
(2016) 05 CAL CK 0036

In the Calcutta High Court

Case No : W.P. No. 18369 (W) of 2009 and CAN 4854 of 2015

Namita Mandal (Maity)

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2016) 4 WBLR 663

Hon'ble Judges : Arindam Sinha, J.

Bench : Single Bench

Advocate : Mr. Pratik Dhar, Ld. Senior Advocate and Mr. Debasish Das, Advocate, for the Appellant; Mr. Sanjib Das, Advocate, Mr. Sahidul Islam, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Arindam Sinha, J.—This writ petition was heard earlier. The facts and submissions made on behalf of the petitioner and the private respondent as recorded in order dated 22nd March, 2016 are reproduced below :-

"The petitioner being aggrieved by the order dated 23rd September, 2009 of the District Magistrate in not accepting the prayer of the petitioner for cancelling engagement of the private respondent no. 7, to engage the petitioner instead, has challenged the same by this writ petition. The reasoning in the order turning down the claim of the petitioner to be appointed purports to be that grace period was given to all concerned candidates applying for the post. The said grace period related to submission of documents of proof regarding the candidates belonging to other backward classes from which the engagement or appointment was to be made for Auxiliary Nurse and Midwife.

Mr. Dhar, learned senior advocate appears on behalf of the petitioner and submits, the facts of the case as cannot be disputed are that the private respondent applied for her OBC certificate one day prior to the cut off date. The

advertisement did not carry any indication of grace period being allowed. On the contrary it was made clear that any document of proof not submitted would render the application cancelled as not to be considered. The cut off date was 22nd July, 2009 and the private respondent obtained her certificate on 30th July, 2009. According to Mr. Dhar, as on the cut off date, being the date of consideration of eligibility of candidates, the private respondent was not eligible. He relied on a judgment of the Supreme Court in the case of Rakesh Kumar Sharma v. State (NCT of Delhi) & Ors. reported in (2013) 11 SCC 58 in particular paragraphs 12 to 20, of which paragraphs 12 and 13 are set out below :-

"12. In U.P. Public Service Commission v. Alpana, this Court, after considering a larger number of its earlier judgments, held that eligibility conditions should be examined as on the last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared up to the last date of submission of applications, would not be eligible.

13. A three-Judge Bench of this Court in M.V. Nair v. Union of India held as under :

"9. ... It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."

He also relies on a judgment rendered by a Division Bench of the High Court of Delhi in the case of DSSS Board & Anr. v. Ram Kumar Gijroya & Ors. reported in 2012 (128) DRJ 124 (DB). Paragraph 19 therein is set out below :-

"19. Else, what has been observed by us qua qualification, equally applies to submission of OBC Certificate also. It is well-nigh possible that a number of other OBC candidates, though otherwise eligible but not in possession of the OBC Certificate by the cut off date, did not apply under the belief that being required to enclose the OBC Certificate along with the application and being not in possession thereof, their applications would be deficient and not entertainable. It is yet further possible that, had such others applied and competed, the respondents in appeal and/or the petitioner in the writ petition may not have been eligible. The respondents in appeal and the petitioner in the writ petition were clearly in the know that their applications were incomplete and took a chance. This Court cannot lay down a law which would encourage such practices. The terms and conditions mentioned in the advertisement were intended, to guide/instruct the prospective applicants and there is no reason to dilute the same. Even otherwise, this Court would be loathe to issue mandamus/directive contrary to the terms of selection/appointment (see Karnataka State Road Transport Corporation v. Ashrafulla (2002) 2 SCC 560, FCI v. Ram Kesh Yadav

(2007) 9 SCC 531, Maharishi Dayanand University v. Surjeet Kaur JT 2010 (7) SC 179 and State of West Bengal v. Subhas Kumar Chatterjee (2010) 11 SCC 694)."

He thus submits, the impugned order should be set aside and quashed.

Mr. Das, learned advocate appears on behalf of the private respondent and submits there remains nothing to be decided in the writ petition since the petitioner had obtained interim order dated 11th May, 2010 restraining appointment being issued in favour of his client after which the said interim order stood vacated on 15th January, 2014. He submits thereafter his client was duly appointed and has since been working as engaged. She has thus acquired a right to continue working upon successfully completing her training."

