

(2019) 12 CAL CK 0035

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 6226, 6230, 6232, 6234, 6236, 6894, 8534, 8536, 8538, 8540, 8549, 8552, 8556, 8559, 8561, 12119, 12149, 3129, 5892, 7523, 7525, 7531, 7534, 7537 (W) Of 2017

Monika Das & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 142, 226

West Bengal Primary School Teachers Recruitment Rules, 2016 — Rule 6, 8(5), 8(5)(b), 8(5)(b)(i), 8(5)(b)(iv), 12, 53

Code Of Civil Procedure, 1908 — Order 1 Rule 8

Citation : (2019) 12 CAL CK 0035

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Partha Sarathi Bhattacharyya, Aninda Bose, Chandrachur Chatterjee, Hemanta Kumar Das, Diptendu Mandal, Tulshi Das Ray, Tapan Ray, Tirthankar Ray, P.S. Deb Barman, M. Nazar Chowdhury, L.K. Gupta, Subir Sanyal, Ratul Biswas, Bhaskar Prasad Vaisya, Suman Dey, Gourav Das, Tapan Kumar Majumder, Somnath Naskar, Saheli Mukherjee, Nilay Barman Mandal, Samim ul Bari

Final Decision : Dismissed

Judgement

Arijit Banerjee, J

1. Same questions of fact and law are involved in this bunch of writ petitions. The grievance of the petitioners in all the writ petitions is the same. Accordingly, these writ petitions have been taken up for hearing and disposal together. Reference to parties in this judgment is on the basis of pleadings filed in WP 6894 (w) of 2017 (Monika Das & Ors. - Vs.- State of West Bengal and Ors.)

2. The petitioners have challenged the recruitment process conducted by the West Bengal Board of Primary Education (in short, 'the Board'), pursuant to its Notification dated 26th September, 2016 inviting applications for filling up posts

of Primary Teachers in schools under different District Primary School Councils (in short 'DPSC') in West Bengal. Learned Counsel for the petitioners submitted that while conducting the selection process the Board has not followed the Reservation Policy. The cut off mark for getting empanelled in Scheduled Caste category was much higher than the cut off mark for getting empanelled in general category. It was submitted that those candidates in the reserved category who obtained higher marks than the cut off mark for getting empanelled under the general category, should have been empanelled under the general category and in that event the cut off mark for getting empanelled under scheduled caste category would have been much lower.

3. The second grievance of the petitioners is that Rule 8 (5) of the West Bengal Primary School Teachers Recruitment Rules, 2016 has been violated. Rule 8(5) of the 2016 Rules reads as follows:

"(5) The Selection Committee shall prepare separate Council-wise panels as per procedure below:-

(a) Firstly, the Selection Committee shall segregate all eligible candidates applying for earmarked vacancies as mentioned in Note 7 to rule 6, from other successful candidates;

(b) Secondly, the Selection Committee shall prepare the following panels for the successful candidates who have applied for non-earmarked vacancies

(i) a panel of all selected candidates in a district, namely, unreserved Category comprising of the names of the candidates belonging to General Category and reserved candidates of Scheduled Caste Category, Scheduled Tribe Category, OBC Category-A, OBC Category-B and PH Category serially according to descending order of merit as per existing vacancies medium wise;

(ii) a panel of selected reserved category candidates in a Council, namely, Scheduled Castes, Scheduled Tribes, OBC Category-A, OBC Category-B and Physically Handicapped (PH) candidates in the respective category as per statutory reservation rules, from amongst the remaining candidates of such categories, serially according to descending order of merit as per existing vacancies medium wise;

(iii) a panel of selected candidates belonging to Exempted Category, Ex-servicemen and Physically Handicapped (PH) in a Council, separate panels category wise, for vacancies reserved for the respective categories;

(iv) an alternative set of panel of selected candidates for each category in a Council serially according to descending order of merit as per existing vacancy medium wise;

Note 1.- Such an alternative set of panel of selected candidates for each category in a Council shall be prepared for the purpose of providing option to the reserved category candidates during counselling to opt for posting as per position in

unreserved category or as per position in the reserved category.

