
(2018) 07 CAL CK 0158
In the Calcutta High Court
Case No : Writ Petition No. 5082 (W) of 2018

Rabiul Islam Sarkar

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 30-07-2018

Acts Referred:

West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 — Rule 4
Punjab Panchayat Secretaries (Recruitment and Conditions of Services) Rules, 1979 — Rule 5
Constitution of India 1950 — Article 226

Citation : (2018) 07 CAL CK 0158

Hon'ble Judges : SHEKHAR B. SARAF, J

Bench : Single Bench

Advocate : Washef Ali Mondal, Arindam Chattopadhyay, Kanak Kiran Bandyopadhyay

Final Decision : Dismissed

Judgement

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by rejection of his candidature on the

ground that he was under age as per Rule 4 of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of

Non-Teaching Staff) Rules, 2009.

2. The petitioner submits that an advertisement was made on August 8, 2016 for the selection for the post of Clerk and Group- â??Dâ?? staffs. In

paragraph 13 of the eligibility criterion, the age limit has been specified as the age to be taken on January 1, 2016. The petitioner submits that he was

only 33 days below the age criterion and on the date of the advertisement and the subsequent selection process he was very much qualified and

eligible for the selection.

3. The petitioner relies on a coordinate bench judgement in W.P. 5443 (W) of 2015 (Mou Mazumder vs. State of West Bengal & Ors.) wherein a

similar fact situation had arisen and the coordinate Bench had directed the West Bengal Board of Primary Education to consider the candidature of

the writ petitioner. The petitioner further relies upon a judgement and order passed by the Division Bench of this Court in FMA 1997 of 2014 with

CAN 5400 of 2014 (Bidyut Roy vs. State of West Bengal & Ors.) wherein the Division Bench held that the age of the petitioner should be taken as

on the date the recruitment process had started. In this particular case, the advertisement had come out in 2006 but the actual recruitment process had

actually started in 2009 (when the petitioner had attained the age of 18 years) and the appeal Court had been pleased to allow the petitioner relaxation

of age and directed the authorities to act accordingly.

4. Counsel appearing on behalf of the School Service Commission relied on several Supreme Court Judgments to support his arguments that when a

specific date has been provided for in the rules/ advertisement, there is no question of any relaxation to the said criteria of age. He firstly relied on

State of Rajasthan & v- Hitendra Kumar Bhatt reported in JT 1997 (7) S.C. 287 wherein the Supreme Court held that a sympathetic view cannot

replace the principles established in law. The Supreme Court specified that the cut-off date has to be adhered to and applied consistently for all

persons and the same cannot be ignored for a particular person. The relevant portion of the said judgment is provided below:

“6. A cut-off date by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may

be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because

they did not possess the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may,

therefore, cause injustice to others.”

5. The petition further relied on Jasbir Rani and Others & v- State of Punjab and Another reported in (2002) 1 SCC 124 that dealt specifically with

the issue of cut-off date pertaining to age. In this case, the government of Punjab had invited for applications for post of Panchayat Secretaries and

had fixed the cut-off date for fulfilling the eligibility qualification pertaining to age. The cut-off date was challenged on the ground that since Rule 5 of

the Punjab Panchayat Secretaries (Recruitment and Conditions of Services) Rules, 1979 required a candidate to fulfill the eligibility qualification

pertaining to age on the date of his appointment, the fixing of a cut-off date prior to the date of appointment was not authorized by the Rules and was

rather contrary to it. Dismissing their appeals, the Supreme Court held as follows:

