

(2013) 06 CAL CK 0070
In the Calcutta High Court
Case No : Writ Petition No. 13971 (W) of 2011

Mohitosh Jana

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

West Bengal Primary Education Act, 1973 — Section 106, 60

Citation : (2013) 06 CAL CK 0070

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Tulsidas Maity in W.P. Nos. 13971 W of 2011, 13934 W of 2011, 13932 W of 2011, 13928 W of 2011, 13939 W of 2011, 13943 W of 2011, 13930 W of 2011, 13945 W of 2011, 13973 W of 2011, 13938 W of 2011 and 13936 W of 2011 and Mr. Aninda Bhattacharya in W.P. Nos. 13971 W of 2011, 13934 W of 2011, 13932 W of 2011, 13928 W of 2011, 13939 W of 2011, 13943 W of 2011, 13930 W of 2011, 13945 W of 2011, 13973 W of 2011, 13941 W of 2011, 13938 W of 2011 13936 W of 2011 and Mr. Nemai Chandra Betal in W.P. No. 4054 W of 2011, for the Appellant; Joytosh Majumdar in W.P. Nos. 13971 (W) of 2011, 13934 (W) of 2011, 13932 (W) of 2011, 13928 (W) of 2011, 13939 (W) of 2011, 13943 (W) of 2011, 13930 (W) of 2011, 13945 (W) of 2011, 13973 (W) of 2011, 13941 (W) of 2011, 13938 (W) of 2011 and 13936 (W) of 2011, Mr. Santanu Chatterjee in W.P. Nos. 13971 (W) of 2011, 13934 (W) of 2011, Mr. Anindya Bose in W.P. No. 13932 (W) of 2011, 13928 (W), 13939 (W) of 2011, 13943 (W) of 2011, 13930 (W) of 2011, 13945 (W) of 2011, 13973 (W) of 2011, 13938 (W) of 2011 and 13936 (W) of 2011, Mr. Subrata Mukherjee in W. P. No. 13945 (W) of 2011, Mr. Ratul Biswas for Board in W. P. No. 13973 (W) of 2011, Mr. Pinaki Dhole, Ratul Biswas and Ms. Paromita Pal for the Board and Mr. Asraf Mandal for the State in W. P. No. 13941 (W) of 2011 and Mr. Srikanta Paul in W. P. No. 13936 (W) of 2011, for the Respondent

Final Decision : Allowed

Judgement

Harish Tandon, J.—The petitioner has prayed for an order for giving appointment to the petitioner upon declaration of the result in the Recruitment Process commenced in the year 2006. Admittedly, the petitioner is registered with the

Director of Employment, Exempted Category Cell, Government of West Bengal, the respondent no. 6 herein. The petitioners' name was sponsored by the said respondent to the District Primary School Council, South 24-Parganas, the respondent no. 3 herein. After receiving the letter of sponsorship, notice was published inviting all such candidates to submit their bio-data and testimonials. Pursuant to the said advertisement, the petitioner submitted the bio-data offering his candidature under the Exempted Category. It is undisputed that the petitioner was found eligible to sit in the written test. The result so published shows that the petitioner is kept under the list of the withheld candidates by the said Council. After persistent effort, it was brought to the notice of the petitioner that his appointment is withheld as the certification given in Paragraph 16 of the bio-data form is not by an appointing authority but by one Ranjan Kumar Roy, Upper Division Clerk who is subsequently blacklisted. In affidavit-in-opposition, apart from the above ground, the Council further contends that by Notification No. 303-Emp/1M-10/2000 dated 21st August, 2002, the petitioner could not have been treated as ex-census worker/enumerator to get the benefit as a candidate of the Exempted Category. It is stated that Paragraph 5 of the said notification provides that the candidate can only be registered under the Exempted Category as ex-census worker/ enumerator if he has worked 240 days before the year 2000. The learned Advocate appearing for the petitioner submits that the Council could not withhold the appointment of the petitioner on the ground either for defective certification or wrong registration under the Exempted Category Cell by the Director of Employment, after allowing the petitioner to participate in the selection process. He strenuously submits that the Council cannot contend that the registration of the petitioner with the concerned Employment Exchange is bad as both the statutory authorities have definite and defined duties under the respective Acts. Lastly it is submitted that in Paragraph 16 of the bio-data form, the certificate is given by one Ranjan Kumar Roy who has been subsequently blacklisted and a proceeding is initiated against him.

