
(2001) 11 CAL CK 0010
In the Calcutta High Court
Case No : Writ Petition No. 8745 (W) of 2001

Rajasree Mukherjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Citation : (2002) 1 CALLT 399

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Mohinoor Rahaman, for the Appellant; Amiya Kumar Chowdhury, Manjuri Gupta, Runu Mukherjee, J.K. Banerjee and Biswajit Banerjee, for the Respondent

Final Decision : Allowed

Judgement

A. Lala, J.—This is a writ petition made by the petitioner for the purpose of getting an appropriate order in case of deleting the credit marks of B.Ed. Degree given to the respondent No.8 for the post of Assistant Teacher in English in respect of concerned School and to pass further order to recast the panel in question. According to the petitioner, her qualification is B.A.(Hons) in English and B.Ed. She got the B.Ed Degree in the year, 1990. She registered her name in the local Employment Exchange in 1989.

2. The concerned School got the up gradation upto classes IX and X In the year, 1996, As because there was no sufficient staffs for the purpose of running the Institution the School Authority took a resolution that a candidate having qualification of B.A.(Hons.) in English preferably trained will be given appointment on temporary basis. The petitioner got such appointment therein. Since the post of Assistant Teacher in English in the said School and the appropriate Authority granted prior permission for filling up the post. The eligible candidates were called upon by the School Authority having qualification in B.A. (Hons.) in English preferably trained in the aforesaid post when certain names

were forwarded by the Employment Exchange including the name of the petitioner. An Interview was fixed on 10th July, 1997 and the petitioner found that she is the loan participant there. The petitioner came to know that three other sponsored candidates were interviewed on a different date i.e. on 13th July, 1997. The petitioner further came to know that the School Authority took a resolution on 28th July, 1997 that School Authority will Inform about appointment for the post of Assistant Teacher in English to the District Inspector of Schools (S.E) 24 Parganas(South), later on. The petitioner also came to know that by an order dated 2nd September, 1997 the School Authority was directed to take reinterview of the candidates sponsored by the local Employment Exchange but it was an unfortunate situation that either the order was not communicated by the office to the school or inspite of having information School Authority did not arrange reinterview in terms of the office Memorandum.

3. The petitioner made an application to the Director of School Education on 29th October, 1997 stating the aforesaid facts with a request to take the appropriate steps. Being aggrieved by the inaction for not holding reinterview the writ jurisdiction of this Court invoked by a separate writ being W.P. No. 22555(W) of 1997 but the same was rejected. Challenging the order an appeal was preferred. The appeal was allowed by directing the School Authority to take a fresh interview in accordance with law and submit a panel before the appropriate Authority as expeditiously as possible. In spite of having direction for expeditious reinterview it was delayed considerably and ultimately interview was held after a period of about 1 year and 7 months. Thereafter, again the date of holding interview was delayed. Ultimately the selection was held by the Selection Committee only on 2nd July, 2000. The petitioner stated that the respondent No. 8 was placed at the top of the panel. The petitioner further came to know that she obtained the B.Ed. Degree in the month of July, 1998 and at the time of interview she produced B.Ed. Degree before the Selection Committee and the credit mark has been added for such Degree in her favour. According to the petitioner, the respondent No.8 was sponsored by the Employment Exchange only having B.A.(Hons.) Degree, since the B.Ed. Degree has been opted by the respondent No.8 long after the prior permission no contrary step could have been taken by the School Authority by calling her an interview and select as a candidate awarding additional marks in qualification of B.Ed.

4. The School Authority relied upon a Judgment reported in 1997 II CLJ 386 (Smt. Bharati Roy v. Sri Shymal Mukhopadhyay and Ors.) where it was held by a Division Bench of this Court that it is the law of the land that if the qualification of the particular candidate is not recorded in the Employment Exchange Registrar but subsequently acquired before the Interview and produced records/documents at the interview by virtue of the law of the land the School Authorities are bound to take into consideration the same and awarded marks accordingly on the basis of the added qualification. The School Authority contended before this Court that there is no wrong in granting any marks in favour of the respondent No.8 having B.A.(Hons.) and B.Ed. Degree similarly with the petitioner. In coming to

conclusion the Division Bench relied upon the majority opinion of the Supreme Court in Ashok Kumar Sharma and Another Vs. Chander Shekhar and Another, .

