
(2013) 02 CAL CK 0045
In the Calcutta High Court
Case No : Writ Petition No. 5846 (W) of 2013

Priyanath Rej

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2013) 2 CALLT 423 : (2013) 2 WBLR 281

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Sougata Bhattacharya and Mr. Sunit Kumar Roy, for the Appellant; L.K. Gupta, Subir Sanyal, Ratul Biswas and Mr. S.P. Lohar for the Board, Mr. J.L. De and Ms. Anjushree Mukherjee for the State and Mr. Anup Banerjee for the Respondents 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—This writ application is filed by the petitioner to allow him to participate in the selection process for appointment to the post of assistant teachers in Government Aided/Sponsored Primary/Junior Basic Schools under the District Primary School Councils/Primary School Councils of West Bengal on the basis of a special advertisement published on February 6, 2013 by the respondent No. 6. It is submitted by Mr. L.K. Gupta, learned Senior Advocate appearing on behalf of the respondent Nos. 6 & 7 that he does not want to file affidavit-in-opposition in the matter since the point of law in this matter can be resolved on the basis of the materials available on record as also the order dated February 2, 2011 passed by the Hon'ble Supreme Court in the matter of West Bengal Organizing Primary Teachers' Associations & Ors. v. Chairman, Adhoc Committee, North & Ors. (In re: S.L.A. (Civil) No(s) 15253 of 2006.

2. The petitioner claims to be an organizing teacher of one unrecognized school situated in the District of Burdwan. According to the petitioner, he submitted several representations before the Chairman, District Primary School Council, Burdwan for approval of his service in the unapproved primary school in which he

had been discharging his function as a teacher.

3. On February 6, 2013, one special advertisement was published by the respondent No. 6 in compliance of the order of the Hon"ble Supreme Court inviting applications for the post of assistant teachers in Government Aided/ Sponsored Primary/Junior Basic Schools under the District Primary School Councils/Primary School Councils of West Bengal to fill up the vacancies from those who were parties before the Hon"ble High Court at Calcutta and the Writ Petition No. 15632(W) of 1998 with reference to the applications for impleadment made before it on which orders were passed on October 31, 2003 as specified in the order dated February 2, 2011 passed in S.L.A. (Civil) No(s) 15253 of 2006 and S.L.P (c) No. 14897 of 2008 by the Hon"ble Supreme Court of India granting age relaxation for those persons. The upper age limit should be reckoned with reference to September 14, 1995. The petitioner was not a party to that proceeding.

4. According to Mr. Sougata Bhattacharya, learned Advocate appearing on behalf of the petitioner, the benefit of age relaxation was granted by the Hon"ble Supreme Court to the parties present before the Hon"ble Apex Court as also who were the parties before the High Court in the writ petition mentioned in the advertisement under reference. According to Mr. Bhattacharya, the above benefit cannot be restricted to the parties to the proceeding under reference on the basis of the settled principles of law that the service jurisprudence postulates that a person similarly situated should be treated similarly and only because one person has approached the Court that would not mean that the persons similarly situated should be treated differently.

5. Mr. Bhattacharya relies upon the decisions of K.I. Shephard and Others Vs. Union of India (UOI) and Others, State of Karnataka and Others Vs. C. Lalitha, and K.T. Veerappa and Others Vs. State of Karnataka and Others, in support of his above submissions.

6. Mr. L.K. Gupta, learned Senior Advocate appearing on behalf of the respondent Nos. 6 & 7 submits that an order dated February 2, 2011 was passed by the Hon"ble Supreme Court in the matter of West Bengal Organizing Teachers" Association v. Adhoc Committee, North & Ors. (In re: SLA (C) No. 15253 of 2006) in favour of some of the parties of that proceeding as referred to the above order. Considering the fact that the above litigation had been going on for over 25 years as also taking into consideration that the West Bengal Primary School Teachers" Recruitment Rules had been framed in the year 2001 restricting the upper age limit of the eligibility criteria to participate in the selection process for appointment of primary school teachers in different institutions within the State of West Bengal, the Hon"ble Supreme Court passed the aforesaid order restricting the benefit of relaxation of age limit calculating the eligibility criteria taking into consideration the age of the aforesaid petitioners as on February 14, 1995. According to Mr. Gupta, the above benefit was expressly restricted in favour of the petitioners of the proceeding under reference. According to him,

there was further order dated January 24, 2013 passed in the proceeding under reference repeating and reiterating the restriction with regard to the above age relaxation. According to him, the above orders for relaxing the age criteria are strictly restricted to the petitioners of the proceeding under reference. Any departure from the above directions may amount to willful disobedience of the order passed in the above proceeding. According to him, it was the reason for publishing the advertisement giving an opportunity to the parties of the above proceeding as referred to the above order to participate in the selection process in question. It is further submitted by Mr. Gupta, that the writ petitioner was sitting on fence to watch the outcome of the proceeding under reference. Suddenly, he filed this writ application to get the benefit of the order passed by the Hon"ble Supreme Court.

7. In view of the above fact, it is also submitted by Mr. Gupta that the decisions relied upon by the petitioner has no manner of application in view of the distinguishable fact and circumstances of this case.

8. Mr. J.L. De, learned Advocate appearing on behalf of the State respondents repeated and reiterates the submissions of Mr. Gupta.

9. Mr. Arup Banerjee, learned Advocate appearing on behalf of the respondent Nos. 4 & 5 adopts the submissions made by Mr. L.K. Gupta.

