
(2011) 05 CAL CK 0109
In the Calcutta High Court
Case No : Writ Petition No. 21924 (W) of 2010

Puspita Mondal (Halder)

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

West Bengal Primary School Teachers Recruitment Rules, 2001 — Rule 9(1)

Citation : (2011) 3 CHN 852

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Subir Sanyal, Ratul Biswas for the Petitioner in W.P. No. 21924 W of 2010, Kallol Bose, T.M. Siddiquem, Suvadip Bhattacharjee for the Council in W.P. No. 21924 W of 2010, W.P. No. 23501 W of 2010 and W.P. No. 1846 W of 2011, Bratindra Narayan Roy for the Petitioner in W.P. No. 23501 W of 2010 and Mohinoor Rahaman for the Petitioner in W.P. No. 1846 W of 2011, for the Appellant; Seba Roy for the State in W.P. No. 21924 (W) of 2010, W.P. No. 2501 (W) of 2010 and W.P. No. 1846 (W) of 2011, for the Respondent

Final Decision : Allowed

Judgement

Biswanath Somadder, J.—Since the issue sought to be raised in the three writ petitions are identical, all the matters are taken up together and disposed of as follows:

2. The writ petitioners participated in the recruitment process initiated by the District Primary School Council, South 24 Parganas, for the post of assistant primary teachers for the year 2006 slot, as ex-census candidates. Each of them was sponsored by the Exempted Category Cell, Directorate of Employment, Government of West Bengal, having its office at 67, Bentinck Street, Kolkata - 700069. All of them were subsequently asked by the concerned Council to fill-up certain bio-data forms wherein they were supposed to also obtain certification from the certifying/appointment authority who appointed them as enumerators for census operation. All of them submitted their bio-data forms upon obtaining certificates from a person by the name of Ranjan Kumar Roy, Upper Division

Assistant in the Home (Chief Minister's Secretariat) Department, Writers' Buildings.

3. So far as the writ petitioners in W.P 21924 (W) of 2010 and W.P. 23501 (W) of 2010 are concerned, they were successfully empanelled and appointment letters were issued in their favour and they joined their posts. Insofar as the writ petitioner in W.P. 1846 (W) of 2011 is concerned, although he was otherwise successful in the selection process, his name was kept withheld by the concerned Council.

4. The writ petitioners who joined service were issued termination/ cancellation letters by the Chairman, District Primary School Council, South 24 Parganas, citing the reason that the said Ranjan Kumar Roy, who had certified their bio-data forms was not authorised to do so. The same reason has been cited by the concerned Council for the purpose of keeping the name of the writ petitioner in W.P. 1846 (W) of 2011 as a "withheld" candidate.

5. All of them, subsequently, proceeded to file the present writ petitions challenging such action on the part of the District Primary School Council, South 24 Parganas.

6. The only question that comes up for consideration in these cases is whether the certification of the bio-data forms by one Ranjan Kumar Roy, who was subsequently found by the Council to be an unauthorised person, is fatal for the purpose of determining the real issue by the concerned Council as to whether the writ petitioners were actually ex-census workers or not, notwithstanding the admitted position that all of them were, in fact, sponsored by the Exempted Category Cell, Directorate of Employment, Government of West Bengal, having its office at 67, Bentinck Street, Kolkata- 700069.

7. Before addressing this question, it is, perhaps, pertinent to observe at this stage that during the course of hearing of these matters this Court had directed all the writ petitioners to produce their original documents in support of their appointment as enumerators/ census workers. All the writ petitioners produced their original documents, which were duly verified and found to be genuine by the Exempted Category Cell, Directorate of Employment, Government of West Bengal, having its office at 67, Bentinck Street, Kolkata-700069, as submitted by Mrs. Seba Roy, learned Advocate for the State, who is representing the Exempted Category Cell, Directorate of Employment, Government of West Bengal.

8. Now, to address the common issue, it is necessary to look into the reason as to why bio-data forms were required to filled-up by the writ petitioners in the first place and whether the certification of Ranjan Kumar Roy, as appearing in their bio-data forms, which was found to be unauthorised by the Council at a latter stage, was fatal to such an extent that their services were either terminated/cancelled or as in the case of the writ petitioner in W.P. 1846 (W) of 2011, the approval of his selection being kept "withheld".

9. In the affidavit in opposition filed by the Council in W.P. 21924 (W) of 2010, it has been stated, inter alia, that the writ petitioner was directed get the bio-data form certified by the certifying/appointing authority who had appointed the writ petitioner as an enumerator, but the petitioner had approached the wrong person namely, Ranjan Kumar Roy, who was neither authorized to certify the said bio-data form, nor, being an Upper Division Assistant in the Home (Chief Minister's Secretariat) Department, he was entitled to do so. It has also been stated by the Council that as a matter of fact many of the enumerators manufactured fake Exempted Category certificates in connivance with the said Ranjan Kumar Roy, a suspended Upper Division Assistant in Home (Chief Minister's Secretariat) Department and submitted the same before the officer of the Council. Various other allegations have been made in the Council's affidavit against Ranjan Kumar Roy.