5. The petitioner relied upon various Judgments of this Court as well as of the Supreme Court. Firstly, she relied upon a Division Bench judgement of this Court reported in 1998 WLR (Cal) 2001 (Md. Ainur Rahaman Khan v. State and Ors.) wherein it has held that in case of appointment of teacher, the qualification acquire after sponsoring the name by the Employment Exchange cannot be taken for consideration. It has further held that the above Division Bench judgment is per incurulum with earlier Division Bench judgment and does not create any binding precedent. I also find from Judgment reported in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, : Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, that where applications are called prescribing a particular date as the last date of filing applications the eligibility of the candidate shall have to be judged with reference to that date alone. A person who acquires qualification subsequent to such date cannot be considered at all.

6. In the said judgment minority view is that who were not qualified on the date of submission of the application but had acquiring requisite qualification before the date of Interview, could not have been allowed to appear for Interview was right.

7. A further Judgment was cited by the petitioner reported in 1997(2) CLJ 428 (Sri Pintu Acharyya v. The State of West Bengal and Ors.) where a Division Bench of this Court held that for the purpose of selection of candidates, qualification mentioned in Employment Exchange to be considered.

8. In 1993 (3) SCC 168 in Rekha Chaturvedi's case it had decided by the Supreme Court that in absence of fixed date in the advertisement/ notification inviting application with reference to which the requisite qualification should be Judged, the only certain date for scrutiny of the qualifications will be the last date for making the applications. When the Selection Committee took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent Illegality and on this ground Itself the selections in question are notable to be quashed.

9. According to me, under normal circumstances, a selection process cannot be interfered with by the Court unless and until patent Illegality or Irregularity is so apparent that the same may definitely affect the right of other. Had it been so that the petitioner is not coming at all under the zone of consideration there would have been no question of taking into account any allegation from such unsuccessful candidate. But when the petitioner is a second empanelled candidate wherein the respondent No. 8 is first empanelled candidate. It is justifiable that Court should interfere with the same in the present situation when the case of the petitioner is supported by various judgments of Supreme Court and High Court.

10. I find that as per the Office Memorandum No.485-C.A/OM-18/88 (pt.II)

dated 4th April, 1996 Issued by the Director of the School Education, Government of West Bengal framed various questionnaires and gave reply. One of such question is as follows:

"Whether any particular qualification or degree including training/ professional qualification of sponsored candidates not mentioned against the names of candidates of the list sponsored by the Employment Exchange but it is produced on the date of interview, will it be taken into consideration?"

Reply to such question is as follows:

"Yes, but no such marks to be awarded for the qualification not mentioned by the District Inspector in the prior permission".

11. Therefore, it is required for the Court to give an appropriate thought in respect of such subject. Admittedly as per prior permission B.A.(Hons.) in English is the required subject preferably trained. The petitioner had B.A.(Hons.) in English with B.Ed. Degree at the time of referring her name by the Employment Exchange but the respondent No. 8 was not. She improved her qualification admittedly before the reinterview was directed to be held.

12. According to me. such administrative order cannot change the Judicial view taken by the Supreme Court or by the High Court on numerous occasions even negating the view of the Division Bench in 197(2) CLJ 386 which has been relied upon by the respondent reported. It is considered opinion of the Courts of Law that any selection proceeded with the qualification available on the date of Interview for the first time will be regarded as patent illegality and selection process has to be quashed. Moreover. It is abundantly clear from the fact that School Authority wanted to accommodate the respondent No. 8 by allowing her time to get B.Ed. qualification so that she can be accommodated by awarding marks.

13. Therefore. I am of the view that the selection process in selecting the respondent No.8 as first empanelled candidate by awarding marks to place her in the first empanelled candidate cannot be sustainable and no approval can be given by the authority concerned to such candidate. Therefore, the writ petition allowed on contest. However, no order is passed as to costs. Concerned District Inspector of School is free to proceed in accordance with the approval of the panel by eliminating marks as against B.Ed. qualification to the respondent No. 8 and approving the panel of others accordingly or by quashing the entire panel whichever to be appropriate according to such authority on the basis of the available documents. However, such steps should be taken by such Authority within a period of one month from the date of communication of this order and by following the prescribed Rule.

14. Let an urgent xeroxed certified copy of this judgment if applied for. be given to the learned Advocates for the parties within two weeks from the date of putting the requisites.