Dr. Keshav Ram Pal, Reader and Head of Sanskrit Department and Offg. Principal, Lajpat Rai Post-graduate College, Sahibabad, Distt. Ghaziabad, U.P. Vs. U.P. Higher Education Services Commission, Allahabad and others, . It is submitted on behalf of the appellant that she appeared at the interview under protest; but there is no scrap of paper to show that she appeared at the Interview under any protest. The learned Advocate for the appellant refers to Ext. 21, that is a sheet containing the names of the candidates. On the back of that sheet I find some written allegation regarding allotment of marks, partiality, etc. But from the first face of that document it Is clear that this document relates to the first interview which took place on 17.4.1988. Because this document contains the signature of the Head-

mistress with seal and date as 17.4.1988. Therefore, even If we accept the writing as protest that relates to the first Interview taken on 17.4.88. But the second interview took place on 5.10.88.

9. Accordingly, the appellant cannot get the benefit of the direction given by the District Inspector of Schools. Secondly, it is a well settled principle of law that the Court of Law shall not sit in appeal over the decision of the Selection Committee.

10. It is true and undisputed that Tapati Khatua is dead and a vacancy has occurred. In effect it Is a fresh vacancy and as such it is to be filled up by calling fresh interview according to the rules of recruitment. The appellant cannot claim that she should be appointed against that vacancy. That apart, it is submitted by the advocate for the appellant that she has" crossed 45 years. The normal age limit is 35 years for an assistant teacher although it could be extended upto 40 years by the Director of Schools Education in reasonable cases, but not beyond that limit.

11. As such from every aspect of the facts involved in this Appeal I do not find any reason to Interfere with the decision of the 1st appellate court affirming the decision of learned trial court. It is necessary to be noted here that the learned trial court as well as the 1st appellate court held that the allegation of allotting marks wrongly could not be substantiated by any cogent evidence by the present appellant.

In the result, the Second Appeal is hereby dismissed without cost as none has appeared for the respondents at the time of hearing.

12. Appeal dismissed