

(2017) 04 CAL CK 0036
In the Calcutta High Court
Case No : 2186 of 2014

Shyam Sundar Tah

APPELLANT

Vs

State of West Bengal & ors.

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Citation : (2017) 04 CAL CK 0036

Hon'ble Judges : Dipankar Datta, Debi Prosad Dey

Bench : DIVISION BENCH

Advocate : Amal Baran Chatterjee, Sandip Ghosh

Judgement

1. A writ petition, W. P. 3832 (W) of 2002, was dismissed by a learned Judge of this Court by judgment and order dated August 17, 2012. The unsuccessful writ petitioner is the appellant before us in this appeal under clause 15 of the Letters Patent.

2. A post of peon in Nawpara High School, Village & P.O. Nawpara in Burdwan District (hereafter the school) fell vacant. Process was started in the year 2001 by the authorities of the school by seeking a prior permission from the District Inspector of Schools (S.E.), Burdwan (hereafter the DIoS) to effect recruitment on such post. The prior permission having been granted, requisition was sent to the Employment Officer, District Employment Exchange, Kalna, Burdwan to sponsor names of eligible candidates. A list containing names of 20 (twenty) candidates was prepared by the employment officer and forwarded vide memo dated February 21, 2002. Since the name of the appellant did not figure in such list, he invoked the writ jurisdiction of this Court. He pleaded in the writ petition that despite registration of the appellant's name with the employment exchange on January 18, 1983, his name had not been sponsored even once for consideration by any recruiting authority. It was also pleaded that at least 10 (ten) of the sponsored candidates who figured in the list dated February 21, 2002 had crossed the upper age limit of appointment of 37 (thirty-seven) years and, therefore, the employment officer committed serious error in sponsoring

their names. A grievance was expressed that had those overaged candidates not been sponsored, the appellant could have been sponsored. An interim order was made on the writ petition by a learned judge of this Court, whereby the authorities of the school were directed to permit the appellant participate in the selection process. He participated and figured at the top of the panel of three candidates. The appellant was, thereafter, appointed on the post of peon. By an order dated April 25, 2005, the writ petition was disposed of observing that the appellant having been selected and appointed, there was no reason to interfere with the process.

3. During pendency of the writ petition, a Susil Kumar Ray [one of the 20 (twenty) candidates sponsored by the employment officer and who figured as the second empanelled candidate] had sought for his impleadment as a respondent in the writ petition by filing CAN 4743 of 2002. Despite direction for impleadment of the said Susil Kumar Ray as a respondent in the writ petition, neither was the cause title of the writ petition amended by formally bringing him on record as a respondent therein nor was he served copy of the writ petition. Without hearing him, the writ petition stood disposed of.

4. The order dated April 25, 2005 disposing of the writ petition was challenged in an appeal (FMA 312 of 2009) by the said Susil Kumar Ray. An Hon'ble Division Bench of this Court by its order dated May 8, 2009 set aside the order impugned dated April 25, 2005 on the ground that the said Susil Kumar Ray had not been served with a copy of the writ petition resulting in breach of natural justice. The Bench directed fresh hearing of the writ petition. It was also ordered that the appellant's appointment would abide by the result of the writ petition.

5. On remand, the writ petition was reconsidered by another learned judge of this Court. His Lordship, upon consideration of the Guidelines for Recruitment of Non-Teaching Staff (Librarian, Clerk, Group-D Staff) of Non-Govt. Aided Secondary Schools, Higher Secondary Schools, Govt. Sponsored Schools, D.A. getting school and all types of Aided Madrasahs including Senior Madrasahs and newly set up Educational institution at Secondary Level in West Bengal, issued by the Director of School Education [vide Memo No. 1736(21) G.A. dated November 1, 1999] (hereafter the said guidelines), Serialized Instruction No.1/1995 issued by the Director of Employment (hereafter the said instruction) as well as the list of sponsored candidates, recorded a finding of fact that January 1, 2001 was the cut-off date for determining the age of the sponsored candidates and that all the sponsored candidates were less than 37 (thirty-seven) years of age on that date; and, therefore, they were entitled to participate in the selection process.

6. This finding has been challenged by the appellant primarily on the ground that the date of sponsoring of candidates by the employment officer i.e. February 21, 2002, ought to have been regarded as the cut-off date.

7. Mr. Chatterjee, learned senior advocate appearing for the appellant contended, by placing reliance on the decision of an Hon'ble Division Bench of this Court

reported in 2001 (3) CHN 313 [Snehansu Jas v. State of West Bengal & ors.], that selection process commences only when the candidates are invited to appear on the basis of names sponsored by the employment exchange on requisition by the managing committee and if that stage has not reached, it would not amount to commencement of the selection process. Based thereon, he further contended that the learned judge while dismissing the writ petition erred in not regarding the date of sponsoring of candidates as the date of commencement of the selection process and instead, in placing reliance on the said instruction. It was also contended by him that the learned judge did not consider the plight of the appellant who, by reason of aging day by day without sponsorship of his name, was deprived of the opportunity of participating in any recruitment process leading to public employment. The view taken by the learned judge while making the interim order on the writ petition, according to him, was a just and reasonable view on facts and in the circumstances and he asserted that the appellant is entitled to claim like consideration. He, accordingly, prayed for setting aside of the impugned judgment and order and for a direction on the school to permit the appellant resume duty as peon.

