

(2001) 02 CAL CK 0018
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 18803 (W) of 1997

Samarendra Nath Gupta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-02-2001

Acts Referred:

Burdwan University Act, 1981 — Section 47, 48
Constitution of India, 1950 — Article 14, 16, 19, 21, 226

Citation : (2001) 2 CALLT 203

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Mr. Pratap Chatterjee, Mr. Kallol Basu, Mr. Manoj Malhotra and Mr. S. Mondal, for the Appellant; Mr. Jahar De, Mr. G. Dey, Mr. A.K. Jana and Mr. S. Banerjee, for the Respondent

Judgement

A. K. Banerjee J.

1. Judges are only empowered to articulate and thus translate the intention of the legislature and fulfil the object of the Act, nothing more nothing less. The particular provision of a statute can not be isolated from the other parts of the statute for its interpretation or implementation. To view the Act as a whole one has to go through the entire statute. It is preamble objects and risk and to come to a conclusion true spirit behind enactment of such statute. To give interpretation of a particular provision so as to make it harmonious with the other provisions of the said statute and true spirit thereof and to find out the correct meaning of a particular provision. One has to go through the other provisions in the self same statute dealing with the similar circumstances. To make it known the statute itself has to be read as a whole.

2. The statutes relating to the appointment and terms and conditions of service of librarians and non teaching staff of Colleges other than Government Colleges stipulated in exercise of the power conferred by Clause O of section 47 read with section 48 of Burdwan University Act, 1981 has come up before me for

consideration in this writ petition. Statute 6(1) (a) &(b) and 7(1) are relevant herein for discussion. The said two statute are quoted below for ready reference:--

"St. 6(1)(a) Whenever a vacancy occurs in any post, not being a promotional one and other than the posts mentioned in clause (a) of St.2 (L & NT), the Principal of the College shall arrange for getting such vacancy notified through newspaper advertisement and notification in the College Notice Board with Intimation to the local Employment Exchange Inviting applications in the such forms as may be prescribed by the appointing authority under Statute 4 (L&NL) :

Provided that in the case of a vacancy arising in a promotional post, the said vacancy shall be notified Internally and circulated to all concerned.

(b) the necessary qualification required for appointment to different non-teaching posts under these Statutes, other than the posts mentioned in clause (a) of St. 2 (L&NT) (a), shall be such as may be determined by the appointing authority, subject to such orders as may be Issued by the University and the State Government in this behalf.

St. 7(L&NT) (1) Whenever a permanent vacancy occurs in any of the posts referred to in sub-clause (I) of Clause (b) of Statute 2, such vacancy shall normally be filled up by promotion from amongst the employees holding any of the post referred to in sub-clause (ii) of clause (b) of the said Statute. In the matter of such promotion, efficiency, seniority Including academic qualification, character rolls and attendance shall have to be taken into consideration:

Provided that in case no suitable candidate for such promotion is available, such permanent vacancy shall be filled up by direct recruitment in accordance with the procedure laid down for the purpose in with Statute 5 and Statute 6."

3. Writ petitioner is a lower Division Clerk at Krishna Chandra College under the Burdwan University. He applied for the post of accountant on promotion. However, his case was rejected by the College on the ground that he did not have the requisite qualification of B.Com which according to the College authority was the eligible qualification for the post of accountant whereas Respondent No,8 who was a cashier, was laterally transferred and appointed as accountant. Respondent No.8 was having B.Com qualification. The action of the College has been challenged by the writ petitioner on two fold grounds:--

Statute 7(1) has not specified any qualification. Hence, according to the writ petitioner. B.Com qualification stipulated in the Government Order can not be made applicable in respect of vacancies to be filled up under statute 7(1).

The second ground on which the action has been challenged is that the appointment of Respondent No.8 was not on promotion but was a case laterally transfer as the Respondent No.8 who was a cashier did not come under statute 2B(I).

4. Mr. Pratap Chatterjee, learned senior advocate appearing for the petitioner, has submitted that statute 6 contemplates direct recruitment wherein Government order has been made applicable. According to Mr. Chatterjee Statute 6(1)(b) clearly provides that the qualification required for such appointment shall be determined by the appointing authority subject to the Government orders. In case of direct recruitment the Government order would be made applicable whereas statute 7(1) has not made any provision for applicability of the Government Order- According to Mr. Chatterjee by omission of mention as to applicability of the Government order in statute 7 it clearly means that the authority did not want to have any qualification restriction in case of recruitment by promotion to be dealt with by Statute 7.

5. Mr. Jaharlal Dey, learned advocate appearing for the College Authority, has submitted that Statute 6(1)(a) contemplates direct recruitment whereas the proviso of the statute 6(1)(a) provides that a vacancy arising in a promotional post should be notified Internally. According to Mr. Dey, Statute 6(1)(b) provides that necessary qualification for appointment other than the post mentioned in Statute 2(a) shall be determined by the appointing authority or by the State Government. Since the post of accountant comes under 2(b)(1), the same should be governed by Statute 6(1)(b).

