
(2006) 06 CAL CK 0030
In the Calcutta High Court
Case No : Writ Petition No. 1810 of 2004

Samser Ali Mondal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Citation : 110 CWN 663

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : Soumen Kumar Dutta, for the Appellant; Dipankar Dutta and Abhijit Gangopadhyay, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The petitioner herein has prayed for a direction upon the respondent Regional School Service Commission (Eastern Region) authorities to recommend his name for appointment to the post of Assistant Teacher in Physical Education to any school under General category. From the available records it appears that the petitioner appeared in the Regional Level Selection Test, 2002 for recruitment to the post of Assistant Teacher in Physical Education (Pass) under the General category. The said petitioner successfully passed the written test and was called for Personality Test. Thereafter, the said petitioner was empanelled against Serial No. 51 of the panel prepared by the respondents-Regional School Service Commission authorities.

2. The life of the panel was to remain valid for one year from the date of approval of the panel and the same could also be extended upto three years by the School Service Commission authorities. In the present case, before exhausting the Life of the said panel, an advertisement for Regional Level Selection Test, 2004 was published for filling up the vacancies in the post of Assistant Teacher in Physical Education (Pass) under General category. The aforesaid vacancies undisputedly arose during the validity period of the panel prepared earlier by the respondent authorities wherein the petitioner was

empanelled against Serial No. 51.

3. There were 36 vacancies for the Regional Level Selection Test, 2002 for which a panel of 54 candidates I was prepared in the ratio of 1.5 times; of the total number of vacancies on 8th November, 2003. The respondents-Regional School Service Commission authorities did not recommend the name of the petitioner for appointment in any school at the first instance as the name of the said petitioner was not within the first 36 empanelled candidates. Since the panel was prepared on 8th November, 2003, the last date of the validity period of the said panel was upto 7th November, 2004.

4. Regulations have been made under the West Bengal School Service Commission Act, 1997 and relevant regulations regarding preparation of panel is quoted hereunder:

8. Preparation of panel for candidates:

(1) On the basis of the written examination, academic scoring and personality test, all added together, each Regional Commission shall, for each subject prepare final merit list" that is to say, a panel of candidates found fit for appointment, strictly in order of merit. Each such panel shall include names one and half times the number of the vacancies referred to in regulation 3. There may be different/ separate/subject wise/language wise/sex wise/category wise sets of panels as may be necessary, based on academic qualifications, for the Higher Secondary, Secondary and Madrasah as may be decided by the Central Commission.

No. 430(R) dated 06th August, 1999

(2) Each panel prepared shall remain valid for one year from the date of approval of the panel by the Regional Commission for the posts which have already been reported and which will within the period of validity of such panel arise and shall be reported. If the Central Commission thinks it expedient to extend the validity of the panel beyond its normal period for any reasonable cause, the validity of any such panel shall be extended for a further period of one year, for the posts which exist or arise and shall be reported within such extended period of one year but such panel, in any event, shall not remain valid for more than three years.

No. 860(R) dated 14th September, 2000

5. The aforesaid Regulation 8 was amended subsequently and the amended Regulation 8 is quoted hereunder :

8. Preparation of panel for candidates :

(1) On the basis of the results of the written examination, academic scoring and personality test, all added together, each Regional Commission shall, for each subject, prepare final merit list, that is to say, a panel of candidates found fit for appointment, strictly in order of merit. Each such panel includes names equal to

the number of vacancies referred to in regulation 3. The candidates equal to 0.5 times the number of the said vacancies, but not figuring in the panel, shall be included in a waiting list in order of merit. There may be different or separate medium wise, subject wise, category wise, or sex wise sets of panel or waiting lists, as may be necessary, for pass, Honours or post graduate category of vacancies, as may be decided by the Central Commission from time to time.

No. 539(R)/16 96(II)/CSSC/2005 dated 20th June, 2005

(2)(a) Each such panel and waiting list prepared in terms of sub regulation (1) shall remain valid for one year from the date of approval of the panel or waiting list by the concerned Regional Commission.

No. 539(R)/16 96(II)/CSSC/2005 dated 20th June, 2005

(b) If the Regional Commission gets information from any school or from the District Inspector of Schools, or otherwise, that a candidate recommended for appointment has not accepted the offer of appointment within the stipulated period, or such a candidate refuses to accept appointment or is found in-eligible for appointment, the Regional Commission may recommend the name of a candidate from the waiting list in order of merit

No. 539(R)/16 96(II)/CSSC/2005 dated 20th June, 2005

(c) If the Central Commission thinks it expedient to extend the validity of the panel or waiting list beyond its normal period of one year for any reasonable cause, the validity of such panel or waiting list may be extended for a further period of six months, beyond which the panel or. waiting list shall not be extended."

