
(2015) 06 CAL CK 0039

In the Calcutta High Court

Case No : Writ Petition No. 24947(W) of 2005

Sirin Parvin and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 148 FLR 113 : (2015) 3 LLN 113 : (2016) 1 WBLR 187

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Milan Ch. Bhattacharyya, Senior Advocate and Uttam Kr. Bhattacharyya, for the Appellant; Sadananda Ganguli and Debapratim Banerjee, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Debangsu Basak, J.—The writ petitioners have assailed an Order dated January 1, 2005 passed by the Director of School Education, West Bengal. A school, the respondent No. 8 herein required teachers. The school authorities had applied for prior permission to fill up the vacancies of the teaching staff. The District Inspector of School, Primary Education, Paschim Midnapore had granted prior permission by a Memo No. 551/P dated August 21, 2003. The school authorities had advertised for three posts of teachers. The writ petitioners had participated in the selection process. The writ petitioners had been found suitable. The managing committee of the respondent No. 8 by a resolution dated September 23, 2003 had prepared a panel of nine selected candidates to fill up three permanent vacancies of Assistant Teacher of the respondent No. 8. The writ petitioners figure in such panel. The Director of School Education, West Bengal however had expressed a view in the Memo No. 2276-Sc/P dated May 17/19, 2004 that the school authorities did not follow the recruitment rules. Such memo was challenged by the writ petitioners in W.P. No. 10244(W) of 2004. By an Order dated July 7, 2004 such writ petition was disposed of by setting aside the

Memo dated May 17/19, 2004. The Director of School Education was directed to take a fresh decision upon hearing the District Inspector of Schools as well as the school authorities and the candidates who might be effected. He was required to pass speaking orders. The Director of School Education by its Order dated January 1, 2005 impugned in the present writ petition has expressed the view that the panel prepared by the school authorities suffered from irregularity due to non-observance of the recruitment rules and, therefore, is liable to be rejected. The school authorities were permitted to a panel afresh following the terms and conditions of the prior permission.

2. Mr. Milan Ch. Bhattacharyya, learned Senior Advocate for the writ petitioners contends that, the panel prepared by the school authorities has never been challenged. Referring to the prior permission dated August 21, 2003 given by the District Inspector of Schools it is contended on behalf of the writ petitioners that, the qualification for selection had been relaxed. The candidates were no longer required to be trained in any given discipline to qualify as the prior permission dated August 21, 2003 had relaxed such qualification making it optional. Referring to the subsequent conduct of the State authorities namely in relaxing Rules 6(2)(a) and (b) of the West Bengal Primary School Teachers Recruitment Rules, 2001 on December 16, 2005, it is submitted that such subsequent event should be taken into consideration for the purpose of determining the writ petition. It is contended that the subsequent notification dated December 16, 2005 does not make training in any discipline to be mandatory. The writ petitioners therefore should be placed at a prejudice more so when the State authorities have notified subsequently that training in any particular discipline is not mandatory. The writ petitioners should be allowed the benefit of such subsequent notification while considering their qualification. It is submitted that, the notification dated December 16, 2005 should be construed to have retrospective effect.

3. Mr. Bhattacharyya referring to the affidavit filed on behalf of the State authorities submits that the explanation sought to be given by the State authorities with regard to the prior permission is that the same had been issued due to inadvertence. It is contended on behalf of the writ petitioners that in view of the ratio laid down in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 that, nothing can be supplemented to the order by way of an affidavit.

4. Mr. Bhattacharyya submits that his clients are not pressing prayers (a) and (b) of the writ petition and that the prayers of the writ petitioners are limited to prayers (c) and (d).

5. Mr. Sadananda Ganguli, learned Advocate for the State authorities submits that, the resolution of the school authorities does not disclose that the school authorities did not find any candidate with the requisite qualification as appearing in the recruitment rules. It is also contended that, the resolution also does not

speaking whether any candidate with requisite training had appeared in the interview or not. He contends that, therefore the resolution of the school authorities not giving such requisite data is not sustainable. Referring to the prior permission particularly clauses (i) and (ii) thereof Mr. Ganguli contends that recruitment rules are applicable. Clause (ii) should not be read in the manner as submitted on behalf of the writ petitioners. Rather it should be read to mean that the candidates should have requisite amount of training, preferably in the disciplines specified therein.

6. On the affidavit-in-opposition Mr. Sadananda Ganguli submits that, the Court's record on this score does not have any affidavit-in-opposition filed on behalf of the State authorities. A copy of such affidavit has been made over by the learned Advocate of the writ petitioners to him. In reply Mr. Bhattacharyya contends that the State should not be allowed to resile from the affidavit used.

