

(2013) 05 CAL CK 0051
In the Calcutta High Court
Case No : Writ Petition No. 4995 (W) of 2013

Probhat Kumar Das and Others

APPELLANT

Vs

The University of Burdwan and Others

RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 05 CAL CK 0051

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Kashi Kanta Mitra and Mr. L. Gupta, for the Appellant; R.N. Chakraborty, Mintu Goswami and Mr. Zakir Hossain for the State, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the wards of the retired employees of the Burdwan University and is filed for issuance of a writ of mandamus commanding the respondents for revoking, cancelling or withdrawing the letter dated September 27, 2012 issued by the Registrar, Burdwan University and other consequential reliefs. The petitioners have contended that the respondent university published an advertisement dated February 10, 2009 for recruitment to the different posts as described in the Advertisement No. 4 of 2008/09 of the respondent university. The petitioners applied for different posts and some of them got the admit card for the written tests. But, the petitioner nos. 2 & 4 were not given the admit cards due to over age.

2. The petitioners have contended that by the Notification dated November 6, 1989, the then Registrar of the respondent university issued orders to the effect that the wards of the employees who will retire on superannuation within five years or have already retired during the last three years and have rendered at least 20 years of service at the University shall get a weightage in the matter of appointment in the University provided that the wards have the requisite

qualification for appointment to the concerned posts and they qualify in the normal process of selection.

3. Previously, a litigation was held being W.P. No. 4380(W) of 1995 wherein it has been decided that the said notification was a policy decision in respect of the employment of the wards and so, the university was directed to consider the policy decision in accordance with law, by the order dated July 26, 1996.

4. The petitioners filed a writ petition being W.P. No. 14396(W) of 2010 which was disposed of on June 5, 2012 directing the respondent university and the concerned office bearers to treat the writ petition as a representation of the writ petitioners and to dispose of the same by a reasoned order in accordance with law.

5. Pursuant to that order, the Registrar passed the impugned order. Being aggrieved by such order, this application has been preferred.

6. Now, the question is whether the order passed by the Registrar suffers from arbitrariness and violation of Article 14 of the Constitution of India.

7. Having heard the learned Counsel for the parties and on going through the materials on record, I am of the view that the concerned Registrar of the respondent university has taken a right approach in compliance with the order dated June 5, 2012 passed by this Hon'ble Court in W.P. No. 14396(W) of 2010.

8. It is pertinent to mention that while disposing of said writ petition, the learned Single Judge did not go into the merit of the application and simply directed to consider the representation of the petitioners.

9. While complying with the said direction, the Registrar has observed that the petitioners do not come at all within the requirement of the notification dated November 6, 1989 for the respondent university and he has assigned reasons in support of his findings. Not only that, in my view, he has taken a right decision by expressing that the benefits to be given to the wards of the employee is nothing but a clear violation of right to equality and so, the respondent university did not choose to follow the said Notification of 1989.

10. It may be noted herein that before passing the impugned order, a meeting was held in presence of the Vice-Chancellor and other dignitaries of the respondent university and they adopted the principle that right to equality should be followed and so, the practice as indicated in the Notification of 1989 could not be entertained.

11. Thus, I find that the respondent university has adopted the liberal approach, i.e., a policy decision in the matter of public employment. In this respect, it may be noted herein that the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, clearly lays down for maintaining the equality in the matter of employment and on the basis of such a decision, several other judgments have been passed by different Courts in India. So, if the respondent university

adopts a resolution that right to equality should be maintained, the extraordinary jurisdiction of this Court should not be exercised.

12. Mr. Kashi Kanta Mitra, learned Advocate appearing for the petitioners, has contended that if any alternative decision has to be adopted, the Executive Council of the respondent university is the appropriate authority to change the policy decision and since the same has not been followed, so, the said policy decision as taken by the Registrar, cannot be expected.

13. However, I find that the Vice-Chancellor of the University was present at the time of taking the decision. Moreover, I find from the Notification of 1989 that before getting any weightage, a ward has to qualify in the normal process of selection. Then the question of weightage comes. As noted earlier, admit cards were not issued to the petitioner nos. 2 & 4 owing to over age.

14. As noted above, the impugned order clearly lays down that none of the petitioners comes within the conditions as made in the Notification of 1989 and as such, their cases cannot be considered.

15. Mr. R.N. Chakraborty, learned Advocate appearing for the Burdwan University, has submitted that when several writ petitioners having different interests, causes of action, etc., file a joint petition, such a writ petition is not maintainable. He relies on the decision passed by this Bench in W.P. No. 8103(W) of 2010.

16. In this regard, I find that the writ petitioners belong to different categories, such as, OBC and General candidates. The advertisement has already been issued treating of the candidates as equal. The status and other qualifications of the writ petitioners or their parents do not seem to be identical. Four different persons having different interests in the matter have filed a joint petition claiming such relief and such type of application, in my view, is not maintainable at all. The cause of action of the four applicants cannot be stated to be identical and same.

17. Under the circumstances, I am of the view that the petitioners are not entitled to get any relief as prayed for.

18. Accordingly, the application is dismissed.

19. However, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.