

(2015) 10 CAL CK 0034
In the Calcutta High Court
Case No : WP 9379 (W) of 2015

Phalguni Sarkar

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Citation : (2015) 10 CAL CK 0034

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Santi Das and Subha Dey, Learned Advocates, for the Appellant;
Sadananda Ganguly and Saikat Chatterjee, Learned Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Samapti Chatterjee, J.—The petitioner has filed the present writ petition for direction upon the West Bengal School Service Commission (South-Eastern Region) to start counselling process from the rank holder No. 255th of the merit list prepared on the basis of the 12th Regional Level Selection Test, 2011 and recommend the name of the petitioner for the appointment to the post of Assistant Teacher in Geography (Hons"/PG) under the Bengali Medium Institution within jurisdiction of South -Eastern region.

2. The petitioner's case in brief is as follows:-

The West Bengal School Service Commission published an advertisement in the state level daily newspaper for conducting 12th Regional Level Selection Test, (AT) 2011 for filling up the post of Assistant Teacher in Geography (Hons"/PG) in Bengali medium institution and other subjects in recognised non-government aided institutions. Pursuant to the said advertisement the petitioner since having the requisite qualification applied for the said post and considering her candidature the petitioner was invited to participate in the written test which was scheduled to be held on 29th July, 2012.

Thereafter on 1st December, 2012 the result of the desired eligibility test was published wherefrom it appeared that the petitioner has qualified in the teacher eligibility test. As a result thereof the petitioner's name appeared sometime in August, 2013 in the combined merit list under 12th RLST (AT) of 2011 was published and petitioner's name was appearing in the Serial No. 255 of the empanelled candidate and therefore petitioner was waiting for her counselling for the said Assistant Teacher's post.

3. It is submitted by Mrs Santi Das, learned Advocate appearing for the petitioner that counselling started for recommending the names of the empanelled candidates by the Commission on and from 25th September, 2013.

4. It is further submitted by Mrs Das that on different dates counselling was taken place. Particular of those dates are given below:-

"First counselling was held on 25.09.2013

Second counselling was held on 24.10.2013

Third counselling was held on 26.12.2013

Fourth phase Part-I counselling was held on 26.02.2014

Fourth phase Part-II counselling held on 21.03.2014 (after 11 months)

4th phase Part-III counselling held on 26.02.2015

4th phase Part-IV counselling held on 07.03.2015

4th phase Part-V counselling held on 13.03.2015."

5. Mrs. Das further vehemently urged that the concerned School Service Commission with some ulterior motive caused a gap of 11 months in between 4th phase Part II-Part III and 4th phase Part-II and Part III counselling were held on 21st March, 2014 and 26th February, 2015 which clearly showed that the Commission had motivatedly made delay to hold counselling only just to frustrate the panel.

6. Mrs Das also vehemently argued that last counselling was held on 13th March, 2015 up to merit list 245 rank holder namely Jamirul Biswas of the said merit list thus depriving the petitioner whose name was appearing in 255th rank in the merit list to be called for counselling.

7. It is also submitted by Mrs Das though there are vacancies still existing within the jurisdiction of south-eastern region but after 13th March, 2015 no counselling was held by the said Commission.

8. Mrs. Das further contended that since there are vacancies still existing in respect of SC female category therefore it was obligatory on the part of the Commission to hold 5th phase counselling to fill up all existing vacant posts and if it was done then the petitioner could have been accommodated to appear in

the counselling process as the petitioner's name was appearing in Serial No. 255 in the combined merit list and upto 245 from the said merit list were asked to appear in the counselling process barring the petitioner.

In support of her contention Mrs Das relied on a decision reported in R.S. Mittal Vs. Union of India (UOI), Paragraphs-10 and 11 which are quoted below:-

"Para-10-The Tribunal dismissed the application by the impugned judgment on the following reasoning:

(a) The selection panel was merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The recommendations of the Selection Board were directory and not mandatory and were not therefore enforceable by issue of a writ of mandamus by the Court.

(b) The letter of Ministry of Home Affairs dated 8-2-1982 which extends the life of panel till exhausted is not relevant in the present case. In the circumstances the life of the panel in this case cannot go beyond 18 months and as such expired in July 1989.

It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel for decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.

Para-11-On the facts of this case, it is not necessary for us to go into the question of applicability of various instructions relied upon by the Tribunal. Even if there are any instructions which provide that a select panel shall remain operative for one and a half years, the said period in our view is sufficient for the Central Government to exhaust the select panel of the type with which we are concerned in this case. We have already indicated the time-bound procedure to be followed in dealing with the select panel of this type."

Therefore, Mrs Das submitted that concerned Commission should be directed by this Hon"ble court to hold further phase of counselling for the remaining vacant posts within a specific time.

