
(2008) 06 CAL CK 0048
In the Calcutta High Court
Case No : F.M.A. No. 1319 of 2003

Sk. Rukunuddin

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Citation : (2008) 06 CAL CK 0048

Hon'ble Judges : Tapas Kumar Giri, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Ajoy Debnath, for the Appellant;A.N. Dhole, Pinaki Dhole for the Respondent No. 8., for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.

The Judgment of the Court was delivered by:

1. Basudebpur K.N.P.C High School in the district of Howrah obtained prior permission to fill up the post of Arabic Teacher on August 25, 1992. They asked the Employment Exchange to sponsor the eligible candidates. Employment Exchange sponsored the list of eligible candidates including three candidates, namely, Sk. Rukunuddin, Abdul Halim Mollick and Sk. Saifullah.

2. Sk. Rukunuddin was graduated with honours in Arabic. He also obtained post-graduate qualification. Abdul Halim Mollick was a science graduate together with special B.A in Arabic having 300 marks. School took the interview in early part of 1994 and sent the panel to the District Inspector. The District Inspector, however, did not take any step on the said panel. In 1995 Abdul filed a writ petition, inter alia, praying for a direction upon the District Inspector to expedite the process of consideration. While the said application was pending in 1997 Sk. Rukunuddin filed a writ petition challenging the said panel as according to him both Saifullah and Abdul did not have the requisite qualification and he should be given employment being the third empanelled candidate after Abdul and Saifullah

respectively. Both the writ petitions were heard together by learned Single Judge. Learned Single Judge rejected the contention of Sk. Rukunuddin and directed the District Inspector to consider the panel at an early date. In terms of the direction of the learned Single Judge the District Inspector approved the panel. Abdul accordingly got appointment in 1999 and since then he is working in the school as Arabic Teacher.

3. Being aggrieved and dissatisfied with the judgment and order of the learned Single Judge Rukunuddin filed the instant appeal which has now come up for hearing before us.

4. Mr. Ajoy Debnath, learned Counsel, appearing in support of the appeal, contends as follows:

i) As per the Government order dated July 05, 1980 an Arabic Teacher must have a graduate qualification with Arabic as one of the subjects. Abdul did not have Arabic in his graduation course as a combination subject. As such he was not entitled to be considered for such post.

ii) As per the Government circular dated April 02, 1993 to become eligible for the post of Arabic Teacher one has to study the relevant subject with at least 300 marks at the graduation level. Since Abdul was a science graduate he did not have Arabic as a combination subject at the graduation level. Hence he was not entitled to be considered for the post.

iii) As per the University circular of 1990 a candidate undergoing special B.A. with one subject only was not entitled to have the graduate qualification in that subject. He would, however, be allowed to participate in M.A. Examination in case he had passed the said subject in special B.A. Examination. Since Abdul studied Arabic in special B.A. as only subject such qualification was not relevant to be considered for the post.

5. To elaborate his submission Mr. Debnath has relied on a Division Bench decision in the case of Abu Dekkar Baidya vs. State of West Bengal & Ors. (MAT 1505/1990).

6. Opposing the appeal Mr. Pinaki Dhole, learned Counsel, appearing for Abdul has contended as follows:

i) Abdul was sponsored by the Employment Exchange in a selection process initiated as per the prior permission granted in August 1992. Hence the rules or circulars applicable on that day would be relevant for the purpose of determination of the controversy. Since the circular referred to by Mr. Debnath being dated April 02, 1993 was issued by the State after initiation of the selection process such circular could not be applied in the instant case.

ii) Assuming such circular was applicable and the judgment in the case of Abu Dekkar Baidya held the field the same was not applicable as such judgment could only have prospective operation.

iii) The interview took place in 1994. The panel was prepared contemporaneously. Hence the belated objection of Rukunuddin after three years should not be entertained by this Court and the learned Judge was right in rejecting the same.

7. In support of his contention Mr. Dhole relied on the following decisions:

i) Ashok Chand Singhvi Vs. University of Jodhpur and Others, .

ii) Baburam Vs. C.C. Jacob and Others, ;

iii) Ranjan Kumar Mondal vs. State of West Bengal & Ors., reported in 1998(1) CLJ 247.

8. We have considered the rival contentions of the parties. We are of the view that the circular appearing at page 29 dated July 06, 1993 had no application in the instant case as the selection process started much before the said date.

9. Let us now consider whether the circular dated April 05, 1980 created any impediment for Abdul to become eligible for the said post.

10. The relevant extract of the said circular is quoted below:

In reference to the above the undersigned has to state that under the revised staff pattern there is no scope for appointment of classical teacher. The Third Language teacher shall be at least a graduate with Sanskrit/Arabic as one of the subjects of studies (as one of the combination subjects) for the degree examination.

11. On a close reading of the said circular it would appear that the Arabic Teacher should be at least a graduate with Arabic as one of the subjects of studies at the graduate level. In the instant case Abdul was a science graduate. Hence there was no occasion for him to study Arabic at the said level. He, however, studied special B.A. with 300 marks in Arabic. Hence it could not be said that he did not comply with the requisite qualification prescribed in the circular dated July 05, 1980. In this regard the University Rules referred to above may be read along with the Circular. On a combined reading we find that the true purport of the circular was to avoid a claim for graduate degree after studying one singular subject. The post required Arabic as one of the subjects of studies. He studied Arabic as a singular subject in special B.A having 300 marks. It cannot be said that he did not have the requisite qualification. However, the position was made clear in the circular dated July 06, 1993. Had the said circular being made applicable Abdul would have been ineligible for the post. The ambiguity which was existent prior to 1993 was removed by the subsequent circular. Since the selection process started before that date let Abdul get benefit of such ambiguity. He is working in the post for last nine years, in our view, he should not be disturbed.

12. Thus we do not make any interference with the order of the learned Single Judge.

13. The appeal thus fails and is hereby dismissed.

14. There would be no order as to costs.

15. Urgent xerox certified copy of this order, if applied for, may be given to the parties.

Tapas Kumar Giri, J.

16. I agree.