11. No doubt, the Rule does not provide a cut-off date by which an applicant is to satisfy the prescribed eligibility qualification pertaining to age. In

the absence of a statutory provision in that regard the date has to be fixed at the time of issuing the advertisement. This is necessary not merely to

enable the appointing authority to sort out the applications of the eligible candidates from those candidates who do not fulfil the prescribed qualification,

but also to avoid criticism of favouritism and nepotism against the authority. In the first advertisement issued in the case on 18-09-1997 the cut-off

date was fixed as 1-9-1997 i.e. about two weeks prior to the advertisement. In the second advertisement which was issued one year after the first one

ordinarily the appointing authority could have similarly fixed a date a few days prior to the date of issue of the advertisement; but as noted earlier, in

the first advertisement the applications were invited from male candidates only; perhaps realizing that there was no reasonable basis for confining the

recruitment to male candidates only it was decided to throw open the recruitment to eligible female candidates also and in pursuance of the said

decision the second advertisement was issued on 19-9-1998. In such circumstances the appointing authority while issuing the second advertisement

fixed the same cut-off date as in the first. If this had not been done then there would have been a difference in date by which the eligibility

qualification pertaining to age was to be complied by male and female candidates. Such action would have exposed the authorities to criticism of

discrimination. In the circumstances no exception can be taken to the action of the authority fixing the same cut-off date in both the advertisements.

12. Coming to the contention raised by Shri R.K. Jain that prescribing a cut-off date prior to the date of appointment for the purpose of satisfying the

eligibility qualifications pertaining to age is impermissible under the Rule, we are not inclined to accept the contention. Rule 5, as we read it, merely

prescribes the eligibility qualification (minimum and maximum) pertaining to age for appointment to the post of Panchayat Secretary. The Rule neither

prescribes a cut-off date nor bars fixing of such a date by the authority competent for making the appointment. In the absence of any such provision it

cannot be held that Rule 5 even by implication prohibits fixing a cut-off date regarding the age.

13. ¹³

14. The position that emerges from the discussions in the foregoing paragraphs is that the State Government cannot be faulted for fixing a cut-off date

in the first advertisement and in the circumstances of the case in adopting the same cut-off date in the second advertisement. Therefore, there is no

merit in these appeals which are accordingly dismissed. There will, however, be no order for cost.¹⁴

6. The last judgment relied on by the respondent authorities is *Shankar K. Mandal and Others v- State of Bihar and Others* reported in (2003) 9

SCC 519 wherein the Supreme Court laid down the principles after considering several earlier judgment of the Supreme Court. The relevant portion is

provided below:

¹⁵5. ¹⁶.. What happens when a cut-off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment and

the effect of any nonprescription has been considered by this Court in several cases. The principles called out from the decisions of this Court (see

Ashok Kumar Sharma v- Chander Shekhar, Bhupinderpal Singh v- State of Punjab and Jasbir Rani v- State of Punjab) are as follows:

(1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date

appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were

to be received by the competent authority.¹⁷

7. It is evident from the judgment in *Shankar K. Mandal* (supra) that when there is no cut-off date provided for in the rules then such date shall be as

appointed for the purpose in the advertisement calling for applications.

8. On an examination of the Supreme Court judgment relied upon by the respondents, it is clear that the State has a right to fix a cut-off date in the advertisement given for selection. In the present case the same was done. The contention of the petitioner that a sympathetic view should be taken in his case as he was under age by only 33 days on the appointed date and had come of age when the selection process started cannot come to his rescue. The principle to be kept in mind is that several candidates would have followed the cut-off date and would have not applied as they were not eligible to do so. The fact that the petitioner applied even though he did not meet the eligibility criteria cannot mushroom into a right to seek for a sympathetic appointment.

9. Both the judgments cited by the writ petitioner do not refer to a single Supreme Court judgment on the issue. Owing to the same both the judgments are contrary to the principles enunciated by the Supreme Court as indicated above and therefore lose their efficacy as binding precedents. The doctrine of precedents has been discussed in detail by me in my earlier judgment in the case of Sri Bijon Mukherjee v- The State of West Bengal and Others bearing no. W. P. No. 6389(W) of 2017 that enunciates the ratio that this Court is bound by the law laid down in the Supreme Court judgments and not by a Division Bench or a Co-ordinate Bench judgment that is contrary to the Supreme Court judgments.

10. In view of the above reasoning, I dismiss this writ petition. On a compassionate plea having been made before this Court by the counsel on behalf of the petitioner, no costs are imposed.

11. Since no affidavits have been invited, the allegations contained in the writ petition are deemed not to be admitted.

12. All parties are to act on the server copy.

13. Urgent certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.