9. Per contra, Mr. Saugata Bhattacharya, learned Advocate appearing for the

School Service Commission submitted that the life of the panel has already lapsed therefore there is no provision to hold further phase of counselling just to accommodate the petitioner.

10. Mr. Bhattacharya further vehemently contended that the petitioner made out a case that she was not called for the counselling by the School Service Commission but the counselling for the purpose of recommendation of the candidates was arranged and held by the Central School Service Commission in phase by phase manner which was started on and from 25th September, 2013.

11. Mr. Bhattacharya further vehemently urged that after maintaining all the requisite formalities and receiving of the report of the left out and non-joining cases of the candidates of the earlier counselling arrangement the next counselling was made. Therefore it is not true that the Commission to frustrate the panel motivatedly failed and neglected to call the petitioner for counselling.

12. Mr. Bhattacharya further strongly urged that Md. Jamirul Biswas whose name was appearing in Serial No. 245 was called for the counselling in the first phase as a candidate of OBC-A category and not in the last phase of counselling which was held on 23rd March, 2015 as alleged by the petitioner.

13. Mr. Bhattacharya further contended that said Md. Jamirul Biswas does not belong to the category of the petitioner.

14. Mr. Bhattacharya also submitted that the petitioner as SC female In-Service Permanent candidate did not come within the zone of consideration during the life time of the panel which expired on 24.03.2015. The status of the counselling and the recommendation made from the subject of Geography (Hons/PG) under SC and General category is indicated below:-

(a) The last candidate under SC Female In-Service Permanent

category was called for the counselling from the combined merit list was Soma Das having Roll No. 512011300776 who secured 233rd rank having B.Ed qualification.

(b) The last candidate under SC Male In-Service Permanent category was called for the counselling from the combined merit list was Pobitra Biswas having Roll No. 512011300380 who secured 182 rank.

Therefore the turn of the petitioner as SC Female In-Service Permanent candidate did not come considering her position in the said combined merit list.

15. Mr. Bhattacharya also contended that counselling for the last phase (i.e. 4th phase Part-V) was held on March 2015 i.e. one day prior to the expiry of the panel on 24th March, 2015. Therefore, the petitioner did not have any chance to be considered in view of her 255th rank in the combined merit list.

16. Mr. Bhattacharya also strongly urged that after 4th phase of counselling the life of the panel expired on 24th March, 2015 after completion of extended period

of six months and, as such, there was no scope for holding further counselling after the expiry of the life of the said panel.

17. Considering the submissions advanced by the learned Advocates appearing for the respective parties and after perusing the records I find that admittedly the petitioner's name was appearing under Serial No. 255th rank in the combined merit list and the person who was given counselling under SC female category having B.Ed degree like the petitioner from the combined merit list was Soma Das having Roll No. 512011300776 who secured 233rd rank much higher than the petitioner's rank under the SC female category having B.Ed degree. Therefore the petitioner had no scope to be called for the counselling.

18. I cannot also ignore the fact that after the last phase i.e. (4th phase Part-V) was held on 23rd March, 2015 the extended panel expired on the following date i.e. on 24th March, 2015. Therefore, I find that the life of the panel was extended on 24th March, 2015 after extension of six months. During that extended period on the basis of the non-joining/left out candidates upto 4th phase of counselling was held by the concerned Commission till 23rd March, 2015 i.e. just one day before the expiry of the extended panel, by that extended life time of the panel petitioner's rank did not come within the purview of consideration.

That being the position I am of the view that there is no scope in the case of the petitioner to be considered by this Hon''ble Court. Therefore, the present case does not deserve any interference by this Hon''ble Court.

19. Now I have to deal the decision relied on by Mrs. Das on the point of delay. In the said decision the case of R.S. Mittal (Supra) it was held that no reason whatsoever were shown by the respondent authority to offer appointment to the petitioner who was selected in the panel but in the present case I find that it has been categorically explained by the said commission how and what manner upto to 4th phase counselling was given to the selected candidates of the merit list.

It is also categorically mentioned that up to last date before expiry of the extended panel i.e. till 23rd March, 2015 counselling was held by the commission and I also cannot shut my eyes that from the fact that the SC Female In-Service permanent category candidate having B.Ed degree like the petitioner was called up to 233rd rank of the combined merit list whereas petitioner's rank was 255th in the combined merit list. Therefore, during the extended period of the said panel the petitioner could not come within the zone of consideration. As a result whereof the petitioner was not called for the counselling under SC Female In-Service permanent category having B.Ed degree category.

Considering the above scenario and after going through the records and the averments I have no hesitation to hold that the decision relied on by Mrs. Das has no manner of application in the case in hand.

20. Considering the above, this writ petition has no merit as a result thereof the

same is liable to be dismissed.

21. Accordingly this writ petition is dismissed without any order as to costs.

22. Urgent photostat certified copy of this Judgment, if applied for, be supplied to the parties after fulfilling all the formalities.