6. Mr. Dey further submits that 7(1) is not independent of Statute 6.

7. To give logical interpretation applying the rule of interpretation as discussed hereinbefore I shall have to deal with various provisions of the said particular statute to come to a conclusion in the Instant case. The said statute regulates the appointments of librarians and non teaching staff of the Colleges under the university. Statute 2(a) deals with the appointment relating to the library and statute 2(b) relates to the staff pertaining to the administration. Statute 3 is the definition clause whereas Statute 4 makes the College authority as the appointing authority. Statute 5(2) deals with the qualification required for the post, there the orders of the State Government to be Issued from time to time would be guiding factor. It is true that in this particular clause it is mentioned that the Government Circular would be the guiding factor in prescribing the minimum qualification through newspaper advertisement and as such it is clearly inferred that statute 5(2) deals with the situation relating to direct recruitment through newspaper advertisement. Hence, although Statute 5(2) has been retted on by the writ petitioner 1 do not wish to deal with the same in detail as I find no need therefore.

8. Rule 6(1)(a) stipulates the mode how direct recruitment could be made i.e. by newspaper publication, notification in the College notice board as also intimation to the local employment exchange. So it can clearly be inferred that Statute 6(1)(a) deals with a situation where the mode has been prescribed with regard to direct recruitment. The said statute also made it clear by inserting the words "not being a promotional one". The matter does not rest there. Proviso to the said statute contemplates a situation with regard to the promotional post. So in my

opinion the authority without making a separate sub-clause for the promotional post made a proviso to statute 6(1)(a). As such taking statute 6(1)(a) as a whole alongwith its proviso it clearly appears that first part of it deals with the direct recruitment whereas second part of it deals with promotional post.

9. Statute 6(1)(b) deals with a situation that the necessary qualification required shall be determined by the appointing authority subject to Government orders other than the post relating to appointment in library. In this sub-clause by adding this words "different non-teaching post under these statute" this sub-clause has been made applicable in respect of all appointments under the statute except the appointment relating to the library.

10. Statute 7(1) has given power to the appointing authority to fill up certain post by promotion and its proviso stipulates that if no suitable candidate is found that should be filled up by direct recruitment in accordance with statute 5 and statute 6.

11. In the instant case Statute 7(1) is admittedly applicable in the case of the writ petitioner. The writ petitioner was denied appointment because of Statute 6(1)(b). An argument has sought to be made by the writ petitioner that since the proviso of Statute 7(1) stipulates direct recruitment under Statute 5 and 6 when no suitable candidate is found for promotion, it presupposes that Statute 6 is applicable only for the direct recruits and not in the case of promotion. Although I admit that there is ambiguities in the said statute since I am not empowered to add or delete any word while interpreting the particular provision I am to give its logical meaning as far as I can by applying the rule of interpretation.

12. Mode of appointment and qualification are two separate subjects. One deals with the procedure, other gives right to somebody to be considered for appointment. Statute 7(1) or its proviso deals with procedure for recruitment in promotional post and in case no suitable candidate is found for filling up the vacancy by direct recruitment. Similarly, Statute 6(1)(a) deals with the procedure for direct recruitment. Its proviso deals with procedure for filling up the promotional post. If I keep the qualification aspect at bay for this moment on plain reading of statute 6(1)(a) and its proviso and Statute 7(1) and its proviso I do not find any inconsistency with regard to the procedural aspect of the matter. Both the said provisions prescribe for the mode under which the posts are filled up either by direct recruitment or by way of promotion.

13. Qualification aspect has been dealt with by 5(2) and 6(1)(b). As I have said earlier that 5(2) deals with only direct recruitment 6(1)(b) fs a general provision for all the post and if 6(1)(b) is made applicable herein the Government order automatically comes which makes B. Com qualification necessary for the post of accountant.

14. Mr. Dey drawing an analogy of the said two provisions has also contented that if I accept the contention of Mr. Chatterjee even persons working in the post prescribed in Statute 2(b)(ii) would be eligible for the post prescribed under

Statute 2(b)(1) on promotion without any requisite qualification i.e. to say a store keeper or record keeper or clerk becomes eligible to be an office superintendent without having any eligible qualification to be stipulated by the authority and/or by the Government for the said post. I find substance in Mr. Dey's argument. I agree with Mr. Dey that in that case situation would be disastrous and the authority concern never ment that while enacting the said statute.

15. Hence I hold that Statute 6(1)(b) is a general provision with regard to the qualification required for the direct recruitment as well as for the promotional post and I am constrained to hold that the argument of writ petitioner on that score is not tenable.

16. With regard to the second issue raised by the writ petitioner I find that the said question has now become academic because of my decision on the first Issue. Since the writ petitioner does not have the eligible qualification whether the appointment of Respondent No.8 is by way of promotion or by way of lateral transfer the writ petitioner is not in any way concerned with the same. Even if I hold that it is a case of lateral transfer and even if I quash the appointment of the Respondent No.8 that would not benefit the writ petitioner in any way. Hence, I do not wish to deal with the said question as I find the same has lost its relevancy in view of my decision on the first issue.

In the result the writ petition falls and is dismissed. However, there would be no order as to costs.

17. Petition dismissed