
(2007) 02 CAL CK 0032
In the Calcutta High Court
Case No : F.M.A. No. 124 of 2003

Ramjan Ali

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

West Bengal Board Of Secondary Education Act, 1963 — Section 47

Citation : 111 CWN 260

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Lakshmi Gupta and Ekramul Bari, for the Appellant;Ardhendu Ghosh, Nitya Gopal Mukherjee, Keshab Bhattacharyya and Banani Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred from the judgment and order dated 3rd September, 2002 passed by the learned Single Judge in the writ petition filed on behalf of the appellant. The learned Single Judge while disposing of the writ petition specifically held that the Director of School Education in the impugned order took a correct view while deciding the eligibility of the petitioner and other candidates for the post in question. The learned Single Judge categorically declared that the petitioner was never entitled to be appointed as an Assistant Teacher to teach Arabic in the said school and therefore. the appointment of the petitioner was -declared a bad appointment. The appellant herein passed the B.A. Examination in the year 1985 and B.A. (Special) Examination in Arabic in the year 1989. It has been urged on behalf of the petitioner that the learned Single Judge failed to appreciate that the writ petitioner herein had the requisite qualifications for the post of Assistant Teacher in Arabic as has been mentioned in the letter of prior permission issued by the District Inspector of Schools (SE), Murshidabad.

2. Referring for the academic qualifications of the writ petitioner learned

Advocate of the appellant submits that the learned Single Judge erred in law in arriving at an erroneous finding that the appellant did not have the requisite qualifications to offer himself as a candidate for the post in question. By the letter dated 1st March, 1996, the District Inspector of Schools, (SE), Murshidabad granted prior permission for appointment to the post of Assistant Teacher in Arabic in the school in question and the requisite qualifications for the said post of Assistant Teacher were also specifically mentioned in the said written communication dated 1st March, 1996 which are reproduced hereinbelow:

B.A. with Arabic (300 marks) Pref. B.T./B.Ed./P.G.B.T. reserved for O.B.C. vice Nurul Islam, expired (9th vacancy).

3. Pursuant to the specific direction passed earlier by the Division Bench of this Court on 30th November, 2000 in a separate proceeding, the Director of School Education considered the entire matter regarding selection to the said p(sic) of Assistant Teacher in Arabic in the said school. Upon considering the submissions of the respective parties and scrutinising the relevant papers and documents the Director of School Education passed a reasoned order which was specifically mentioned in Memo dated 7th/8th March, 2003 In the said order the Director of School Education specifically observed as hereunder:

"None of the candidates included in the panel in question passed B.A. Examination with Arabic (300 marks) as determined by the Government in Education Department in respect of such appointment in Language Group vide Government Order No. 276 Edn (S) dated 13-03-1992 and therefore the awarding of marks to the empanelled candidates in the instant matter for academic attainment on the basis of calculation not being provided in the extant procedure framed by the authorities is not acceptable.

The External Expert being a responsible teacher of Government High School admitted the fact that he had not awarded the marks to the interviewing candidates as shown in the papers, he only signed the blank papers which were used by the authorities for the purpose without his concurrence."

4. Undisputedly, the writ petitioner/appellant did not pass the B.A. Examination with Arabic as combination subject and from the records it appears that the said writ petitioner passed B.A. (Special) Examination in Arabic in the year 1989. The District Inspector of Schools, (SE), Murshidabad while granting prior permission for appointment to the post of Assistant Teacher specifically mentioned that the eligibility qualification for the said post of Assistant Teacher is B.A. with Arabic (300 marks).

5. The Education Department by notification dated 13th March, 1992 specifically provided that the selection of Assistant Teachers in any language specially in recognised high and junior high schools should be made only from amongst, those candidates who had studied relevant languages as a combination subject of at least 300 marks at the graduation level. The appellant/petitioner did not pass B.A. Examination with Arabic as combination subject in terms of

Government Order No. 276 Edn (S) dated 13th March, 1992.

6. Mr. Lakshmi Gupta, learned Senior Advocate representing the appellant/petitioner submits that the appellant/petitioner since he had passed Special B.A. Examination in Arabic paper, should be treated as eligible for appointment to the post of Assistant Teacher in Arabic. Mr. Gupta further submits that the aforesaid notification dated 13th March, 1992 cannot and should not be relied upon as the said Memo/ Circular dated 13th March, 1992 was never published in the Official Gazelle and therefore, the same cannot be operative. Mr. Gupta also submits that the publication of a notification and/or circular in the Official Gazette is a must u/s 47 of the West Bengal Board of Secondary Education Act, 1963.

7. Mr. Keshab Bhattacharyya, learned Advocate appearing on behalf of the State-respondents submits that the aforesaid circular/notification dated 13th March, 1992 was never issued u/s 47 of the West Bengal Board of Secondary Education Act, 1963.

8. On examination of the aforesaid circular, we are satisfied that (he same is nothing but an administrative instruction and/or decision of the Education Department which is very much applicable in the matter of appointment of the teachers in view of the fact that no other provision of any statute and/or regulations contrary to the subject matter of the aforesaid circular is in operation and/or in existence. Furthermore, a candidate upon passing Special B.A. Examination in Arabic paper cannot claim B.A. degree with Arabic as combination paper.