No. 539(R)/16 96(II)/CSSC/2005 dated 20th June, 2005

6. The learned advocate of the petitioner submits that the subsequent advertisement for the Regional Level Selection Test, 2004 was published within the validity period of the previous panel on 1st March, 2004 as the said previous panel was valid upto 7th November, 2004. The learned advocate of the petitioner further submits that the vacancies reported within the validity period of the panel prepared on 8th November, 2003 should have been filled up by the empanelled candidates of the said panel, as according to the learned advocate of the petitioner, in terms of Regulation 8(2) each panel prepared shall remain valid for one year from the date of approval of the panel by the Regional Commission for the posts which have already been reported and which will arise within the period of validity of such panel and shall be reported.

7. According to the petitioner, the, respondents-Regional School Service Commission authorities not only published the next advertisement for the Regional Level Selection Test, 2004 during the validity period of the previous panel but also sought to fill up the vacancies which arose and were reported within the validity period of the previous panel. The learned advocate of the

petitioner submits that the vacancies mentioned in the Regional Level Selection Test, 2004 virtually arose and were reported within the validity period of the previous panel and therefore, the petitioner should have been recommended for appointment as an empanelled candidate for the post of Assistant Teacher in Physical Education on the basis of Regional Level Selection Test 2002.

8. The learned advocate of the respondents, however, opposed the aforesaid contention of the petitioner on the ground that the name of the petitioner could be recommended if the commission had received non-joining reports of 15 candidates out of first 36 recommended candidates. The learned advocate of the respondents further submits that if the declared vacancies are filled up by the candidates recommended by the commission within one year from the date of approval of the panel then, the life of the panel is not extended further.

9. The learned advocate of the respondents, however, opposed the aforesaid contention of the petitioner on the ground that the name of the petitioner could be recommended if the commission had received non-joining reports of 15 candidates out of first 36 recommended candidates. The learned advocate of the respondents further submits that if the declared vacancies are filled up by the candidates recommended by the commission within one year from the date of approval of the panel then, the life of the panel is not extended further.

10. It has been specifically submitted on behalf of the commission that since no non-joining report was received by the commission during the first year of the validity period of the panel, no other empanelled candidate after the first 36 empanelled candidates could be recommended by the commission and therefore, the name of the petitioner was not recommended for appointment. The learned advocate of the respondent commission further submits that during the pendency of the writ petition, the petitioner herein appeared at the 5th Regional Level Selection Test, 2004 for the same post in the same subject. Undisputedly, the vacancies which arose during the validity period of the previous panel were sought to be filled up by the Regional Level Selection Test, 2004 and the petitioner herein also appeared at the said Selection Test during the pendency of the present writ petition without even obtaining any leave of this Hon'ble Court.

11. The challenge thrown by the petitioner in this writ petition has been sought to be repelled basically on the following grounds:

Firstly, on principles of estoppel, waiver and acquiescence.

Secondly, the petitioner has no right to be recommended in terms of the amended provisions of Regulation 8 as the name of the petitioner could not be recommended since no non-joining report was received by the commission from the recommended candidates.

12. Undisputedly, the amended provisions of Regulation 8 have no manner of application in the facts of the present case as the Regulation 8 have no manner of application in the facts of the present case as the Regulation 8 was amended

long after the holding of the Regional Level Selection Test, 2004. The respondent authorities herein cannot deny and/or defeat the claims of the petitioner relying on the amended provisions of Regulation 8 as the said Regulation 8 was not amended at the relevant point of time i.e. at the time of holding the Regional Level Selection Test, 2004.

13. The unamended provisions of Regulation 8 specifically provides that each panel prepared shall remain valid for one year from the date of approval of the panel by the Regional Commission for the posts which have already been reported and which will arise within the validity period of such panel and shall be reported. In the present case, the panel was prepared on 8th November, 2003 and therefore, the said panel remained valid till 7th November, 2004.

14. The respondent Commission admittedly issued the advertisement for the Regional Level Selection Test, 2004 on 1st March, 2004 i.e. within the validity period of the previous panel as the last date of validity of the previous panel was 7th November, 2004. The vacancies mentioned in the Regional Level Selection Test, 2004 therefore, arose and must be deemed to be reported within the validity period of the previous panel.

