
(2009) 08 CAL CK 0039
In the Calcutta High Court
Case No : Writ Petition No. 8202 (W) of 2009

Nabin Kumar Agarwala and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal School Service Commission (Amendment) Act, 2008 — Section 7

Citation : (2009) 08 CAL CK 0039

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharjee and Aninda Bhattacharjee, for the Appellant; Saptangsu Basu, Saugata Bhattacharyya for Respondent No. 6, Kishore Dutta and Binoy Das for the Private Respondents, for the Respondent

Judgement

S.P. Talukdar, J.—Challenging the notice dated 24th January, 2009, being Annexure-"P-2" at page 20, the petitioners filed this application under Article 226 of the Constitution. By the said notice, the Secretary of the Samsi Agril. High School (H.S.), invited applications for appointment of non-teaching staff in permanent vacancy. It was for the post of Clerk (both reserved for S.C. & General), Peon and two posts of Laboratory Attendants (one for General and the other reserved for S.T. category).

2. Grievance of the petitioners, as ventilated by learned Counsel, Mr. Bhattacharjee on their behalf, relates to alleged illegality in such recruitment process. It was submitted by Mr. Bhattacharjee that the West Bengal School Service Commission (Amendment) Act, 2008 came into force on and from 1st January, 2009. By such amendment, all the recruitment in the post of Non-Teaching Staff in any Secondary School was required to be routed through School Service Commission. Section 7 of the Amending Act, as submitted by Mr. Bhattacharjee, makes any appointment invalid, if it is in contravention of the Amendment Act of 2008. It was further submitted on behalf of the petitioners that if any selection process commenced after coming into force of the said Act

of 2008, the same was required to be done by the School Service Commission and the school had no jurisdiction to initiate such selection process.

3. While assailing the notice dated 24th January, 2009, it was submitted that the authority concerned made no attempt to fill up the said posts from amongst the "died-in-harness" category. It appears that the petitioner No. 1 applied for the post of Clerk (General), petitioner No. 2 applied for the post of Laboratory Attendant (S.T.), petitioner No. 3 sought for appointment as Laboratory Attendant (General) whereas petitioner No. 4 applied for the post of Peon (General). It was then submitted that interview was conducted between 22nd February, 2009 and 26th February, 2009. Petitioners, thus, participated in the selection process without having any knowledge about the amendment of School Service Commission (Amendment) Act, 2008.

4. Petitioner Nos. 1 and 4 submitted a representation dated 20.2.2009 addressed to the respondent No. 3 i.e. the District Inspector of Schools (Secondary Education), District Malda, alleging that one Sadhan Chakraborty made payment of huge sum in order to get appointment in the post of Clerk (General). Respondent Nos. 7, 8, 9, 10 and 11 were selected respectively for the post of Clerk (S.C.), Peon (General), Laboratory Attendant (General), Clerk (General) and Laboratory Attendant (S.T.) on the basis of the aforesaid selection process in which the petitioners, of course, also participated. The President of the Managing Committee, by letter dated 6th of March, 2007 informed the District Inspector concerned that the selection against the said five posts was vitiated by illegality and corrupt practice. He wanted cancellation of the panel and proposed fresh interview in accordance with law. Respondent No. 4, however, had already sent the panel to respondent No. 3 for approval. This prompted the petitioners to rush to this Court for redressal of their grievances.

5. Mr. Saptangsu Basu, appearing as learned Counsel for the respondent No. 6, referred to the factual backdrop of the present controversy.

6. Mr. Kishore Dutta, appearing as learned Counsel for the private respondents, particularly invited attention of the Court to the admitted fact that the petitioners duly participated in the selection process and it was submitted that having failed to qualify, they cannot now be permitted to turn back and challenge the selection process. It cannot be denied that by notification dated January 15, 2009 issued by the School Education Department, Government of West Bengal, 14th day of January, 2009 was fixed as the date of coming into effect of the West Bengal School Service Commission (Amendment) Act, 2008.