7. I have considered the rival contentions of the parties and the materials made available on record.

8. The respondent No. 8 had advertised for three permanent post of Assistant Teacher. The respondent No. 8 had applied prior permission with the District Inspector of Schools for initiating such recruitment process. The District Inspector of Schools had permitted the respondent No. 8 to initiate the recruitment process for such post by the Memo dated August 21, 2003. The relevant clauses of such memo are as follows:--

"(i) Unless otherwise directed all appointments in the school will be guided by the Recruitment Rules of the Govt. as amended from time to time.

(ii) Educational qualification of the applicants/candidates should be Madhyamik (preferably Jr. Bsc./P.T.T.I. Trained)."

9. The writ petitioners had participated in the selection process. The selection committee of the respondent No. 8 had selected nine candidates to fill up three permanent vacancies of Assistant Teachers. The managing committee of the respondent No. 8 by resolution dated September 23, 2003 had approved the panel of nine selected candidates for three permanent posts of Assistant Teachers. By such resolution the Secretary of the respondent No. 8 was requested to issue appointment letters in the order of merit to the candidates selected subject to the approval of the District Inspector of Schools, Paschim Midnapore. By a communication issued by the Director of School Education dated May 17/19, 2004 to the District Inspector of School, Primary Education, Paschim Midnapore, it has been observed that the recruitment rules have not been followed during the preparation of the panel.

10. The writ petitioners being aggrieved by such communication had filed a writ petition being W.P. No. 10244(W) of 2004. Such writ petition was disposed of by an Order dated July 7, 2004. Such order has set aside the communication of the Director of School Education dated May 17/19, 2004. The Director of School

Education was directed to take a fresh decision after hearing the District Inspector of Schools as well as the school authorities and the candidates who might be effected and pass a speaking order thereon.

11. Pursuant to such order the Director of School Education had heard the concerned parties. The writ petitioners had appeared before him personally as well as through their Advocate. The Director of School Education had considered the rival contentions of the parties. By his Order dated January 1, 2005 which is impugned in the present writ petition, the Director of School Education found the panel not to be prepared in terms of the educational qualification mentioned in G.O. No. 57-SE (Pry.) dated January 15, 2002.

12. The resolution of the managing committee of the respondent No. 8 states that the writ petitioner does not have any training. The writ petitioners also do not claim to be trained. The contention that the prior permission dated August 21, 2003 had relaxed the requirement of training prescribed in the West Bengal Primary School Teachers Recruitment Rules, 2001 cannot be accepted. During the period of time when the selection for the post of Assistant Teachers for the respondent No. 8 was under possess the West Bengal Primary School Teachers Recruitment Rules, 2001 was in vogue. Clause (ii) of the prior permission dated August 21, 2003 does not obviate the requirement of a candidate to be trained as specified in the West Bengal Primary School Teachers Recruitment Rules, 2001. Clause (ii) of the prior permission dated August 21, 2003 allows a preference to be given to candidates who possess the requisite training specified therein. The resolution of the managing committee does not state that all candidates participating in the selection process were without any training. As the prior permission stands a candidate with training was required to be considered in preference to a candidate without training. In absence of data relating to the status in relation to training of each candidate participating in the selection process appearing in the resolution of the managing committee it could not be said with certainty that the selection process was conducted in accordance with the Rules of 2001 and the prior permission.

13. The next contention that the subsequent conduct of the State authorities in withdrawing the qualification of a candidate to possess training should also benefit the writ petitioners cannot be accepted. The writ petitioners are guided by the then Recruitment Rules of 2001. The Recruitment Rules of 2001 was amended in 2006 so far as the training requirement is concerned. The 2006 Notification withdrawing the training requirement does not say that the Recruitment Rules of 2001 stood amended retrospectively. The advertisement for selection states that the selection would be in accordance with the 2001 Rules. When the advertisement was published, the 2001 Rules were not amended. Benefit of a subsequent modification in 2001 Rules cannot be given to the writ petitioners as the process of selection was on the basis of a particular rules which cannot be construed to have been amended retrospectively.

14. Consequently, the decision of the Director of School Education impugned

herein cannot be faulted.

15. The ratio laid down in Mohinder Singh Gill and Anr. (supra) does not assist the writ petitioner in the facts of the instant case. The respondents are not supplementing anything to the impugned order by way of an affidavit or otherwise. The order impugned speaks for itself. I have not found any material irregularity in the order impugned warranting interference by me under Article 226 of the Constitution of India.

16. In such circumstances, I do not find any merit in W.P. No. 24947(W) of 2005. The same is dismissed however without any order as to costs.