9. A candidate who has passed Special B.A. Examination in a particular subject will be entitled only to appear in the M.A. Examination in that subject but the said candidate cannot be treated as passed B.A. Examination with that subject as one of the combination subjects at Graduation level. The University does not confer any degree to a candidate after passing Special B.A. Examination in any particular subject. Therefore, the appellant herein cannot claim that he has passed B.A. Examination with Arabic as combination subject since Arabic subject was not a combination subject of the appellant in the regular B.A. Examination and the appellant passed Special B.A. Examination in Arabic subject subsequently which cannot be treated as the B.A. degree with Arabic as one of the combination papers.

10. The District Inspector of Schools (SE), Murshidabad while granting prior permission for appointment to the post of Assistant Teacher in Arabic specifically mentioned that the qualification of the Assistant Teacher should be, B.A. with Arabic (300 marks) and in the Government notification dated 13th March, 1992 it has been made clear that selection of Assistant Teachers in any language specially in recognised high and junior high schools should be made only from amongst those candidates who had studied the relevant language as a combination subject of atleast 300 marks at the graduation level.

11. It is true that the appellant/petitioner herein has studied the Arabic language

in the University of Calcutta following the same syllabus like other regular students studying Arabic language as one of the combination subject in Graduation level and appeared at the same examination in the said Arabic subject for total 300 marks but even then it cannot be said that the appellant passed B.A. Examination in Arabic as combination subject which was specifically mentioned in the letter of prior permission issued by the District Inspector of Schools (SE), Murshidabad as the requisite qualification for the post of Assistant Teacher in the school concerned. Furthermore, pursuant to the Government Order dated 13th March, 1992, appellant herein is also not entitled to be selected for the post of Assistant Teacher as he has studied Arabic language as an additional subject and passed Special B.A. Examination which cannot be treated as B.A. degree with Arabic as combination subject.

12. There is no doubt that the selection of Assistant Teachers in any recognised high or junior high schools should be made only from amongst those candidates who had studied the relevant language as a combination subject of atleast 300 marks at the Graduation level pursuant to the specific Government Circular being Government Order No. 276-Edn (S) dated 13th March, 1992 and the appellant/petitioner herein, therefore, cannot be considered for appointment to the post of Assistant Teacher for want of the requisite qualification as mentioned in the letter of prior permission dated 1st March, 1996 issued by the District Inspector of Schools (SE), Murshidabad and also in the specific Government Order bearing No. 276-Edn (S) dated 13th March, 1992.

13. Mr. Keshab Bhattacharyya, learned Counsel representing the respondent-State of West Bengal submits that the identical issue was considered earlier by the Division Bench of this Hon''ble Court in the following cases:

- 1) 2001(2) CHN 29 (Abu Bhakkar Baidya vs. State of West Bengal & Ors.) Paragraph 4.
- 2) 2006(2) CLJ (Cal) 669 (West Bengal Regional School Service Commission, Western Region & Ors. vs. Madhusudan Karmakar)

14. In the case of Abu Bhakka Baidya (Supra), the Division Bench of this Hon''ble Court specifically held as hereunder:

"4. After considering the matter we are of the opinion that as per the qualification laid down by the Government, it is more that clear, that for being qualified to the post of a language teacher, the incumbent must have a combination of papers in language of at least 300 marks in graduation level, that enables the incumbent for appointment to the post of teacher in the language. Therefore two conditions follows from the above discussion one is that the candidate should have combination of papers in language which should carry at least three hundred marks in (he graduation level and the other is that simply by doing graduation in a special paper would not enable the incumbent to be qualified for the post of teacher in language. In this connection, the University of Calcutta has clarified the position that the candidates who have passed B.A. in

one subject shall not be entitled to a B.A. degree. However, he will be entitled to appear in M.A. Examination in that-subject. Therefore, it is more than apparent that obtaining a graduation degree in a particular paper does not mean that he is a qualified graduate in combination of papers....."

15. In the case of West Bengal Regional School Service Commission, Western Region & Ors. (Supra), the Division Bench also held as hereunder:

"12. It will be further seen that the petitioner cannot be deemed to be a graduate in the subject of English nor can it be held that he holds a valid degree in that subject. He merely holds a certificate that he has passed the examination of Special B.A. in English, which does not mention about a degree. A degree in the subject of English was an essential qualification....."

16. The aforesaid decisions, in our opinion, are very much applicable in the facts of the present case.

17. For the reasons mentioned hereinabove, we are of the opinion that the learned Single Judge has rightly decided the writ petition filed by the appellant/petitioner herein and therefore, there is no scope to interfere with the order passed by the learned Single Judge.

18. Accordingly, the appeal is dismissed.

19. There will be, however, no order as to costs. Let argent xerox certified copy of this judgment and order, if applied for be given to the learned Advocates of the parties on usual undertaking.

Arunabha Basu, J.

I agree.