2. The learned advocate appearing for the Council, however, submits that the District Primary School Council is constituted under the West Bengal Primary Education Act, 1973 which does not define Exempted Category. By placing reliance upon a Division Bench Judgment in case of Smt. Shrabani Mondal (Pal) Vs. The State of West Bengal and Others, , it is contended that the provisions of West Bengal Regulation of Recruitment in state government establishment and establishments of public undertakings, statutory bodies, government companies and legal authorities Act, 1999 applies to the District Primary School Council as well. He, however, submits that the said notification dated 21st August, 2002 is issued in exercise of the power conferred under the said Act of 1999 defining the Exempted Category and as such the same meaning should be attributed in case of the Primary School Council which is a statutory body. He strenuously submits that the said notification provides that unless enumerator or worker worked 240 days on or before the year 2000, he cannot be treated as exempted category as ex-census worker/enumerator. By contending that if things are required to be

done in a prescribed manner, the authority cannot act contrary thereto, reliance is placed upon a judgment of the Supreme Court in case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , State of Mizoram Vs. Biakchhawna, . Lastly, he submits that the Court should not either prescribed qualification or entrench upon the power of the authority so long such qualification so prescribed are reasonably relevant and have a rational nexus with the functions and duties attached to the post and placed reliance upon a judgment of the Supreme Court in case of Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie and Others,

3. The genesis of the District Primary School Council is under the West Bengal Primary Education Act, 1973 and the duties and functions of the Primary School Council so constituted are expressly defined therein. In exercise of the powers conferred under sub-section (1) and clause (k) of sub-section (2) of section 106 read with clause (k) of sub section (1) of section 60 of the West Bengal Primary Education Act, 1973, West Bengal Primary School Teachers Recruitment Rules, 2001 was promulgated which provides the full mechanism and procedure to fill up the vacancies of the Primary Teachers within the State.

4. The Employment Exchanges are set up for enrolling the name of the unemployed persons and Section 4 of the National Employment Exchange Selection and Recruitment Act of 1991 provides that in addition to the other mode of inviting applications, the organization/government should also invite the names of the candidate from the Employment Exchange.

5. Rule 8 of the West Bengal Primary Teachers' Recruitment Rule, 2001 envisaged that the Council should notify the number of vacancies to the concerned Employment Exchange who, in turn, would sponsor the name of the eligible candidates. The aforesaid rules provide that the Employment Exchange shall enrol the name of the candidates belonging to the Schedule Caste, Schedule Tribes, Other Backward Classes, Exempted Category, Ex-Service Men and Physically Handicapped persons and in the event of non-availability of the sufficient number of the candidate belonging to the aforesaid categories, the Council shall made a reference to the special Employment Exchange, Exempted Category who shall send the further names of the candidate of the respective categories. Sub-rule 2 of Rule 8 of the said Recruitment Rules makes it imperative on the Employment Exchange to indicate in a letter of sponsorship of the required minimum qualification of the candidates and the reservation quota for candidates belonging to Schedule Caste, Schedule Tribes, Other Backward Classes, Exempted Category, Ex-Servicemen & Physically Handicapped candidates maintaining the existing reservation rules as framed by the competent authority and the number of vacancies to be filled up. Rule 9 of the said recruitment rule requires the Council to communicate in writing to all the candidates to produce the testimonial/certificates for computation of their marks in the score sheet.

6. The combined reading of the aforesaid provisions, the fields of operation of both the bodies namely Primary School Council and Employment Exchange are distinct, separate and well-defined. The Employment Exchanges are set up with one of the primary duty entrusted upon is to enrol the candidates belonging to a general and reserved categories and sponsor the name of the eligible candidates of such categories to any organization/government on being asked u/s 4 of the National Employment Exchange Selection & Recruitment Acts of 1991. It is obvious that the said authority at the time of enrollment of the name of the candidates under any of such category, does so, on verification of the documents relevant for such purposes and upon being satisfied about the veracity, sanctity and genuinity of the said documents. The authorities are bound to act within their precincts. The different wings of the government or the statutory authorities constituted under the Special Act should not encroach upon the domain of other.

