
(2005) 11 CAL CK 0031
In the Calcutta High Court
Case No : WPCT No. 164 of 2005

Rajinder Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Citation : 110 CWN 222

Hon'ble Judges : P.N. Sinha, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—The Jawaharlal Nehru Rajkeeya Mahavidyalaya is a government college under the Andaman Administration. For the post of Principal, under the Recruitment Rules, the Union Public Service Commission (UPSC) was the appropriate body to conduct a regular recruitment process. An advertisement was published by the UPSC in the year 1997 for the post of Principal in the said college. Altogether 16 applications were received including the petitioner, the respondent no. 6 and one Dr. Z.A. Khan. The petitioner was already working in the said college as lecture in Chemistry. Interview was held in 1998 when the respondent no. 6 was selected by the said UPSC, Dr. Z.A. Khan challenged the said appointment before the Tribunal and the matter came up before this court in a revisional application, which was disposed of by this court on July 15, 2002. This court held that the selection process was vitiated by illegality, malafide and bias. The Division Bench also held that one Shri P. K. Tripathi influenced the selection process favouring respondent no. 6. The appointment of respondent no. 6 was quashed and set aside and the UPSC was directed to conduct a fresh selection process.

2. Both the respondent no. 6 as well as the UPSC filed two separate Special Leave Petitions before the Apex Court which stood dismissed. After the dismissal of the Special Leave Petition, the Andaman Administration sent a requisition to the UPSC for filing; up the said post by issuing a fresh advertisement. The UPSC,

however, declined to adhere to such requisition on the plea that selection process in terms of the order of this court would start de novo from the stage of conducting the interview.

3. An application for contempt was filed by Dr. Z. A. Khan. The same was disposed of by this court on November 15, 2003, inter alia, rejecting the contention of Dr. Z.A. Khan to the effect that there should be a fresh advertisement. This court directed UPSC to conduct a selection process de novo by holding a fresh interview of all candidates who responded to the earlier advertisement. Accordingly, interview was held by the UPSC through a selection committee excluding Shri P.K. Tripathi and the respondent no. 6 was again selected for the said post. The petitioner also filed a contempt application which was also disposed of by this court granting him liberty to approach the Tribunal for ventilating his grievance. Accordingly, the petitioner approached the Tribunal and, inter alia, contended that the respondent no. 6 should not have been called for the interview as he was already over aged on the date of interview which was the cut off date as per the order of the court dated November 15, 2003. The Tribunal negated the plea and ultimately rejected the application of the petitioner. The petitioner, thereafter, filed the instant revisional application being WPCT No. 164 of 2005, inter alia, contending that respondent No. 6 could not have been called for the interview and as such the appointment was consequently illegal and should be set aside.

4. The petitioner appeared in person before us. He urged the following points:

(i) There should have been a fresh advertisement as the Hon"ble Court directed a fresh selection process to be conducted. According to him, fresh selection was not conducted issuing a fresh advertisement.

(ii) Since the Division Bench in its order dated November 15, 2003 observed that all eligible candidates as on the date of interview should be called for fresh interview, the respondent no. 6 being over aged on the date of interview was not eligible to participate at the interview.

(iii) There had been an amendment in the recruitment process particularly with regard to the qualification as on the date of fresh interview. Hence the selection process committee should have taken into account such amendment.

5. Mr. H. R. Bahadur, learned advocate appearing for the Administration, while contesting the said writ petition, drew our attention to the notification dated September 4, 1980, xerox copy of said notification which is kept on record, to show that for the post of Principal, the age could be relaxed in the case of a Government Servant. Since the respondent no. 6 was already in service, he was entitled to have age relaxation. Moreover, admittedly, the candidates who applied for the said post including the respondent no. 6 were within the prescribed age limit. Hence, if they crossed the age limit by that time, when fresh interview was held, that fact could not have any relevance in the instant case.

6. Mr. Bahadur further contended that the petitioner had already retired from service by accepting voluntary retirement. Hence, he lost his right to challenge the appointment, of respondent no. 6. Moreover, having participated in the selection process, he was not entitled to challenge the recruitment process.

7. On the first issue raised by the petitioner, we find that the identical issue was raised by Dr. Z. A. Khan before the Division Bench earlier. The Division Bench, however, negated such contention while disposing of the contempt application on November 15, 2003. It is true that the Division Bench while disposing of contempt application filed by the petitioner observed that he would be entitled to challenge recruitment process. It had not given any special right in favour of the petitioner to take such plea, which reached finality. The petitioner, in this regard, contended that he was not the party to the first proceeding. Such plea, in our view, cannot be sustained as the identical issue resulting from the identical selection process had been decided by this court earlier.

8. The issue can be looked at from another angle. The Division Bench while disposing of the earlier Tribunal application held that the interview process was vitiated by illegality because of interference of Shri P. K. Tripathi. Hence fresh selection process was ordered to be conducted. There was no fault found by this court on the advertisement as such there was no occasion for UPSC to issue a fresh advertisement.

9. Hence on both counts the first plea of the petitioner, being not tenable, is rejected.

10. On the second plea raised by the petitioner, we find that in terms of Recruitment Rule, the age was relaxable in case of existing Government Servant. Moreover, admittedly all the candidates as on the date of making the application as well as on the date of first interview were within the prescribed age limit. Hence, it would not be fair on our part to disqualify any candidate who crossed age eligibility at the time of holding the second interview. The second plea of the petitioner is also rejected.

11. On the third plea, Mr. Bahadur contended that new Recruitment Rule was framed in 2005 whereas the original advertisement was published in terms of 1980 rules. Hence, the 1980 rules would prevail and if there was any subsequent amendment that could not be taken into account by the Selection Committee. However, the petitioner did not point out any disqualification of the respondent no. 6: even as per the amended rules. Hence, we do not go into this question in detail and the same is rejected.

12. Hence, we do not find any scope for interfering with the order passed by the learned Tribunal.

13. The application being WPCT No. 164 of 2005 fails and is hereby dismissed, however, without any order as to costs.

14. The writ petitioner, in course of hearing, contended that although he

accepted voluntary retirement and he was allowed to retire pre-maturely, the authority was proceeding against him department ally for which his retiral benefit was withheld. He was also not. allowed to draw his subsistence allowance.

15. This issue cannot be gone into this application. Mr. Bahadur however, in his usual fairness, contended that he would look into the matter and see that the petitioner is paid his subsistence allowance if premissible in law, if not already paid. We do not wish to make any comment on this, being outside scope of this application. Let a xerox certified copy of this order be supplied to the parties on usual undertaking within a week.

P.N. Sinha, J.

I agree.