
(2002) 08 CAL CK 0004
In the Calcutta High Court

Pelaram Mahato	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2003) 2 CALLT 287 : (2002) 2 ILR (Cal) 197

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Manaranjan Mahato, for the Appellant; Shyamali Banerjee, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mukherjee, J.—This is to consider an application under Article 226 of the Constitution of India (the writ petition in short) challenging the order dated February 27, 2002 passed by District Inspector of Schools (S.E.), Purulia, inter alia, refusing to accord approval to the panel for filling up a post of Group "D" employee (Laboratory Attendant) in Rishi Nibaran Chandra Vidyapith, Bandwan.

2. The brief facts leading to the filing of the writ petitioner may be summarised as under:

(a) The Director of School Education, West Bengal by order dated September 5, 1999 sanctioned two posts of Laboratory Attendants in the said school.

(b) The District Inspector of Schools (S.E.), Purulia granted prior permission to school authorities to fill up the posts of Laboratory Attendants. While granting the prior permission, the District Inspector of Schools concerned indicated the qualification for appointment in the said posts. It was indicated that the incumbents should complete Class VIII standard and they should be capable to read and write Bengali and English. It was indicated, further, that one of such post would be meant for general candidate while the other post would be reserved for reserved category. In the order of prior permission names of three

candidates were mentioned from died in harness category.

(c) As the persons sponsored from died in harness category failed of appear before the school authority, by order dated November 28, 2000, the said District Inspector of Schools permitted the school authority to fill up the posts by obtaining names from the Employment Exchange, Purulia.

(d) On December 20, 2000 the school notified the vacancies to the Employment Exchange Officer requesting him to sponsor names to fill up the post of Laboratory Attendants. The school, also, indicated that the essential qualification for the said posts as VIII standard, but it was, further, indicated that it would be desirable that the candidates should possess Madhyamik Examination Pass Certificate.

(e) On April 9, 2001 the Employment Exchange Officer forwarded 19 (nineteen) names to the Secretary of the said school from the reserved category.

(f) On May 14, 2001 the Employment Exchange Officer, also, sponsored the name of Paleram Mahato, the writ petitioner, as the 20th candidate, indicating that his name could not be sponsored on April 9, 2001 due to oversight and requested the school authorities to consider his candidature along with the other sponsored candidates.

(g) The school authorities asked the said twenty candidates to appear before the selection committee constituted for the purpose of selection in the post of Laboratory Attendant reserved for reserved category for an interview to be held on July 22, 2001 at the school premises.

(h) The candidates appeared before the selection committee and the selection committee prepared a panel of three candidates.

(i) In the panel the writ petitioner was placed as the first empaneled candidate while Sunil Baran Mahato, the respondent No. 7, was empaneled as the second empaneled candidate.

(j) The Managing Committee of the school forwarded the panel to the District Inspector of Schools (S.E.), Purulia for approval.

(k) The respondent No. 7, that is, the second empaneled candidate moved a writ petition before this Court being W.P. No. 12874(W) of 2002 contending inter alia, that the interview was held and the panel was prepared without following the recruitment procedures as provided in paragraph 6(k) of the recruitment procedures dated December 1, 1995.

(l) Lala, J. By order dated October 16, 2000 disposed of the said writ petition with a direction to the authority concerned to consider the matter of approval of the panel upon giving fullest opportunity of hearing to all the parties and to come to an appropriate conclusion in this respect.

(m) On January 29, 2002 the District Inspector of Schools gave hearing to the

persons concerned in the matter and passed his order dated February 27, 2002, inter alia, refusing to accord approval of the panel prepared for the post of Laboratory Attendant from reserved category.

3. The relevant portion of the order passed by the District Inspector of School is quoted herein below:

"Having heard the contentions of the parties and in consideration of the submissions thereof, the matter is disposed of with the direction to the school authority to adhere the judgment of as contained in the W.P. No. 12874 and also to abide by the provisions of the Recruitment Procedures to ignore the name of the 1st empaneled candidate since it was sponsored in the 2nd list or continuation list which is barred by limitation. Moreover, the school authority will have to act in accordance with the requisition of vacancy as sent and the permission accorded by this office wherein the requisite qualification for filling up the post was fixed as Class VIII pass candidate as corroborated by way of resolution of the Managing Committee.

The matter is, thus, heard, considered and disposed of. All concerned be informed accordingly."

4. Being aggrieved the writ petitioner has come up before this Court. At the hearing only the respondent No. 7 appeared through his learned advocate to contest the writ application.