10. A bare perusal of one of the copies of the bio-data forms which were filled-up by the writ petitioners reveals that the Chairman, District Primary School Council, South 24 Parganas, had issued such forms under his signature addressed to the concerned candidate stating therein that the Council had received their names, upon being sponsored as exempted category candidates by the concerned employment exchange.

11. The concept of requiring a bio-data form to be filled up by those candidates who were sponsored by the employment exchange is simply non-existent in the West Bengal Primary School Teachers' Recruitment Rules, 2001. If name of candidates for the post of assistant teachers were obtained from an employment exchange, all that was required to be done by those candidates were to produce testimonials/ certificates for computation of their marks in the score sheet for the purpose of selection. For the said purpose, the Council is supposed to communicate, in writing, to the candidates to produce such testimonials/ certificates. This is clear from the scheme of Rule 9(1) of the West Bengal Primary School Teachers' Recruitment Rules, 2001.

12. In such a backdrop, there appears to be no justifiable reason as to why the candidates who were, admittedly, sponsored by the employment exchange as ex-census workers belonging to the exempted category, were required to fill-up such bio-data forms requiring certification by the certifying/appointing authority. In case of doubt, all that the Council was required to do was to seek clarification from the concerned employment exchange. It is, therefore, inconsequential as to whether Ranjan Kumar Roy was an authorised certifying/ appointing authority or not. The authenticity and/or genuineness of a candidate falling under the exempted category by virtue of being a former census worker/ enumerator, could only be verified from the concerned employment exchange. In the instant case, it was the Exempted Category Cell, who had sponsored the name of such candidate in the first place. The Council never approached the Exempted Category Cell, Directorate of Employment, Government of West Bengal, for the purpose of verification. Instead, the Council chose to terminate/ cancel the services of the

writ petitioners in W.P. 21924 (W) of 2010 and W.P. 23501 (W) of 2010, alleging that Ranjan Kumar Roy was neither authorised nor competent to certify the bio-data forms as submitted by the writ petitioners.

13. On the same logical analysis and reasoning, it may be held that the name of the writ petitioner in W.P. 1846 (W) of 2011, has been wrongly kept "withheld" by the Council, in spite of being otherwise successful in the selection process, on merit. As observed hereinbefore, the West Bengal Primary School Teachers' Recruitment Rules, 2001, does not contemplate filling-up of bio-data forms by the sponsored candidates. All that the Council was required to do has been specifically stated in Rule 9(1) of the West Bengal Primary School Teachers Recruitment Rules, 2001, which has been discussed hereinbefore. Even if it is assumed, for a moment, that Ranjan Kumar Roy was neither authorised nor competent to certify the bio-data forms of the sponsored candidates, his incompetency or lack of authority cannot be held to be so fatal so as to vitiate the selection of a candidate on merit who has, admittedly, been sponsored by the Exempted Category Cell, Directorate of Employment, Government of West Bengal.

14. The authentication by the Exempted Category Cell, Directorate of Employment, Government of West Bengal, of the original testimonials/certificates produced by all the writ petitioners during the course of hearing of these matters, proves beyond doubt that the writ petitioners were genuinely engaged as census workers/enumerators.

15. For reasons stated above, this Court directs the Chairman, District Primary School Council, South 24 Parganas, to treat all the writ petitioners as genuine candidates. The letters issued by the Chairman, District Primary School Council, South 24 Parganas, cancelling the letters of appointments issued earlier in favour of the writ petitioners in W.P. 21924 (W) of 2010 and W.P. 23501 (W) of 2010, are liable to be set aside and quashed and are accordingly set aside and quashed. The Chairman, District Primary School South 24 Parganas, is directed to allow the writ petitioners to resume their duties forthwith. Upon rejoining their respective posts, the writ petitioners shall be entitled to all consequential benefits which may have accrued in their favour during this period, including notional seniority. For the said purpose, the Council shall treat the period between the date of issuance of letters of cancellation of their appointments and the date of passing of this order as the period during which notional service was rendered by them. The writ petitioners shall also be entitled to arrear salaries and other emoluments which may have accrued in their favour, to the extent they are entitled to, in accordance with the Service Rules governing their service.

16. So far as the writ petitioner in W.P. 1846 (W) of 2011, is concerned, in the event, he is found to be otherwise eligible, the Chairman, District Primary School Council, South 24 Parganas, is directed to forward his name forthwith to the office of the Director of School Education, West Bengal, for grant of formal approval of his selection. The Director of School Education, West Bengal, on receipt of the name of the writ petitioner from the office of the Chairman of the

concerned Council, shall accord approval in favour of the writ petitioner in W.P. 1846 (W) of 2011, provided of course, he conforms to and fulfils all statutory requirements necessary for the purpose of securing his appointment. It is expected that the Director of School Education, West Bengal, shall take such decision as expeditiously as possible, preferably within a period of four weeks, but not later than six weeks from date of receipt of the name of the writ petitioner. In the event, the Director of School Education, West Bengal, grants approval in favour of the writ petitioner, the Chairman of the concerned Council shall issue appointment letter in favour of the writ petitioner within a week there from.

17. The writ petitions stand allowed accordingly.

18. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocate for the parties.