15. On examination of the advertisement issued by the West Bengal School Service Commission, it appears that the Regional Level Selection Test, 2002 was conducted for preparing the panel of Assistant Teachers against the vacancies available and likely to occur. The West Bengal Central School Service Commission also issued an advertisement in the daily newspaper "The Statesman" on 8th August, 2003 publishing the result of the Regional Level Selection Test, 2002 for Assistant Teachers wherein the vacancy statement for Assistant Teachers in respect of various zones were specifically mentioned and furthermore, the vacancy was specifically defined in the Note mentioned in the said advertisement. The definition of Vacancies specifically mentioned in the Note of the said advertisement is quoted hereunder :

NOTE: (a) VACANCIES MEAN AND INCLUDE VACANCIES IN TEACHING POSTS WHICH ARE PRESENTLY EXISTING AND THOSE LIKELY TO OCCUR WITHIN 2nd JANUARY, 2004.

16. The West Bengal Central School Service Commission issued an advertisement on 1st March, 2004 for holding the Regional Level Selection Test, 2004 i.e. within the validity period of the panel prepared pursuant to the Regional Level Selection Test, 2002. From the vacancy statement issued by the West Bengal Central School Service Commission it appears that pursuant to the result of the Regional Level Selection Test, 2004, respondent commission sought to fill up total 37 vacant posts of Assistant Teachers in Physical Education (Pass) in Eastern Region and 22 posts of Assistant Teachers in South Eastern Region.

17. In the aforesaid circumstances, it is clear that total 59 vacancies arose in Eastern Region and South Eastern Region within the validity period of the panel prepared on the basis of the result of the Regional Level Selection Test, 2002.

18. Undisputedly, the petitioner was empanelled against Serial No. 51 of the panel prepared on the basis of the result of the Regional Level Selection Test, 2002 and total 36 candidates were recommended for appointment by the commission. Accordingly, the petitioner could also be recommended by the commission for the post of Assistant Teacher in Physical Education (Pass) if the aforesaid vacancies, which arose within the validity period of the panel prepared pursuant to the result of the Regional Level Selection Test, 2002 were taken into consideration.

19. It is not in dispute that the West Bengal Central School Service Commission while publishing the result of the Regional Level Selection Test, 2002 specifically mentioned that the vacancies mean and include vacancies in the teaching posts which are not only existing but also likely to occur within 2nd January, 2004. From the advertisement published for the Regional Level Selection Test, 2004 it is very much clear that about 59 vacancies occurred within the validity period of the panel prepared pursuant to the result of the Regional Level Selection Test, 2002 and therefore, the petitioner herein could be accommodated against any one of the aforesaid vacancies.

20. In my view, the respondent Commission wrongfully and illegally refused to recommend the name of the petitioner against the aforesaid vacant posts of Assistant Teachers in Physical Education (Pass) even though sufficient vacancies in the said post of Assistant Teacher in Physical Education (Pass) occurred and were reported during the validity period of the earlier panel prepared by the respondent authorities on the basis of the result of the Regional Level Selection Test, 2002 wherein the petitioner was empanelled against Serial No. 51. The respondent authorities totally ignored the relevant provision of Regulation 8(2) which was in force at the relevant point of time wherein it was specifically mentioned that the panel prepared by the commission would not only remain valid for one year from the date of approval of the said panel by the commission for the posts which have already been reported but also for the posts which will arise and would be reported within the validity period of the said panel.

21. I am also of the opinion that the respondent authorities ignored the specific stipulations mentioned in the Note at the bottom of the vacancy statement for Regional Level Selection Test, 2002 published in the daily newspaper. The Statesman" on 8th August, 2003 wherein the commission has specifically mentioned that vacancies mean and include vacancies in teaching posts which are existing and were likely to occur within 2nd January, 2004.

22. For the aforementioned reasons, I am constrained to hold that in the present case, the respondent Commission has wrongfully and illegally deprived the petitioner by not recommending his name against any one of the vacant posts of Assistant Teacher in Physical Education (Pass) group even though sufficient number of vacancies occurred and were reported within the validity period of the panel prepared on the basis of the Regional Level Selection Test, 2002.

23. The learned advocate of the respondents also raised the point of estoppel, waiver and acquiescence in order to oppose the claims of the petitioner in the present case.

24. Mr. Dipankar Dutta, learned advocate of the respondent Commission submits that the petitioner appeared at the 5th Regional Level Selection Test, 2004 knowing fully well that the said test was conducted for the vacancies which had arisen during the validity period of the panel prepared on the basis of the Regional Level Selection Test, 2002 wherein the name of the petitioner was empanelled against Serial No. 51. Mr. Dutta further submits that the petitioner herein is not entitled to any relief in view of the principles of "estoppel by conduct". According to the learned advocate of the respondent commission, the petitioner herein after taking part in the 5th Regional Level Selection Test, 2004 is estopped from raising the question regarding validity and/or legality of the panel prepared on the basis of the result of the said 5th Regional Level Selection Test, 2004 for the purpose of filling up the vacancies which occurred within the validity period of the panel prepared on the basis of the result of the Regional Level Selection Test, 2002.

