
(2011) 05 CAL CK 0080
In the Calcutta High Court
Case No : Writ Petition No. 18791 (W) of 2009

Shamit Rudra

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Citation : (2011) 05 CAL CK 0080

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Swapan Dutta and Sankar Mukhopadhyay, for the Appellant; Monish Gupta, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—Pursuant to the prior permission granted by the District Inspector of Schools (S.E.), Burdwan, on 5th September, 2008, the school authority of Balgona Sharadamoni Balika Bidyalaya initiated a selection process for filling up the vacancy in the post of Group "D" staff. After holding an interview of the eligible candidates, a panel was prepared by the selection committee but the said panel was neither accepted by the Managing Committee of the said school nor the said panel was submitted to the concerned District Inspector of Schools for his approval. As a result, the said panel could not be taken up for consideration by the concerned District Inspector of Schools for deciding the issue regarding grant of approval to the said panel.

2. However, ultimately pursuant to the directions passed by this Hon'ble Court in two earlier writ petitions being W.P. No. 9133(W) of 2009 and W.P. No. 6313(W) of 2009, the papers were submitted by the Head Mistress of the said school to the concerned District Inspector of Schools on 3rd July, 2009. On perusal of those papers, the concerned District Inspector of Schools found the following irregularities in the process of preparation of the said panel:

i) Consolidated score sheets were not signed by two members (i.e. Head Mistress and the Panchayat nominee Rakohari Roy) among the four members of the

selection committee.

ii) Present Managing Committee did not take resolution in its any meeting to approve/comment/examine the panel in question before submission of the same before the aid District Inspector of Schools for his approval.

3. Considering the aforesaid irregularities, the said District Inspector of Schools refused to approve the said panel and the school authority was asked to make fresh prayer for prior permission for filling up the said vacancy as per the current Recruitment Rules.

4. The Petitioner herein who was a participating candidate in the said selection test has filed the instant writ petition challenging the legality of the aforesaid order passed by the said District Inspector of School on 21st October, 2009.

5. Having heard the learned advocates of the parties and after considering the materials on records, though this Court does not find any illegality in the first part of the impugned order by which the concerned District Inspector of Schools refused to grant approval to the said panel, but at the same time this Court cannot approve the direction given upon the school authority to seek prior permission for filling up the said vacancy as per the current Recruitment Rules, for the reasons given hereunder.

6. Considering the irregularities in the process of preparation of the said panel as pointed out by the concerned District Inspector of Schools in the impugned order, this Court holds that the said panel cannot be approved. As such the concerned District Inspector of Schools rightly refused to approve the said panel.

7. However, this Court cannot be oblivious of the fact that the selection process in the present case was initiated under the old Recruitment Rules of 2005, before the new Recruitment Rules of 2009 came into operation with effect from 9th July, 2009. Not only the prior permission was granted under the old Recruitment Rules of 2005 but also selection test was held prior to the cut off date i.e. 9th July, 2009. As such the participating candidates' right to be considered for appointment in the said post under the old Recruitment Rules of 2005, cannot be denied in view of the Division Bench of this Hon"ble Court in the case of *Sehanshu Jas and Ors. v. State of West Bengal and Ors.* Reported in 2001 (2) CLJ 558.

8. The right which was so accrued in the favor of the Petitioner cannot be defeated merely because of certain lapses on the part of the school authority in the process of preparation of the said panel. As such this Court holds that the said selection process should be completed by constituting a fresh selection committee and by holding a separate selection test by the newly constituted selection committee and also by permitting the candidates who earlier participated in the said selection test including those participants who crossed the maximum age limit in the meantime by giving relaxation to them so far as the age bar is concerned, so that the age barred candidates are also not deprived

of their right to be considered for the said post due to the lapses of the school authority.

9. Accordingly, this Court disposes of this writ petition by directing the school authority to constitute new selection committee as per the old Recruitment Rules of 2005 and a fresh selection test be taken by the said selection committee after inviting all the candidates who earlier participated in the previous selection test including those who crossed the maximum age limit in the meantime by giving relaxation of age bar to them.

10. It is clarified that the entire process including grant of approval to the said panel by the District Inspector of Schools and if any occasion arises subsequently, for approving the service of the selected candidate then grant of approval to the service of the appointee should also be completed as per the Recruitment Rules of 2005. Since the said post remains vacant since 2008 the entire process should be completed by all the authorities at every stage thereof as expeditiously as possible.

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

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