
(1997) 06 CAL CK 0005
In the Calcutta High Court
Case No : Writ Petition 9768 (W) 1997

Sm. Manju Adhikary

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1997) 06 CAL CK 0005

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Amal Baran Chatterjee and Abdul Alim, for the Appellant; Manik Chandra Das and Goutam Mukherjee, for the Respondent

Judgement

Gitesh Ranjan Bhattacharjee, J.

1. In this case the main question upon which all the contentions hinge is whether, even if a candidate's name is not sponsored by the Employment Exchange to the concerned school in connection with the preparation of any panel for appointment to the post of a teaching or non-teaching staff in the school, such candidate can claim the opportunity to appear before the Selection Committee for consideration of empanelment for the concerned post along with other candidates sponsored by the Employment Exchange. It is submitted on behalf of the State-respondents that under the existing order issued by the Director of School Education, the names of the candidates are required to be sponsored by the Employment Exchange for consideration of empanelment for appointment to any post of teaching or non-teaching staff in a school and as such there is no scope of permitting the outside candidates, that is, candidates whose names have not been sponsored by the Employment Exchange to appear before the Selection Committee along with other candidates sponsored by the Employment Exchange for consideration of empanelment. It is on the other hand submitted on behalf of the petitioner that the petitioner is not directly challenging the recruitment procedure prescribed by the Director of School

Education and what the petitioner claims is that he should not be debarred from being considered along with other candidates sponsored by the Employment Exchange in connection with the preparation of the panel for the post in question in the concerned school. In support of the contention raised on behalf of the petitioner the decision of the Supreme Court in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, has been referred to. In the said case, the Supreme Court after considering the rival contentions of the parties lays down that it should be mandatory for the requisitioning authority/ establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition, and that in addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins and then consider the cases of all the candidates who have applied. The Supreme Court in that connection categorically observes that if the said procedure is adopted, fair play would be sub served and the equality of opportunity in the matter of employment would be available to all eligible candidates. This decision of the Supreme Court, therefore, clearly warrants that in (fee: matter of appointment to the teaching and non-teaching posts on schools also the mode of recruitment should not be restricted only to the channel of Employment Exchange excluding all other candidates, It is submitted on behalf of the State-respondents that the Supreme Court in the said decision considered the question in the background of the allegation that the names of the candidates were not forwarded by the employment exchange by adopting fair means and procedure according to seniority and it has also not been indicated in the said Supreme Court decision as to whether there was any prescribed procedure requiring the consideration of only the names of the candidates sponsored by the, employment exchange as the recruitment procedure prescribed by the Director of School Education. West Bengal requires here. It is also argued on behalf of State-respondents that since in the present case the recruitment procedure has been prescribed by the Director of School Education under his delegated power, the said Supreme Court decision would not be applicable to the cases, of appointment in schools covered by the recruitment procedure formulated by the D.S.E. The learned Advocate for the State-respondents also refers to the legal maxim that a thing which is required to be done in a particular manner under any prescribed procedure of law should be done either according to the prescribed manner or not at all. In my opinion, the said maxim has no application in the present case or to a case of this nature where the question of equal opportunity under Article 14 or 16 of the Constitution is invoked. It is needless to mention that even if there is a prescribed procedure in the matter and it appears that the prescribed procedure has the effect of violating the equality clause of the Constitution causing infraction of Article 14 or 16 in that case certainly the court will come into render necessary assistance vindicating and enforcing the equality clause of the

Constitution. It is also to be pointed out here that in the case under consideration of the Supreme Court in the reported decision referred to above the argument that was advanced concerning the fair means and procedure in the matter of forwarding of names by the employment exchange was an argument based on a general and possible situation rather than on a specific instance. Moreover whatever might have been factual background of the case in the said Supreme Court decision the Supreme Court evidently examined the matter on the touchstone of Articles 14 and 16 of the Constitution and therefore, the law laid down by the Supreme Court in the said decision is applicable to any situation in which the equality clause enshrined in the Constitution is violated by unduly restricting the consideration of the eligible candidates only to the channel of the employment exchange. It is also submitted on behalf of the State that if the open market candidates are also allowed to apply for a post in a school besides candidates sponsored by the employment exchange, to that case there may be large number of candidates for a single post for consideration and it may be even unmanageable for the school authorities to tackle the same. "Well, in my opinion that cannot be a ground for denying the equality of opportunity to the eligible candidates who are otherwise entitled to the benefit of the same. Moreover, that is only a hypothetical apprehension.

2. Therefore, having regard to the said Supreme Court decision and even without entering into the question whether the relevant recruitment procedure prescribed by the Director of School Education should be declared ultra vires or not this much can be safely held that a candidate who is otherwise qualified and eligible for a particular teaching or non-teaching post in a school should also be allowed to appear before the Selection Committee and he also should be considered for the post along with other candidates sponsored by the employment exchange for the post in question.

3. In that view of the matter I make my earlier interim order absolute and also disposed of the writ petition accordingly. It is needless to mention that a candidate who wants to appear for consideration before the Selection Committee along with the sponsored candidates from the Employment Exchange must, however, possess the requisite qualification necessary for the post in question and is otherwise eligible for the same according to the requirements for the post in question, such as regarding age limit, reservation, if any, etc.

4. The parties are granted liberty to take gist of the order for communication. This order will also govern the other matters being nos. W.P. 5044(W) of 97, W.P. 9783(W) of 97. W.P. 9798(W) of 97. W.P. 9977(W) of 97. W.P. 9882(W) of 97. W.P. 9886(W) of 97. W.P. 9992(W) of 97. W.P. 10007(W) of 97, W.P. 10008(W) of 97. W.P. 10009(W) of 97. W.P. 10010(W) of 97, W.P. 10116(W) of 97, W.P. 10063(W) of 97. W.P. 10262(W) of 97. W.P. 10291(W) of 97. W.P. 10301(W) of 97. W.P. 10407(W) of 97, W.P. 10409(W) of 97. W.P. 1043(W) of 97. W.P. 10460(W) of 97. W.P. 10443(W) of 97, W.P. 10165(W) of 97, W.P. 10519(W) of 97. W.P. 10502(W) of 97. W.P. 10596(W) of 97. W.P. 10604(W) of 97, W.P. 10605(W) of

97. W.P. 10628(W) of 97. W.P. 10651 (W) of 97. W.P. 10653(W) of 97. W.P. 10682(W) of 97. W.P. 10706(W) of 97. W.P. 10724(W) of 97. W.P. 10803(W)of 97. W.P. 10805(W) of 97. W.P. 10806(W) of 97. W.P. 10809(W)of 97. W.P. 10810(W) of 97. W.P. 10811(W) of 97. W.P. 10810(W) of 97. W.P. 10811(W) of 97. W.P 10812(W)of 97. W.P. 10814(W) of 97. W.P. 10815(W) of 97, W.P. 10819(W) of 97. W.P. 10863(W) of 97. W.P. 10367(W) of 97, W.P. 10868(W) of 97, and W.P. 10869(W) of, 97 and all those matters also stand disposed of accordingly.