10. I have heard the learned Counsel appearing for the respective parties at length and I have given my anxious consideration to the fact and circumstances of this case. It is an admitted position that the petitioner was not a party to the proceeding which ultimately reached the Hon"ble Supreme Court in which the Hon"ble Supreme Court gave the age relaxation to the petitioners. In order to adjudicate the issue involved in this case, the order dated February 2, 2011 passed by the Hon"ble Supreme Court in the matter of West Bengal Organizing Primary Teachers' Associations & Ore. v. Chairman, Adhoc Committee, North & Ors. an re: S.L.A. (Civil) No(s) 15253 of 2006 are quoted below:

...In course of hearing of these two special leave petitions, Mr. Bhaskar P. Gupta, senior advocate appearing for respondent Nos. 2 and 3 in SLP (C) No. 15253/2006 and/or respondent Nos. 5 and 6 in SLP (C) 14897/2008 and for respondent Nos. 5 & 6 in SLP (C) No. 14897/2008, stated that in case the members of the petitioner Association and the petitioners in the other SLP make applications in response to any current advertisements or advertisements that may be issued in future under Rule 8 of the West Bengal Primary School Teachers Recruitment Rules, 2001 for appointment as primary schoolteachers, their applications will be considered, along with all other eligible candidates, in accordance with the provisions of the aforesaid Rules.

The offer made by Mr. Gupta is not of much help to the petitioners because by an amendment introduced in the Rules, an age limit is prescribed and all the petitioners have by now become overage. They are, for that reason, no longer eligible to apply for appointment as Primary School Teachers.

Having regard to the fact that this litigation is going on for the past 25 years and further having regard to the fact during this period the West Bengal Primary School Teachers Recruitment Rules were framed in the year 2001 and were subjected to amendments in May and July 2009, by which the upper age limit of 40 years is prescribed for appointment as Primary School Teachers, we deem it just and proper to direct that in case of the 1257 members of the West Bengal Organizer Primary Association (Petitioner No. 1 in SLP (C) No. 15253/2006) and in case of all those persons who were parties before the High Court in Writ petition No. 15632(W) of 1998, the upper age limit shall be reckoned with reference to September 14, 1995 (the date on which this Court passed orders in SLP(C) No. 3594/1995 from which the claim of the petitioners emanate). In other words, in case the 1257 members of the petitioner Association and those persons who were parties before the High Court in the aforementioned writ petition satisfy the age criterion as on September 14, 1995, their applications shall be duly considered in terms of the other eligibility criteria prescribed under the Rules as they stand on date.

In case any applicant claims relaxation of age on the basis of this order, it will be open to the concerned authorities to satisfy themselves as to whether the concerned applicant was a party before the High Court in the aforementioned writ petition with reference to the application of impleadment before the High Court on which orders were passed on October 31, 2003. It is further made clear that if a formal order of impleadment was not made in case of anyone for non payment of court fee, as directed by the High Court, that shall not be taken into account to reject his/her claim for relaxation of age.

The special leave petitions are disposed of with the aforesaid observations and directions.

All pending applications for impleadment are rejected.

11. It is also not in dispute that the Hon''ble Supreme Court of India while passing the above order took into consideration the fact of continuation of a litigation for over 25 years as also the introduction of the West Bengal Primary School Teachers'' Recruitment Rules by which the upper age limit of the eligible candidates for participating in the selection process for appointment of primary school teachers was restricted to 40 years. It is also not in dispute that the Hon''ble Supreme Court, while granting the age relaxation in favour of some of the parties of that proceeding as referred to the above order, directed that in case any applicant claims relaxation of age on the basis of the aforesaid order, it would be open for the concerned authority to satisfy themselves as to whether the concerned applicant was a party before the Hon''ble High Court in the writ petition, under reference, with regard to the application made before the High Court on which orders were passed on October 31, 2003. Therefore, I have no hesitation to hold that the above order was strictly restricted in favour of some of the parties of that proceeding as referred to in the above order.

12. So far as the decisions of K.I. Shephard (supra), C. Latitha (supra) & K.T. Veerappa (supra) are concerned, the Hon''ble Supreme Court did not consider any such restriction of granting benefit in any previous proceeding in favour of a party to that proceeding. In that view of the matter, the instant case cannot be said to be on the identical point of law. It is the settled principles of law that a decision is not an authority for a proposition which did not call for its consideration. Reference may be made to the decision of Punjab National Bank Vs. R.L. Vaid and Others, . The relevant portion of the above decision is quoted below:--

5. We find that the High Court has merely referred to the decision in R.K. Jain's case (supra) without even indicating as to applicability of the said decision and as to how it has any relevance to the facts of the case. It would have been proper for the High Court to indicate the reasons and also to spell out clearly as to the applicability of the decision of the facts of the case. There is always peril in treating the words of a judgment as though they are words in a Legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a difference between conclusion in two cases. Disposal of cases by merely placing reliance on a decision is not proper. Precedent should be followed only so far as it marks the path of justice, but you must cut out the dead wood and trim off the side branches else you will find yourself lost in thickets and branches, said Lord Denning, while speaking in the matter of applying precedents. The impugned order is certainly vague.

(Emphasis supplied)

13. In view of the distinguishable facts and circumstances as discussed hereinabove, I find that the aforesaid decisions of K.I. Shephard (supra), C. Latitha (supra) & K.T. Veerappa (supra) have no manner of application in this case.

14. Before parting with I cannot ignore the admitted fact that the Hon''ble Apex Court restricted a particular benefit in favour of some parties to a proceeding in no uncertain terms, the writ petitioners hereinabove did not approach the Hon''ble Apex Court for appropriate modification of that order to get the similar benefit. Therefore, according to me, it is decision in personem restricting the relaxation of age for the eligible candidate in favour of the parties of a proceeding as referred to that decision.

15. In view of the above discussions made hereinabove, this writ application is dismissed. There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.