25. The learned advocate of the respondent Commission cited the following decisions of the Supreme Court in support of his aforesaid arguments:

1. Suneeta Aggarwal Vs. State of Haryana and Others,
2. Madan Lal and Others Vs. State of Jammu and Kashmir and Others,

In my view, the aforesaid decisions are not at all applicable in the facts of the present case as the petitioner filed the present writ petition before publication of the result of the 5th Regional Level Selection Test.

26. The result of the 5th Regional Level Selection Test and the vacancy statement was published by the respondent authorities by the Advertisement No. 01/5/AT/04 dated 26th November, 2004 i.e. long after the filing of the present writ petition before this court. In the advertisement published in The Statesman" on 8th August, 2003, respondent commission mentioned the vacancy statement for Assistant Teachers in various subjects and at the bottom of the Vacancy Statement, it has also been specifically mentioned in the Note that vacancies mean and include vacancies in teaching posts which are existing and also likely to occur within 2nd January, 2004.

27. Since the advertisement for 5th Regional Level Selection Test, 2004 was published in the month of March, 2004, petitioner herein might have been misled and wrongly understood that the said selection test will be conducted for the purpose of filling up the vacancies which occurred after 2nd January, 2004 and therefore, it cannot be said that the petitioner had full knowledge about the fact that the respondent Commission sought to fill up the vacancies which had occurred on or after 2nd January, 2004 by holding the Regional Level Selection Test, 2004. The petitioner is therefore, entitled to get the benefit of doubt in this

regard.

28. For the aforementioned reasons, I am not inclined to accept the submissions of the respondent Commission that the petitioner herein appeared at the 5th Regional Level Selection Test, 2004 inspite of having specific knowledge that the vacancies which occurred within 2nd January, 2004 would be filled up on the basis of the result of the said Regional Level Selection Test, 2004.

29. Waiver is a question of fact which must be clearly proved but in the present case as I have already observed that because of the sufficient reasons petitioner might be misled and confused, it cannot be said that waiver has been clearly proved in the facts of the present case.

30. -Referring to the decision of the Supreme Court in the case of Smt. Isabella Johnson Vs. M.A. Susai, learned advocate of the petitioner submits that there cannot be any estoppel on the pure question of law. In the present case also, the respondent authorities sought to fill up the vacancies in the posts of Assistant Teachers in various subjects including the vacant posts of Physical Education (Pass) in violation of the specific provisions of Regulation 8(2) as were prevailing at the relevant point of time. The respondent authorities, therefore, cannot act in clear violation of the Regulations and avoid the challenge before the court of law raising the point of estoppel and waiver although considering the facts of the present case, it cannot be said that the petitioner specifically waived his right by participating at the Regional Level Selection Test, which was conducted subsequently by the respondent Commission for the reasons already discussed hereinbefore.

31. In the aforesaid circumstances, it is clear that the respondent Commission wrongfully and illegally filled up the vacancies in the various posts of Assistant Teachers including the posts of Physical Education (Pass) on the basis of the result of the 5th Regional Level Selection Test, 2004 in clear violation of the Regulation 8(2) as was prevailing at the relevant point of time since the respondent commission was. under an obligation and was duty bound to fill up the vacancies which occurred on or before 2nd January, 2004 from the candidates empanelled on the basis of the result of the Regional Level Selection Test, 2002.

32. For the aforementioned reasons, the respondent authorities, particularly the respondent Nos. 2, 3 and 4 herein are directed to take immediate appropriate steps to recommend the name of the petitioner for appointment as Assistant Teacher in Physical Education (Pass) in an appropriate school against next available vacancy as a special case without disturbing the appointments already made pursuant to the result of the 5th Regional Level Selection Test, 2005.

33. Needless to mention that the benefits of this judgment will be restricted to the petitioner only as no one else has challenged the illegalities and/or irregularities committed by the respondent commission along with the petitioner herein.

34. With the aforesaid observations and directions, this writ petition stands allowed.

35. There will be, however, no order as to costs. All parties concerned are to act on a xerox signed copy of this judgment on the usual undertaking.

later:

After pronouncement of the judgment, the learned counsel of the Regional School Service Commission prays for stay of the operation of the judgment and order. I find no reason to grant such stay. Accordingly, the prayer for stay is refused.