8. The respondents are not represented and we have also not considered it necessary to put them on notice to answer the contentions advanced on behalf of the appellant.

9. The said guidelines dated November 1, 1999 provided in paragraph 4(d) as follows: "4(d) No person shall be selected for appointment unless he/she is a citizen of India and 18 years of age or above. The maximum age limit for appointment in Aided Institution is 37 years and is relaxable in case of S.C./S.T./O.B.C. candidates as per existing Government."

10. Mr. Chatterjee has not contended that whatever be the age of a candidate on the date he is sponsored, he must be less than 37 (thirty-seven) years of age on the date he is offered appointment. However, we wish to make certain observations in relation to clause 4(d) to clear the confusion that might be created on a literal interpretation of clause 4(d).

11. If indeed one were to proceed on a literal interpretation of the aforesaid stipulation of 37 (thirty-seven) years being the maximum age limit for appointment of a general candidate, a chaotic situation is likely to arise. Attributing a narrow meaning to the clause, none who is above 37 (thirty-seven) years of age on the date the offer of appointment is issued, but who was less than 37 (thirty-seven) years at or about the time the selection process rolled into motion, would be eligible for appointment.

12. Should a candidate be sponsored by the employment exchange when he was below the age of 37 (thirty-seven) years but the process of recruitment continues for months, or even a year or two, as a result whereof he crosses the age of 37 (thirty-seven) years, can he be deprived of appointment on the specious ground that the maximum age limit for appointment is 37 (thirty-seven)

years? Let us look for the answer.

13. Experience has shown that selection process initiated in terms of the said guidelines and previous guidelines on the same lines took months, and even years in some cases, to conclude. A literal interpretation leading to undesirable results could be perceived resulting in issuance of the said instruction by the Director of Employment, the terms whereof cannot be ignored by us. For facility of reference, it is quoted below: "Sub : Crucial date for calculation of age.

Unless specifically mentioned in the recruitment rules, the prescribed age limits (both lower and upper) should be as on the first day of the year of recruitment i.e. the year the procedure for recruitment has been taken up by the appointing authority in the case of vacancies under the State Government its undertakings and in local bodies.

This issues with concurrence of the Finance Department as communicated vide U.O. Group "B" (Service) No. 1697 dated 19.10.1994.

This will have immediate effect."

14. To our mind, the answer to the question formulated in paragraph 12 (supra) has to be in the negative. The term "appointment" as used in paragraph 4(d) of the said guidelines, read with the said instruction, must receive a broader meaning to include within it steps taken at the very initial stage for conducting recruitment on the post and the maximum age of appointment must relate to the date on which the process starts with the school/institution seeking permission to fill up the vacant post. This is, in our considered view, a reasonable interpretation of clause 4(d) based on careful reading of the said instruction.

15. While deciding *Snehansu Jas* (supra), the coordinate Bench did not have the occasion to look into the said instruction possibly because none of the parties to the lis produced the same. This is one reason why we feel disinclined to follow the ratio thereof. It is also apparent from a bare reading thereof that the said guidelines too did not fall for consideration and, therefore, the said decision is at best an authority for the issue decided by it on a reference being made in view of conflicting decisions of single Bench decisions of this Court.

16. Having read the said guidelines together with the said instruction, we are of the considered view that the learned judge was right in applying the terms of the said instruction to the facts on hand. The recruitment process having been initiated by reason of the prior permission that was issued by the DIoS sometime in 2001, the first day of 2001 i.e. January 1, 2001 had to be regarded as the cut-off date for determination of age and we find no infirmity in the finding of the learned judge that none of the 20 (twenty) sponsored candidates was in excess of 37 (thirty-seven) years of age as on January 1, 2001. They were, therefore, rightly sponsored and the said *Susil Kumar Ray* did have a legitimate grievance that he was made to compete with a candidate (the appellant) who had no right of participation in the selection process.

17. There is one other weighty reason for not accepting Mr. Chatterjee's contention. The list of sponsored candidates is dated February 21, 2002. If February 21, 2002 is to be regarded as the cut-off date, no doubt half of the sponsored candidates would be overaged and not qualified to participate in the process. However, does it mean that the appellant would acquire an automatic right of being considered for recruitment? This question too, may have to be answered in the negative.

18. We find from the employment exchange registration card of the appellant that he was assigned registration No. KL ? 209/83. As has been noticed above, the appellant's name was registered on January 18, 1983. It stands to reason that prior to the appellant, 208 (two hundred eight) candidates had registered their names with the employment exchange between January 1 and 18, 1983 itself. To allow the appellant to participate in the selection process considering his pleading that he has never been sponsored even once, might result in allowing the appellant to steal a march, if not over all the 208 (two hundred eight) candidates who had registered their names before the appellant in January, 1983, but at least some of the candidates. In the absence of the relevant particulars of the candidates who had their names registered with the employment exchange between January 1 and 18, 1983 prior to the appellant, and they not having been impleaded as parties, it is difficult, if not impossible, on our part to make a direction that the appellant acquired a right of participation in the recruitment process.

19. For the reasons aforesaid, we hold that the judgment and order under appeal does not merit interference and that the appeal is liable to be dismissed. It is ordered accordingly.

20. No order is made as to costs. Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.