Note 2.- Separate sets of panels for all selected candidates applying for earmarked posts as mentioned in Note 7 to rule 6 shall be prepared in accordance with the procedures mentioned in clauses (i) to (iv) of sub-rule (b)."

It was submitted that without following the aforesaid rule, the respondent no. 6 prepared the panel and the list of empanelled candidates under the unreserved category which comprises of only the candidates belonging to general category. This is contrary to the rules.

4. The third grievance of the petitioners is that one Biswajit Barman being the respondent no.19 had participated in the selection process. His name was not there in the Third List of Empanelled and Not Empanelled Untrained Candidates for Counselling and Appointment to the post of Primary School Teachers in Bengali medium. However, the Board called him to its office on 14th February, 2017 for the purpose of counselling. This amounts to gross irregularity.

5. The next grievance of the petitioners is that one candidate namely, 'Y' having Roll No.070064796 and one Rabindra Nath Tagore having Roll No.070064547 were wrongly empanelled in the Third List of Empanelled and Not Empanelled Untrained Candidates for Counselling and Appointment to the post of Primary School Teachers in Bengali medium.

6. The fifth grievance of the petitioners is that the respondent no.18, being a general category candidate, despite obtaining third division marks in Madhyamik Examination, has been appointed as Primary School Teacher.

7. Appearing for the Board, Mr. Gupta, Learned Senior Advocate, submitted that what the petitioners are complaining of is the alternative set of panel of selected candidates for each category in a particular DPSC, prepared as per the direction contained in Rule 8(5)(b)(iv) of the 2016 Rules. Note 1 under the said Rule explains the necessity of having such an alternative set of panel. Hence, there is no substance in the grievance of the petitioners.

8. As regards respondent no.19, Mr. Gupta submitted that as stated in the Board's affidavit-in-opposition, the respondent no.19 at first did not submit relevant documents pertaining to his training qualification. He was asked to submit his particulars in relation to TET, 2014. He submitted the requisite documents relating to his training qualification. He was then empanelled and appointed as a trained candidate.

9. As regards the grievance with respect to Rabindra Nath Tagore, Mr. Gupta submitted that his name was not in the list of empanelled candidates in the district of Murshidabad and hence, all allegations with regard to him are baseless and without merit. As regards the empanelment of 'Y', it was submitted that applications of candidates for appointment in terms of the Recruitment Notification were received online. During submission of online applications, some letters of the names of some of the candidates had been omitted because of web-

link failure. To save such candidates from the mischief caused by web-link failure, they were empanelled with valid roll numbers. On the basis of all valid documents against TET Roll No.070064796, Rohan Singha was empanelled and duly appointed. 'Y' is actually Rohan Singha. TET roll number is the key identity of any TET qualified candidate. Hence, Rohan Singha was empanelled on the basis of his TET roll number under the name 'Y' since his name was initially unavailable for the reasons aforesaid.

10. As regards the last grievance of the petitioners, Mr. Gupta submitted that in terms of the 2016 Recruitment Rules, marks/division obtained in the Madhyamik Examination is not the only eligibility criterion for selection, recruitment and appointment as a Primary School Teacher. The rules prescribe various other parameters and the respondent no.18 was empanelled and appointed strictly adhering to such parameters.

11. Mr. Gupta then submitted that the petitioners failed to obtain any interim order when they moved the writ petitions. All the posts have been filled up long back. The appointees excepting respondent nos.8, 18 & 19 have not been made parties to the writ petitions. Hence, the writ petitions should fail for non-joinder of necessary parties. Learned Senior Counsel further submitted that Hooghly DPSC has not been impleaded in the writ petitions and hence, all allegations against it should be ignored. He also submitted that the writ petitions suffer from the vice of mis-joinder of parties and / or causes of action. The alleged cause of action of each of the petitioners is individual and separate.

12. Mr. Gupta finally submitted that this is not a public interest litigation. The petitioners are attempting to agitate their personal causes. However, the petitioners cannot claim any right to be appointed as their names are not in the composite panel prepared in terms of Rule 8(5)(b) of the 2016 Rules. No legal right of the petitioners has been infringed. Hence, they have no legitimate reason to be aggrieved and they lack locus standi to maintain the writ petitions.

