

(2004) 10 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petition No. 2700 (W) of 2003

Muktipada Bag and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

School Service Commission Rules — Rule 7(2), 7(3)
West Bengal School Service Commission Act, 1997 — Section 15, 16, 17, 18, 7

Citation : (2005) 2 CALLT 178

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : R.N. Bag, for the Appellant; P.B. Chakraborty, Tapabrata Chakrobarty and K. Bhowal, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Mitra, J.—The writ petitioners herein are the claimants for the post of Assistant Teachers. The petitioners in the writ petition has annexed the copies of certificates in support of their educational qualification. The petitioners stated that after promulgation of School Service Commission Act, 1997 teachers are to be recruited through School Service Commission. According to the petitioners School Service Commission has been divided in four zones i.e. Eastern, Western, Southern and Northern and the petitioners belong to Western region. In the writ petition the petitioners have quoted the definition of Board, Council, School, Madrassah, Higher Secondary Council, Secondary Council, etc. The definition of teacher as given in 2P of the School Service Commission Act (hereinafter termed as "said Act") has also been given in the writ petition. The petitioners in paragraph 14 have stated that in Section 7 of the said Act the functions of Regional Commission have been prescribed. In Section 8 the amendment and scope of selection of persons and procedure for conduct of business of Commission have been prescribed. In Section 9 the fact of recommendation of the Commission have been prescribed. The provisions laid down in Section 15 have provided the categories of the school to which the West Bengal Service

Commission Act will not apply. The functions of the Central Commission have been laid down in Section 16 of the Act. The power to make rules and regulations have been prescribed in Section 17 and 18.

2. It has been stated in paragraph 16 of the writ petition that District Midnapore, Bankura and Purulia have been placed in the Western Region of the Commission vide a Notification No. 901/S.E. (S)15/95/22.10.97 with headquarter at Bankura.

3. The petitioners in paragraph 17 have quoted Rule 7(2) of the said Act.

4. The petitioners have also stated that in paragraph 18, 100 point roster have been directed to be followed under the provisions laid down in provisions 7(3) of the aforesaid rules.

5. The petitioners further stated that procedure for selection of persons for appointment to the post of Teachers of School have been prescribed in Notification No. 14SE(S)/1S-6/97 dated 8.1.1998 and the petitioners further stated the Clause D and G have prescribed the method of recruitment of Assistant Teacher of Secondary School and the method of recruitment of Assistant Teacher of Higher Secondary School respectively. Advertisement was published in the "Ananda Bazar Patrika" by the Secretary of the West Bengal Central School Service Commission on 04.08.2001 notifying that Selection Test 2001 for appointment of Assistant Teachers in Recognised Non-Government Aided Schools including Madrasahs in West Bengal as per State Government's rules and procedures.

6. It appears from the advertisement dated 04.08.2001 that there was vacancies in the schools other than Madrasahs for Regional Level Selection Test, 2001 in Western Zone in Bio-Science (Pass) and Zoology (Hons.)/P.G. in Bengali medium. The petitioners applied for the posts and the list of successful candidates which were published in "Sambad Pratidin" on 27.03.2002 contained the names of the petitioners. Therefore, the petitioners were successful candidates.

7. The petitioners were called for Personality Test through Memo dated 11.04.2002 issued by the Assistant Secretary, School Service Commission. The petitioners have also annexed a list of successful candidates in the writ petition and made in annexure-P.

8. According to the petitioners though they were successful candidates in Bio-Science group they were not called for interview and the validity of the panel was for one year. The said validity of the panel expired in May 2003.

9. On completion of the appointments made from the panel/select list aforesaid, the West Bengal Central School Service Commission has already made an advertisement for Regional Level Selection Test, 2002 in other subjects than Bio-Sciences.

10. The petitioners contended that no reason has been assigned why the appointments to the petitioners were not given, though validity of the panel was

extended for another year by the School Service Commission. The petitioners have qualifications, they appeared in the interview, they were selected, their names appeared in the selection list, they were called for interview. During the pendency of the writ petition the petitioners through a letter dated 27.02.2003 were intimated by the Chairman, West Bengal Regional School Service Commission that the tenure of the panel of Bio-Science of R.L.S.T. (A.T.) 2001 for the post Assistant Teacher will end on 20.05.2003 and further extension of another year as and when required would be duly considered. In such a position the petitioners moved this writ petition.

11. Affidavit-in-opposition was filed by the School Service Commission and the Secretary of the said Commission affirmed the affidavit. In the affidavit-in-opposition in para 3(a) it has been stated that the Commission could not issue recommendation in favour of the petitioners due to interim orders passed by Hon"ble" High Court in W.P. No. 15090(W) of 2000 (Kanchan Dey and Ors. v. State of West Bengal and Ors.) and W.P. No. 4728(W) of 2002 (Smt. Kumarika Ghosh v. State of West Bengal and Ors.).

12. It has further been stated in the opposition that validity of the select list/ panel is for one year and if at one time 1.5 i.e. 66% of the panel is not exhausted by way of giving appointment of the panel, the Commission may extend the panel for another year as per rules and to that effect communication had already been made to the petitioners and their learned advocate vide Memo dated 27.02.2003.

13. It has been also stated that in view of the communication in annexure-R1 and in view of the Commission's contention that further extension of the tenure of the panel will be duly considered as per procedure as and when required for another year, no further relief can be claimed by the petitioners through the instant writ application and the same has become infructuous.