5. Mr. Manaranjan Mahato, learned advocate, appearing for the petitioner, submitted that the District Inspector of Schools was wrong in refusing to accord approval when the panel was prepared by the selection committee and has been forwarded by the Managing Committee of the School after following the recruitment procedures. It is submitted that the District Inspector of Schools proceeded on a wrong assumption that the name of the writ petitioner was sponsored by the Employment Exchange Officer in violation of the requirements of paragraph 6(k) of the said recruitment procedures. It is, further, submitted that the selection committee committed no mistake in considering the candidature of the writ petitioner although he possessed higher qualification than the qualification prescribed in the prior permission. Mr. Mahato in support of his contentions cited the decisions in the cases of Ganges Manufacturing Company Limited v. The Messrs Ganges Manufacturing Co. Ltd. Vs. The State of West Bengal and Another, and Ganga Chowdhury v. B.D.O., Tamruk II and Ors. reported in 1996 WLR 213.

6. Ms. Shyamali Banerjee, learned advocate, appearing for the respondent No. 7, however, strenuously contested the contentions of the writ petitioner and argued that under paragraph 6(k) it was not permissible to obtain a second list from the Employment Exchange. It is, further, submitted that both in the prior permission and in the notification notifying the vacancy to the Employment Exchange Officer, the essential qualification was prescribed as Class VIII standard and as the writ petitioner possesses B.A. and B.P.Ed. Degrees, the writ petitioner was ineligible

to be considered for the said post. Ms. Banerjee argued that the selection committee acted erroneously in not counting the seniority in age for giving preference to the respondent No. 7 inasmuch as the respondent No. 7 was born January 3, 1961 while the writ petitioner's date of birth is September 25, 1961. Ms. Banerjee cited the Special Bench decision of this Court in the case of *Debasis Dutta v. The State of West Bengal*, reported in 1998(2) CLJ 1 and invited my attention to the observation of the Special Bench that it was well settled principle of law that no recruitment could be made in violation of or in derogation of the provisions of the recruitment procedures.

7. Under the National Employment Service Manual it was incumbent on the Employment Exchange Officer to sponsor names of the candidates strictly in order of seniority in the ratio of 1:20. The school notified the vacancy and it was incumbent on the part of the Employment Exchange Officer to sponsor twenty names against the vacancy of one post of Laboratory Attendant. On April 9, 2001 the Employment Exchange Officer sponsored the names of 19 candidates. When the mistake was detected, on May 14, 2001, the Employment Exchange Officer sponsored the 20th name, which could not be sponsored due to oversight, with a request to the school authority to entertain the said candidate along with others sponsored candidate. Paragraph 6(k) of the recruitment procedures of 1995 contemplates that no second list should be obtained from Employment Exchange. It is not a case here that the school authority has obtained the second list from the Employment Exchange. It was incumbent on the Employment Exchange to sponsor names in 1:20 ratio, but the Employment Exchange, due to oversight, forwarded 19 names and when the mistake was detected the name of the 20th candidate was sponsored. It is always permissible to rectify an error committed due to oversight. Nobody has complained that the Employment Exchange Officer ignoring the claim of any senior person sponsored the name of the writ petitioner.

8. The selection committee, constituted by the Managing Committee of the school, interviewed the candidates and thereafter, prepared the panel. It is true that the writ petitioner possesses a higher qualification than what has been prescribed for the post, but it is nobody's case that in preparing the panel the selection committee has considered his higher qualification in awarding marks to him. As it has been observed by a Division Bench of this Court in *Ganga Chowdhary's case* (supra) that over qualification did never disentitle a person for being considered for appointment inasmuch as, in view of the provisions of Article 16 of the Constitution of India, each person, who was entitled to be considered for appointment, should be considered. If a person had a right to consider for appointment in terms of Articles 14 and 16 of the Constitution of India, the fact that a candidate was over qualified by itself could never be a ground for setting aside the appointment.

9. Ms. Banerjee, finally, argued that as the respondent No. 7 was senior in age and the selection committee should have given him preference. Such contentions of Ms. Banerjee in only to be rejected. The respondent No. 7 appeared in the

interview and it is not open to him to challenge the manner of selection by the selection committee. This Court in exercise of its power of judicial review is not in a position to act as the Court of appeal to adjudicate the mode and the manner of selection by a selection committee. The Supreme Court of India in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, observed that the result of the selection test on merits could not be successfully challenged by a candidate, who took a chance to get selected at the said interview and, ultimately, found himself to be unsuccessful.

10. Accordingly, the order dated February 27, 2002 passed by the District Inspector of Schools (S.E.), Purulia is set aside inasmuch as the premises on the basis of which the order has been passed was erroneous and, as in my view, the said order was not an appropriate one. The District Inspector of Schools (S.E.), Purulia is, therefore, directed to consider the panel forward to him by the school authority for approval in the light of the observations made in this order. The said District Inspector of Schools, is directed to take his decision in the matter within four weeks from the date of communication of this order to him.

With the aforesaid observations the writ application is allowed without, however, any order as to costs.

The office is directed to supply xerox certified copies of this order, if applied for, to the applicants within seven days from, the date of making requisitions.