2. Mr. Dhar relies on the written objection filed by the private respondent, to pages 33 and 36 therein to demonstrate that the concerned Authority had by letter dated 21st January, 2016 required a declaration to be given by the said respondent that she would abide by the decision in this writ petition and she may be allowed to join only after obtaining such declaration. Page 36 of the said affidavit is the declaration dated 1st February, 2016 in which, inter alia, the following had been said :-

"I declare that I will abide by the decision of the Hon"ble High Court in the manner of W.P. no. 18369 (W) of 2009 filed by Smt. Namita Mondal."

3. Mr. Dhar submits, the resistance put up on behalf of the private respondent on the submission that equity had accrued in her favour, cannot be accepted inasmuch as she had waived any such equity that might have arisen.

4. Mr. Das then relies on an unreported judgment dated 19th March, 2013 delivered by a Division Bench of this Court in MAT 358 of 2013 (Kalpana Mondal v. Shyamali Mondal & Ors.). He relies on a portion of the judgment as is reproduced below :-

"In compliance with the aforesaid decision of the Ministry of Personnel, Government of India, the respondent No. 1/writ petitioner herein also could be appointed provisionally by the competent authority subject to furnishing the prescribed Caste certificate issued by the competent authority.

In the present case, however, the respondent No. 1/writ petitioner submitted the Scheduled Caste certificate on 14th December, 2006 whereas the last date of submission of the application form was 30th November, 2006. Delay in submission of the Caste certificates, therefore, cannot be fatal in view of the aforesaid guidelines framed by the Ministry of Personnel, Government of India as well as the law laid down by the Hon"ble Supreme Court in the case of Kumari Madhuri Patil & Anr. (supra)."

5. He submits there should be no interference. Mr. Dhar, in reply, refers to another portion in Kalpana Mondal (supra) as is reproduced below :-

"The Ministry of Personnel, Government of India, has made it clear in Chapter 13 of the Brochure that when a candidate belonging to Scheduled Caste or Scheduled Tribe is unable to produce a certificate from the prescribed authority then he may be appointed provisionally on the basis of the prima facie proof in support of his claim subject to furnishing the prescribed certificate within a reasonable time."

He submits, Kalpana Mondal (supra) is, therefore, clearly distinguishable. The said judgment had pronounced with reference to a provision in the Brochure of Ministry of Personnel, Government of India regarding provisional appointment on inability to produce a certificate which provision is absent from the eligibility criteria in the present case.

6. The position in law regarding eligibility criteria and relaxation of the same has been declared by the Supreme Court in Rakesh Kumar Sharma (supra). The fact in this case is that the private respondent produced her certificate a few days after the last date within which she was required to have produced it. The Supreme Court in Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development & Ors. reported in (1994) 6 SCC 241 delivered its judgment and the declaration of law relied upon in Kalpana Mondal (supra), on facts being that a student had applied for issuance of a caste certificate and during the pendency of that application she applied for being admitted to college to study to be a Doctor. The time for her admission was running out and she filed a writ petition to direct the Additional Commissioner to dispose of her appeal and to the Dean of the Medical College to permit her to appear for her interview and admit her in the college if she was found fit. It is on those facts that the declaration of law was made in the said judgment as relied upon and quoted in Kalpana Mondal (supra). The portion in Kumari Madhuri Patil (supra) relied upon in Kalpana Mondal (supra) is reproduced below :-

"12. *** **

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For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following :

- 1)
- 2)
- 3)
- 4)
- 5)

6)

7)

8)

9)

10) In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee."

7. This Court finds that the petitioner has been successful in making out a case for relief prayed for in the writ petition. The impugned order dated 23rd September, 2009 is set aside and quashed. The petitioner be issued appointment letter in the post of auxiliary nurse, if she is found otherwise entitled to be appointed, she having fulfilled the eligibility criteria. Since the Authority had proceeded to give the appointment to the respondent no.7 upon obtaining undertaking from her, this Court finds that necessity of appointment is there. The concerned respondents will proceed to take action consequent to this order within a period of four weeks from the date of receipt of a copy of the same.

8. The writ petition is disposed of. The connected application is also disposed of.

9. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.