Court's view

13. The petitioners have challenged the process of selection of candidates for appointment to posts of primary teachers in schools under different DPSCs. If the petitioners succeed in establishing that there was incurable infirmity in the recruitment process, the entire process along with the panel of successful candidates prepared pursuant thereto will have to be set aside.

14. I have given my anxious consideration to the rival contentions advanced on behalf of the respective parties. I am unable to allow the writ applications for reasons more than one.

15. Firstly, it is not in dispute that pursuant to the selection process that was initiated by issuance of Notification dated 26th September, 2016, a panel of successful candidates was prepared and appointments have been given to a huge number of candidates in posts of primary school teachers under different DPSCs.

If the petitioners' prayer is allowed, the appointments of such candidates will have to be set aside. In other words, such candidates would be badly affected if an order is passed as prayed for by the petitioners. This makes such candidates necessary parties to the instant writ applications. Any person who may be adversely affected by an order which may be passed in a legal proceeding is a necessary party to such proceeding. Without hearing him no effective order can be passed. An order passed without hearing a necessary party is a nullity and has no binding effect.

16. In this connection one may refer to the decision of the Apex Court in *Khetra Basi Biswal -Vs.- Ajaya Kumar Baral & Ors.*, 2004 (100) FLR 6 = (2004) 1 SCC 317. Although the order that was passed in that case by the Hon'ble Supreme Court was in exercise of power under Article 142 of the Constitution, there is clear pronouncement in the judgment and order that procedural law as well as substantive law both mandate that in the absence of a necessary party, the order passed is a nullity and does not have a binding effect.

17. In *State of Orissa & Anr. -Vs.- Binode Kishore Mohapatra*, AIR 1969 SC 1249, the Union Government had prepared a seniority list with which the writ petitioner was aggrieved and accordingly the writ petitioner challenged such list. The matter ultimately reached the Hon'ble Supreme Court. It was urged by Learned Attorney General that all the officers who were likely to be affected by the decision of the writ petition had not been impleaded as parties to the petition. The Hon'ble Supreme Court accepted the contention that in the absence of such officers, who were necessary parties, the writ petition could not succeed. The Hon'ble Supreme Court referred to its decision in *Padam Singh Jhina -Vs.- Union of India*, Civil Appeal No.405 of 1967 wherein speaking for the Court, Shah, J. had observed:

"But we are unable to investigate the question whether there has been infringement of the rules governing fixation of seniority, for a majority of those who were placed above the appellant in the seniority list are not impleaded in the petition before the Judicial Commissioner and are not before this Court. It is impossible to pass an order, assuming that the appellant is able to convince us that a breach of the rules was committed, altering the list of seniority, unless those who are likely to be affected thereby are before the Court and have an opportunity of replying to the case set up by the appellant."

The Hon'ble Supreme Court observed that this is a salutary rule and should be followed.

18. The petitioners contended that a very large number of candidates were given appointments and it was practically impossible to implead all of them as respondents in the writ petition. This is not an acceptable explanation. The petitioners could have and should have impleaded a few of the candidates who were appointed, in representative capacity. Rule 12 of the Rules governing applications under Article 226 of the Constitution framed by this Court

contemplates institution of a writ petition in a representative capacity. A petitioner may institute a writ petition seeking to represent other persons also who according to him would be similarly interested in the subject matter and result of the writ petition. Similarly, a petitioner may implead a person as a respondent in a representative capacity to represent the interest of others who may be similarly situate as the impleaded respondent and may be adversely affected by the order that may be passed in the proceeding. Further, Rule 53 of the said Rules provide that the provisions of the Code of Civil Procedure, 1908 will apply to applications under Article 226 of the Constitution in so far as the same can be made applicable. Order 1 Rule VIII of the Code of Civil Procedure provides for institution of suits in representative capacity. By reason of Rule 53 of the said Rules, the provisions of Order 1 Rule VIII are attracted to a writ application. For instituting a writ application in a representative capacity, the petitioner needs to obtain leave of the Court. No such prayer was made by the petitioners in the present case nor such leave was obtained otherwise. A few of the appointed candidates have been impleaded as respondents, not in a representative capacity, but in their individual capacities. Hence, the writ petitions must fail for non-joinder of necessary parties.