7. It is attempted to impress upon this Court that the petitioner could not have been enrolled under the Exempted Category as Ex-Census Worker as they did not work more than 240 days as contemplated under circular dated 21 August, 2002. According to the Council, the Division Bench in case of Shrabani Mondal(Paul) have held that the District Primary School Council is a corporation and is controlled by the State Government and, therefore, the said circular applies to the recruitment of a primary teacher. On noticing the said judgment, this Court finds that the Division Bench in case of Shrabani Mondal(supra) took a different view than the view taken by the other division bench in case of Director of Employment, Government of West Bengal, vs. Nadia District School Council and ors. wherein is held that the West Bengal Act of 1999 does not cover the West Bengal Primary Education Council. It is no doubt true that the later division bench taken a contrary view should have referred the point of conflict for the decision of the larger bench to maintain the judicial discipline. There is no difficulty in referring the matter to the Hon''ble Chief Justice for constituting a larger bench if two conflicting judgments of the Co-ordinate Bench are operating in the field but this Court feels that the matter can be decided without taking any aid to the aforesaid point, even if, it is taken that the Act of 1999 is applicable. The reason is obvious that even if the said circular applies the Employment Exchange obviously upon taking into consideration all the relevant provisions, circulars and government orders have registered the name of the petitioner. Even if a mistake committed by the Employment Exchange, such mistake can only be rectified by the said authority and the District Primary School Council cannot take a stand with the registration under the Exempted Category as Ex-Census Worker is illegal and/or invalid. What is expected that the matter should have been pointed to the Employment Exchange who upon following the procedure if withdraws and/or de-enrol the names of the candidates registered under the Exempted Category, then the Council could have taken a plea that the candidature of the said candidate should not have been considered under the Exempted Category. Having not done so, the Council cannot withhold the

appointment of the candidate whose enrollment under the Exempted Category as Ex-Census Worker by the competent authority still stands. Furthermore, this Court does not find that the aforesaid reason was really pressed by the Council for withholding the appointment of the petitioner. The authority cannot be permitted to take a plea before the Court if it is not reflected in the decision communicated to the affected person. It is only for the first time in affidavit-in-opposition, a plea has been taken that the petitioner should not have been enrolled by the Employment Exchange under the Exempted Category as Ex-Census Worker. In view of the discussion made above, the aforesaid point is not sustainable.

8. The only plea which is taken by the Council is that the certification is done by one Ranjan Kumar Roy who is not authorized to certify. The identical point was taken by the Council in another writ petition being W.P. 1846 (W) of 2011 and the Co-ordinate Bench while overruling the aforesaid point held:

On the same logical analysis and reasoning, it may be held that the name of the writ petitioner in W.P. 1846 (W) of 2011, has been wrongly kept "withheld" by the Council, in spite of being otherwise successful in the selection process, on merit. As observed hereinbefore, the West Bengal Primary School Teachers' Recruitment Rules, 2001, does not contemplate filling up of bio-data forms by the sponsored candidates. All that the Council was required to do has been specifically stated in Rule 9(1) of the West Bengal Primary School Teachers Recruitment Rules, 2001, which has been discussed hereinbefore. Even if it is assumed, for a moment, that Ranjan Kumar Roy was neither authorized nor competent to certify the bio-data forms of the sponsored candidates, his incompetency or lack of authority cannot be held to be so fatal so as to vitiate the selection of a candidate on merit who has, admittedly, been sponsored by the Exempted Category Cell, Directorate of Employment, Government of West Bengal.

The authentication by the Exempted Category Cell, Directorate of Employment, Government of West Bengal, of the original testimonials/certificates produced by all the writ petitioners during the course of hearing of these matters, proves beyond doubt that the writ petitioners were genuinely engaged as census workers/enumerator.

9. The decision relied upon by the Council for the proposition that the authorities cannot act de hors the statutes and if an action is required to be taken in a particular manner, the same must be done in such manner alone, is beyond any pale of doubt. The Apex Court in case of State of Mizoram Vs. Biakchhawna, and Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, have also laid down the aforesaid proposition of law. This Court does not find that the aforesaid plea is at all relevant in the present context. Rule 9(1) of the West Bengal Primary School Teachers' Recruitment Rules 2001 requires the Council to invite all candidates sponsored by the Employment Exchange to produce testimonial/certificates. It does not say that a certificate by a competent authority is one of the mandatory conditions for bringing the candidate within the zone of

consideration.

10. The matter can be viewed from another angle. The Exempted Category Cell, Directorate of Employment, Government of West Bengal has sponsored the name of the petitioner in Exempted Category as Ex-Census Worker. It is immaterial whether the certification on the bio-data is done by an incompetent authority if the sponsorship is made by the competent authority under the Exempted Category. Therefore, the aforesaid stand of the Council in withholding the candidature of the petitioner is not sustainable.

11. The Council is directed to forward the name of the petitioner to the office of the Director of School Education, West Bengal for grant of formal approval to his appointment. The entire exercise shall be completed by the Chairman, District Primary School Council within two weeks from the date of the communication of this order. In turn, the Director of the School Education on receipt of the name of the petitioner from the office of the Chairman of the said Council shall grant approval to the petitioner subject to the fulfillment of all statutory requirements required therefor. The director would complete his exercise within six weeks from the date of the receipt of the name of the petitioner from the Chairman, District Primary School Council.

12. The writ petition thus stands allowed.

13. However, there shall be no order as to costs. Urgent photostat certified copy of the judgment, if applied for, be given to the parties on priority basis.