7. After hearing learned Counsel for both parties and taking into consideration the relevant facts and materials, it appears that the crux of the controversy is whether the selection process commenced prior to coming into force of the Act of 2008. In course of submission, reference was made to the Division Bench decision of this Court in the case between Abdul Mannan Laskar v. State of West Bengal and Ors. as reported in 2000 (1) CHN 435. In the said case, the selection

process was not completed prior to passing of the School Service Commission Act, 1997 as the panel was not completed. Their Lordships, accordingly, held that appointment cannot be made in violation of the Act or Rules framed there under.

8. In the case between Raj Kumar and Others Vs. Shakti Raj and Others, the Hon"ble Apex Court took into consideration the fact that the concerned authority did not call the names from the employment exchange and conducted the examinations for them. This was in the context of the Punjab Public Works Department (Irrigation Branch), Patwaris State Service Class III Rules (1955). Considering the fact that after the selection of the candidates, names of the selected candidates were called from the employment exchange. The Apex Court held that the procedure adopted was clearly illegal denying equal opportunity to many a candidate waiting in the register of the concerned employment exchange.

9. In the case between Snehasu Jas v. State of West Bengal and Ors. as reported in 2001 (2) CLJ 558 the Division Bench of this Court held that once the selection process has already started, meanwhile if the rules are amended then in that case selection process should be allowed to continue as per the unamended rules and the amended rules will not affect the selection process which has commenced under the unamended rules. In regard to the issue as to whether the writ petitioners having participated in the selection process can be permitted to raise dispute regarding the same, it was submitted that the principle of estoppel by conduct or acquiescence would not be attracted in the facts and circumstances of the present case. In this context, reference was made to an earlier decision of the learned Single Bench of this Court in the case between Dr. Md. Ketab Ali v. State of West Bengal and Ors. as reported in 2001 (2) CHN 419.

10. The Apex Court in the case between Madan Lal and Others Vs. State of Jammu and Kashmir and Others, held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn around and challenge the method of selection as being illegal.

11. Question that arose before the learned Single Bench in the case of Dr. Md. Ketab Ali (Supra) was where there are glaring illegalities committed in the matter of selection, the principle of estoppel by conduct or acquiescence would apply or not. In course of submission, reference was further made to the decision of the Division Bench of this Court in the case between Debendra Nath Mondal v. Ratan Kumar Das and Ors. as reported in 2008 (1) CLJ 913. Learned Division Bench after taking into consideration the relevant facts and circumstances of the said case held that the Secretary of the Managing Committee had no right to allow the participation of sole non-sponsored candidate, who got the knowledge of vacancy otherwise but not from the public advertisement of the vacancy.

12. It cannot be disputed that the West Bengal School Service Commission (Amendment) Act, 2008 having coming into force, the legal complexion as regards recruitment of non-teaching staff has undergone radical change. It was notified on 15th January, 2009 that such Amending Act of 2008 would come into

force on and from 14th of January, 2009.

13. In such circumstances, there remains very little scope for controversy and unless it is clearly found that the selection process started prior to coming into effect of the said Amending Act, 2008, there is no scope for accepting the stand taken by the Managing Committee.

14. Grievances, as ventilated on behalf of the writ petitioners, cannot just be brushed aside under the carpet.

15. But having regard to the fact that there is no convincing material before this Court regarding the actual date of commencement of the selection process, this Court thinks that the matter should better be left to the respondent No. 3 for his decision. Accordingly, the present writ application, being W.P. No. 8202 (W) of 2009 be disposed of with direction upon the writ petitioners to forward a copy of the writ application along with all its annexures and of course, a copy of this judgment to respondent No. 3. If such a representation is received by the said respondent No. 3, he must consider the same in accordance with the law and in the light of the observations made hereinbefore. The entire process must be completed within a period of eight weeks from the date of receipt of the representation and while doing so, the said authority, being respondent No. 3 must give the writ petitioners as well as the private respondents herein an opportunity of hearing.

16. Action to be so taken or order to be so passed must be duly communicated to the writ petitioners within a further period of two weeks.

17. There is no order as to costs.

18. Xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.