

(2012) 02 CAL CK 0076
In the Calcutta High Court

Case No : Matrimonial No. 584 of 2011 and W.P. No. 6626 (W) of 2011

Monoranjan Sarkar and Another

APPELLANT

Vs

State of West Bengal and Ors

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Citation : (2012) 1 CALLT 493

Hon'ble Judges : Pratap Kumar Ray, J;Prasenjit Mandal, J

Bench : Division Bench

Advocate : Narayan Ch Mondal, Mr. Sankar Sarkar and Ms Anita Khattri, for the Appellant;Alok kr. Ghosh for the High Court Administration, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard learned Advocates appearing for the parties. In view of very nature of impugned order passed by learned Court below, we are of the view that there is no scope to pass any stay. The stay application is dismissed.

2. The appeal is taken up as on day's list for hearing in view of very nature of order impugned.

3. The impugned order dated 13th April 2011 reads such:

13.4.11.- This writ application is filed by the petitioners for allowing them to participate in the selection process initiated by the respondent No. 3 for appointment of Group-C and Group-D Staff.

According to the petitioners, a selection process was initiated by the respondent No. 3 in the year 2006 to fill-up the aforesaid vacancies. The respondent No. 5 sponsored the names of the eligible candidates by a communication dated March 9, 2007. Thereafter, the petitioners did not receipt any information from the respondent authority with regard to such selection process.

An advertisement was published in "The Statesman" on January 26, 2011 inviting

applications from the eligible candidates to fill up the vacancies of Group-C and Group-D posts. The petitioners submitted their applications to the respondent No. 3 to allow them to participate in the above selection process condoning the age bar. Necessary to point out here that in the meantime all the petitioners crossed the age limit of the eligible candidates.

In reply to the applications submitted by the petitioners the respondent No. 3 informed that by a communication dated February 28, 2011 no process for recruitment was started in the year 2006-07 in terms of the resolution dated February 24, 2011 of the Recruitment Committee.

It is submitted on behalf of the petitioners that in the year 2006 their names were sponsored by respondent No. 5 for consideration against the posts under reference. At that point of time all the petitioners were within the prescribed age limit. Therefore, they are entitled to appear in the selection process initiated by virtue of an advertisement dated January 26, 2011.

On the other hand, it is submitted by the learned Counsel appearing for the respondents that in the year 2006 no advertisement was published by the respondent authority inviting applications from the eligible candidates only the respondent No. 5 was requested to sponsor the names of the eligible candidates. Considering that aspect of the matter the respondent authority cancelled the above selection process. A fresh selection process was initiated in the year 2011 pursuant to the above advertisement dated January 26, 2011. Since all the petitioners crossed the prescribed age limit they were not eligible candidates.

Having heard the learned Counsel appearing for the respective parties as also considering the fact and circumstances of this case I find that no material is available on record to show that the respondent authority proceeded on the basis of the recruitment process initiated in the year 2006-07. The reason assigned for cancellation of the above selection process does not suffer from any impropriety. I do not find any nexus of the selection process initiated by the respondent authority pursuant to the advertisement dated January 26, 2011 with the selection process which had been initiated in the year 2006-07. Since the petitioners crossed the prescribed age limit I do not find any legally enforceable right in their favour to participate in the selection process under reference.

Therefore, this writ petition stands dismissed.

There will be, however, no order as to costs...

4. From the writ application it appears that writ petitioners prayed for writ of mandamus commanding respondents to hold vacancies with reference to which earlier writ petitioners' names were sponsored by Employment Exchange and to relax the age limit of petitioners. From the factual matrix it appears which is an admitted position that writ petitioners' names were sponsored in the year 2007 from Employment Exchange for consideration of their candidatures respectively for Group-C and Group-D posts respectively in the Judgeship of District-Maldah.

That selection process did not proceed. Thereafter, a Vacancy Notification was issued in "The Statesman" on 26th January, 2011, inviting applications from eligible candidates and also invitation made from Employment Exchange for sponsorship of candidates. The writ petitioners now are not eligible to appear in view of the fact that they have crossed the maximum age to appear in such interview for the purpose of appointment in those posts under the statutory rule. When there is a statutory rule fixing age bar, High Court cannot exempt/condone the age bar issue for consideration contrary to the statutory provision. It is a settled legal position that writ of mandamus should not be issued on breach of statutory provision. Reliance is placed to the judgements passed in the cases Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others, ,Life Insurance Corporation of India v. Asha Ramchandra Ambekar Mrs. reported in AIR 1994 SC 2148 , State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, and A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, . It is also a settled legal position that Court of Law cannot direct the statutory authority to act contrary to law/statutory provision. Reliance is placed to the judgement passed in the case Union of India and Another Vs. Kirloskar Pneumatic Company Limited, .

5. Learned Advocate for the appellants/writ petitioners submits that since in the year 2007 the names of writ petitioners appellants were sponsored from Employment Exchange when they did not cross maximum age of appointment under the Recruitment Rules, they cannot be penalised refusing their appearance in the interview which is scheduled to be held in future on the basis of newspaper advertisement as stated above. Mere sponsorship of a candidate to appear in any selection process ipso facto does not give any right to the candidate to claim that even if the selection process starts de novo, their age to be condoned. It is an admitted position that earlier selection process was cancelled and no candidates were interviewed

6. In view of such legal position as discussed, the prayer as made seeking writ of mandamus is not legally maintainable. As such, we are not inclined to disturb the finding of learned Trial Judge dismissing the writ application. The appeal accordingly stands dismissed. There will be no order as to costs.

Let xerox certified copy of this order, if applied for, be given to learned Advocates appearing for the parties expeditiously.

Prasenjit Mandal, J.

I agree.