14. In the opposition it has been stated that Commission made advertisement on 04.08.2001 which included amongst others the posts of Assistant Teachers in Bio-Science (Pass) and Zoology (Hons.) in Bengali medium Schools in Western region. The respondents in the opposition stated that the Commission published merit list of successful candidates of Bio-Science (Pass) on 29.05.2002.

15. The respondents denied each and all the allegations made in the writ petition.

16. The petitioners submitted reply to the said opposition and reiterated their stand taken in the writ petition and they claimed appointment.

17. Since the determination of this Court was changed the writ petitions preferred by Kanchan Kr. Dey and Subrata Singha Mahapatra appeared in the list of Hon"ble Justice Indira Banerjee and after hearing Hon"ble Justice Banerjee released those two matters of Kanchan Kr. Dey and Subrata Singha Mahapatra.

18. The petitioners in their reply in paragraph 3(p) submitted that three matters i.e. the instant writ petition of Muktapada Bag and Ors. v. State of West Bengal

and Ors. and two other writ petitions of Subrata Singha Mahapatra and Kanchan Kr. Dey & Ors. should be heard analogously. It has also been stated in the reply that these writ petitioners have already filed application for addition of parties as well as application for vacating the interim order passed in W.P. No. 13725(W) of 2001 and W.P. No. 15090(W) of 2000 and the copies of the said applications for addition of parties have already been served upon the learned advocate for the writ petitioners above mentioned.

19. Another writ petition on similar cause of action relating to appointment in the post of Assistant Teacher in Bio-Science was moved by Kumarika Ghosh being W.P. No. 4728(W) of 2002 and the said writ petition was dismissed on merit by Hon''ble Justice Subhra Kamal Mukherjee on 12.08.2002.

20. The respondent in the opposition stated that the present tenure of panel of Bio-Science RLST(2001) for the post of Assistant Teacher is to end on 28.05.2003 and further extension as and when required for another year will be duly considered as per procedure.

21. The petitioners in the reply contended that their claims should be considered and they should be given appointment.

22. Heard the learned counsel for the parties, considered their respective submissions and the respective averments as also the submissions made in the written argument filed on behalf of the parties.

23. Simply the whole case is that the Teachers are now appointed through School Service Commission and for the purpose of appointment of Teachers in Bio-Science (Pass) and Zoology (Hons.) advertisement was made in the newspaper inviting applications for the said posts. The petitioners are qualified and accordingly they applied and were selected. They qualified in the oral test also and they were expecting appointment from the panel. Ultimately, when they could not get they filed the instant writ petition.

24. It is to be decided as to whether the petitioners are entitled to get appointment as Teachers in the present context or in the above set of facts. The petitioners have requisite qualifications, the petitioners applied duly, they qualified in the written test, they qualified also in the oral interview and in the appointment panel prepared by the School Service Commission the names of the petitioners were there. On the other hand the life of a panel is one year extensible for another year. It is to be seen that whether empanelled candidates have got right to appointment or not.

25. The Hon''ble Apex Court in so many judgments have observed that if a candidate after being selected gets him empanelled that does not ipso facto confer any right on him to get appointment. Even if a candidate is selected and his name appears in the selection list then also as a matter of right he or she cannot claim appointment. But the Hon''ble Apex Court has also observed in other decisions that the authority of any institution cannot declare the panel

infructuous on efflux of time after keeping the posts vacant that is an institution makes advertisement for the posts, called for interviews, select candidates and prepares a selection list but keeping some posts vacant and allow the time to pass and declare the panel as infructuous because of efflux of time, that is mala fide. The authority being a creation of the statute is to act fairly and bona fide.

26. Here the doctrine of legitimate expectation applies. A candidate has got requisite qualification, prepared himself for the interview, appeared in the interview, got selected and naturally he can expect that if the post is vacant he will get an appointment. Very well this can be his legitimate expectation. It is also a fact that if the period of validity of the panel is exhausted then that panel becomes infructuous but if the authority allows the panel to be exhausted because of efflux of time keeping vacancies intact then that is biased or mala fide. Apart from personal mala fide there is official mala fide and in this case it can be said that it is an official mala fide.

27. The petitioners being in the select list were waiting for appointment but because of no fault of their own, because of interim order of injunction passed in other matters they could not get appointment. In the meantime the time passed, period of validity of the panel exhausted and the authority declared that because of efflux of time the panel has become infructuous and the candidates will not get appointment, this is not only a mala fide action of the authority but this is also a punishment meted out to an innocent though he has not committed any offence. The Court in this situation should not sit over the fence and become a silent spectator. The Court should exercise its jurisdiction. In a decision reported in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the Hon"ble Apex Court has observed that wherever there is injustice mandamus should reach. In the instant case patent injustice is there on the candidates selected for the post of Teachers.

28. In view of the discussions made above, I, therefore, direct the School Service Commission authorities to give the petitioners appointment in their respective subjects being selected candidates, before preparing a fresh panel for the purpose of selection and or before giving any appointment to any candidate in Bio-Science (Pass) or Zoology (Hons.).

The writ petition is thus allowed.

There will be no order as to cost.

Urgent xerox certified copy, if applied for will be given to the parties expeditiously.