
(2011) 05 CAL CK 0082
In the Calcutta High Court
Case No : Writ Petition No. 18694 (W) of 2010

Salauddin Mollah

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Citation : (2011) 05 CAL CK 0082

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Kallol Bosu, for the Appellant; Partha Sarathi Bhattacharya and Raju Bhattacharya, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—Pursuant to the prior permission granted by the District Inspector of Schools (S.E.), Burdwan on 18th September, 2008, the school authority of Ukhura N.N. High School (H.S) initiated a selection process for filling up the vacancy in the post of an Additional Clerk in the said school. The school authority requisitioned the names of suitable candidates for the said post, from Kalna Employment Exchange on 31st December, 2008. Names of suitable candidates were sponsored by the said Employment Exchange on 16th January, 2009. An advertisement for the said post was published in the daily newspaper namely "Bartaman" on 17th January, 2009. The Petitioner applied for the said post in pursuance of the said advertisement. The Petitioner along with the other candidates participated in the selection test on 15h February, 2009. After holding interview of those candidates, a panel was prepared by the selection authority on the very same day. The said panel along with the school's resolution accepting the said panel, was forwarded to the concerned District Inspector of Schools on 25th February, 2009 for its approval. The said District Inspector of Schools refused to accord approval to the said panel in view of the purported G.O. No. 126(20)-SE(S) dated 4th February, 2009.

2. Being aggrieved by the said decision of the said District Inspector of Schools, the Petitioner herein filed a writ petition earlier. The said writ petition which was

registered as W.P. No. 11379 (W) of 2009 was disposed of by a learned Single Judge of this Court on 7th July, 2010 by setting aside the order which was impugned in the said writ petition. The District Inspector of Schools was directed to take a decision with regard to the said panel in accordance with law within two months from the date of communication of the said order. While disposing of the said writ petition it was held by His Lordship that since the said selection process was initiated prior to the West Bengal School Service Commission (Amendment) Act, 1997 and the West Bengal Schools (Control of Expenditure) Act, 2005 came into operation, the said selection process should have been completed in accordance with the Rules which were prevalent at the time when such selection process was initiated. His Lordship further held that since the selection process was initiated under the old Recruitment Rules of 2005, the departmental circular dated 4th February, 2009 mentioned in the said impugned order, could not be a valid ground for taking steps by the Respondent No. 3 in the matter of non-approval of the panel under reference.

3. In terms of the direction passed by His Lordship in the earlier writ petition, the said panel was again taken up for consideration by the concerned District Inspector of Schools who again refused to grant approval to the said panel while passing the impugned order, on the following grounds:

(i) The prior permission for recruitment of the clerk of the said school was granted on 18th September, 2008, i.e. after 22nd July, 2008;

(ii) It violates the existing Recruitment Rules for non-teaching staff in reference to School Education Departments" Memo No. 740/ES/S/IS-18 dated 15th May, 2010.

4. The propriety of the said order is under challenge in this writ petition at the instance of the writ Petitioner.

5. Let me now consider as to how far the said District Inspector of Schools was justified in passing the impugned order in the facts of the instant case.

6. The reasons which were supplied by the said District Inspector of Schools for refusing to grant approval to the said panel, have already been indicated above.

7. The District Inspector of Schools supported his first ground of refusal by referring to para 7 of the School Education Department's Memo No. 740/ES/S/IS-18/08 dated 13th may, 2010, wherein it was stated that "having considered the above stated state policy already in force, I am directed to request you to instruct immediately once again the District Inspector of Schools (SE) of all districts of this not to accord any approval of panel prepared by the school authority in terms of the West Bengal Schools (Recruitment of Non-Teaching Staff) Act, 2005 published under No. 1594-SE(S) dated 26th December, 2005 for the recruitment of non-teaching staff in the West Bengal recognized non-Government, aided educational institutions as such power of according approval of panel by the District Inspector of Schools (SE) has already been withdrawn"

with a further rider that "this will include all cases for which prior permission for the recruitment of non-teaching staff was accorded on or after 22nd July, 2008." Since in the instant case prior permission was granted on 18th September, 2008 i.e. after the said cut off date, this aid District Inspector of Schools refused to grant approval to the said panel.

8. Let me now consider as to how far he was justified in doing so in the facts of the instant case.

9. How the selection process which was initiated under the old Recruitment Rules of 2005, is to be concluded, has already been decided by the Division Bench of this Hon''ble Court in the case of *Sehanshu Jas v. State of West Bengal and Ors.* Reported in (2001) 2 CLJ 558, wherein it was held that since the Recruitment Rules of 2009 which came into operation on 9th July, 2009, had no retrospective effect, the selection process which was initiated under the old Recruitment Rule of 2005 is required to be concluded as per the old Recruitment Rules of 2005 notwithstanding a change was introduced in the selection process by introducing new recruitment Rule of 2009 which came into force on 09.07.2009 i.e. during the continuation of the selection process under the old Rules of 2005. The time when such selection process is initiated and/or deemed to have been initiated, has also been decided by the Division Bench in the said decision. It was held herein that when the Employment Exchange sponsors the names of the suitable candidates for the concerned post, the selection process commences. It was further held therein that when any candidate applies for the said post in pursuance of any advertisement for the said post, the selection process should be deemed to have been commenced. Such conclusion was arrived at by the Division Bench of this Hon''ble Court in the said decision as the said Division Bench was of the view that the right of the sponsored candidate and/or the candidates who applied for the said post, to be considered for the said post as per the Recruitment Rules which were prevalent as on the date when such selection process commenced, cannot be ignored, as the new recruitment Rules had no retrospective effect.

10. Thus if the aforesaid principles, laid down by the Division Bench of this Hon''ble Court, is applied to the instant case then this Court holds that the instruction which were given in para 7 of the School Education Department's Memo dated 13th may, 2010 which was referred to by the said District Inspector of Schools to support his conclusion in ground No. 1 as mentioned above cannot be sustained.

11. Before concluding, this Court wants to add that the right of the selected candidate for being appointed in the post in question cannot be denied by cancelling the prior permission granted by District Inspector of Schools on 18-09-2008 by issuing administrative order giving retrospective effect from 22nd July, 2008.

12. This Court further holds that the ground No. 2 which was mentioned by the

District Inspector of Schools in support of the said conclusion also cannot be sustained in view of the Division Bench decision of this Hon"ble Court in the case of Sehanshu Jas v. State of West Bengal and Ors. (Supra) as aforesaid.

13. As such this Court holds that the District Inspector of Schools was not justified in refusing to grant approval to the said panel which was prepared in the selection process which commenced under the old Recruitment Rules of 2005 before the cut off date i.e. 9th July, 2009 when the new Recruitment Rules of 2009 came into operation.

14. The impugned order thus, stands, quashed. The District Inspector of Schools is, thus, directed to grant approval to the said panel as per the old Recruitment Rules of 2005 within four weeks from the date of communication of this order and communicate his decision in this regard to the school authority immediately thereafter so that the said vacant post can be filled up by the school authority without causing any further delay. The concerned District Inspector of Schools is also directed to approve the said appointment whenever such approval will be sought for by the school authority by following the Rules which were prevalent at the time when the selection process was initiated.

15. The writ petition is, thus, disposed of.

16. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.