19. Secondly, the primary ground for challenging the selection process is that Rule 8 (5) of the 2016 Recruitment Rules has been violated in preparing the panel of successful candidates. Apart from such bald allegation, no material particulars have been furnished in support of such allegations nor any documentary evidence has been disclosed in support of such contention. Copies of the documents enclosed to the writ petition do not inspire credence and in any event do not advance the case run by the petitioners. In the affidavit-in-opposition filed on behalf of the West Bengal Board of Primary Education it has been explained as to how Rule 8(5) of the 2016 Rules has been scrupulously adhered to and Learned Senior Counsel appearing for the Board has also explained the same to me in course of his submission. The petitioners wanted the Court to direct the Board to produce the entire records pertaining to the selection process. I was not and am not inclined to do so. The records are voluminous. It would be practically an impossible task for the Writ Court to delve into such records and ascertain as to whether or not the panel under challenge has been prepared violating the recruitment rules. This would entail adjudication of highly disputed questions of fact which the Writ Court is ill-equipped to do.

20. It is not in doubt that the High Court while exercising power of judicial review under Article 226 of the Constitution can issue a writ of certiorari calling for the records of a particular case and upon consideration of such records quash the order challenged in the writ application. However, such a writ would be issued ordinarily only when serious factual disputes are not involved and on a bare perusal of the records, the Court can come to a decision one way or the other.

However, if consideration of the records would involve the Writ Court in adjudicating disputed questions of fact, the Writ Court would ordinarily not issue

such a writ of certiorari. A writ remedy is a discretionary remedy and this is a discretionary rule that the Writ Court generally follows. The present case, in my opinion, is not one where merely by looking at the records the Court would be able to come to a conclusion, this way or that way. Separate panels have been prepared for each of the districts. If the prayer of the petitioners for issuance of a writ of certiorari is allowed, the Writ Court would have to convert itself into a fact finding trial Court which cannot be countenanced.

21. Further, it was up to the petitioners to bring on record sufficient documentary evidence to establish their case. They having alleged illegality/irregularity in the preparation of the panel under challenge, it was up to them to produce sufficient materials before this Court to establish their case. All the relevant materials are in public domain. There is nothing on record to show that the petitioners made any effort to obtain such materials either by way of application under the Right to Information Act, 2005 or otherwise. A petitioner cannot approach the Court by making bald allegations against a party and then ask for a direction on that party to produce documents that according to the petitioner would support his case. This is a proceeding where the petitioners are agitating their private interest. This is an adversarial litigation. It is not a public interest litigation. Even in case of public interest litigation, the Hon'ble Apex Court has clarified in several cases that the petitioner must undertake sufficient research before initiating a public interest litigation and must produce sufficient materials in support of the grievance that he seeks to ventilate in the public interest litigation.

22. Thirdly, the grievance regarding Biswajit Barman (respondent no.19), Rabindra Nath Tagore, Arindam Sahoo (respondent no.18) and 'Y' as noted above have been sufficiently explained by Mr. Gupta, Learned Senior Advocate appearing for the Board as recorded above. I find such explanation to be highly plausible and acceptable.

23. Finally, it is not in dispute that the names of the petitioners do not figure in the composite panel prepared in terms of Rule 8(5)(b)(i) of the 2016 Rules. Hence and even otherwise, they have no legal right to be appointed. Even an empanelled candidate has no indefeasible right to be appointed. No legal right of the petitioners has been infringed as rightly submitted by Mr. Gupta, Learned Senior Counsel representing the Board. The locus standi of the petitioners to maintain the present writ petitions is doubtful.

24. For the reasons aforesaid, these writ petitions fail and are dismissed. There will be, however, no order as to costs.

25. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.