
(2008) 11 CAL CK 0053
In the Calcutta High Court
Case No : Writ Petition No. 3712 (W) of 1998

Smt. Ankhi Mitra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 11 CAL CK 0053

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Mrinal Das, J.K. Adak and S. Das, Subir Sanyal and S. Sen, for the Appellant; Joydeep Sen, Pradip Sen and Anil Kumar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Indira Banerjee, J.—In this writ application, the petitioner has challenged the selection of the respondent No. 7 for appointment to the post of Assistant Teacher of Geography, Bolpur Girls High School, Bolpur District Birbhum, hereinafter referred to as the school. In 1997 a vacancy in the post of Assistant Teacher of Geography arose at the school. By a Memo No. 1411/G dated 30th April, 1997. The District Inspector of Schools accorded prior approval to the school to fill up the said vacant post. Thereafter candidates were requisitioned from the Employment Exchange.

2. On 30th June, 1997, the Employment Exchange concerned sponsored names of 19 candidates including the names of the petitioner and the respondent No. 7. The date of birth of the Respondent No. 7 was recorded as 4th August, 1961. The respondent No. 7 had thus crossed 35 years of age.

3. Both the petitioner and the respondent No. 7 were called for interview along with others on 18th August, 1997 and a panel of selected candidates was prepared in which the respondent No. 7 was placed in the first position, the respondent No. 8 in the second position and the petitioner in the third position.

The panel was approved by the District Inspector of Schools by his Memo No. 2932/G dated 26th September, 1997.

4. In the meanwhile, after the interview, and the preparation of the panel of selected candidates, but before approval of the panel, the Employment Exchange issued a Memo dated 20th August, 1997 rectifying an error in the description of the employment status of the respondent No. 7, which is not material to the issues involved in this writ application. On 30th September, 1997, a letter of appointment was issued to the respondent No. 7. The respondent No. 7 joined service as Assistant Teacher of Geography of the school on 3rd October, 1997.

5. On the same day, that is, on 3rd October, 1997, the petitioner moved a writ application being W.P. No. 18236 (W) of 1997 inter alia challenging the selection of the Respondent No. 7. The said writ application was disposed of by directing the Director of School Education to consider the matter in accordance with law, after giving the interested parties an opportunity of hearing and by passing a speaking order. Status quo was directed to be maintained in the meanwhile.

6. It appears that the selection was questioned mainly on two amongst other grounds. Firstly, it was contended that the Respondent No. 7, who had a Master of Arts degree in Geography and had been enjoying the post graduate scale of pay was over-qualified as the requisite qualification for the post for which she was selected was graduate. The second objection was on the ground that the respondent No. 7 was over-aged.

7. On 13th January, 1998, the Director of School Education rejected the representation of the petitioner inter alia holding that higher qualification was no bar for appointment. The Director of School Education also found that age bar did not apply to a candidate already in approved service. The aforesaid order of the Director of School Education, is under challenge in this writ petition.

8. Mr. Das appearing on behalf of the petitioner did not, in course of hearing, press the ground of over-qualification. Mr. Das, however, emphatically argued that the respondent No. 7 was over-aged in as much as she has crossed 35 years of age at the material time when she was appointed.

9. In support of his argument, of the respondent No. 7 being patently age barred, Mr. Das referred to the Rules for Recruitment of Teachers and Non-teaching Employees framed from time to time under Rule 28 of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969, hereinafter referred to as the 1969 Rules. Mr. Das made a comparative analysis of the Rules for Recruitment of Teachers and Non-teaching Employees as contained in the office memorandum dated 1st August, 1981, Memo No. 1828 (17) G.A. dated 31st August, 1987, Memo No. 2816 (17) G.A. dated 4th December, 1989, Memo No. 1049/1 (19) G.A. dated 20th May, 1993 and Memo No. 2066-GA dated 27th October, 1995 effective from 1st December, 1995 being the rules applicable to the selection in this case.

10. Mr. Das submitted that under the old rules, there was provision for in service teachers and a further provision for age relaxation for experienced teachers. Mr. Das submitted that the recruitment rules of 4th December, 1989 expressly provided that for Head Masters, Assistant Head Masters and in service candidates, the upper age limit was relaxable up to the date of superannuation.

11. Mr. Das drew the attention of this Court to paragraph 4(g) of Memo No. 1049/1(19) dated 20th May, 1993, which provides as follows:

4(g) 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 institutions is 35 years and is relaxable upto 40 years in case of experienced and highly qualified candidates as per existing Government order. Maximum age limit as relaxed for certain categories by Government orders from time to time shall be taken into consideration at the time of selection.

12. Mr. Das thereafter placed paragraph 4(g) of Memo dated 27th October, 1995 effective from 1st December, 1995 which is also extracted hereinbelow for convenience:

4(g) No person shall be selected for appointment unless he/she is a citizen of India and 18 years of age or above. Except for the post of Headmaster/Headmistress of High/Higher Secondary Schools and Superintendent of Senior Madrasahs, the maximum age limit for appointment in aided institutions is 35 years and is relaxable upto 40 years in case of S.C./S.T. candidates as per existing Government order. Maximum age limit as relaxed for certain categories by Government orders from time to time shall be taken into account at the time of selection.

13. Mr. Das argued that there was no provision in the recruitment rules, effective from 1st December, 1995 for appointment of in service teachers. Even assuming that in service teachers sponsored through the Employment Exchange could compete along with other candidates sponsored by the Employment Exchange, the age bar of 35 years would apply to in service teachers.

14. Mr. Das argued that the relaxation for experienced teachers had consciously been removed from the new rules, applicable to the petitioner. The age relaxation was expressly restricted to candidates belonging to Scheduled Castes and Scheduled Tribes.

15. Mr. Das submitted that Circular No. 3E-138/19/10491-560B dated 22nd December, 1992 of the Director of Employment which had been relied upon in the order impugned to justify relaxation of age limit was totally illegal, without jurisdiction and could not be relied upon. Significantly, however, there is no challenge in the writ petition to the said circular. Mr. Das argued that the circular dated 22nd December, 1992 of the Director of Employment was not a Government Order but a simple circular issued by the Director of Employment and in any case, it was cancelled and/or superseded by the recruitment rules of

1995.

16. Mr. Das finally argued that at the material time when the selection took place, the Selection Committee was not aware of the fact that the petitioner had been an in service candidate, as the Employment Exchange rectified the error in the employment status of the petitioner subsequently. Mr. Das referred to Craies on Statute Law (7th Edition) with regard to the effect of designed omission of words and submitted upon comparison of the rules, that in service candidates were not to enjoy any age relaxation. In *Raj Kumar and Others Vs. Shakti Raj and Others*, cited by Mr. Das the Supreme Court held that where the procedure of selection suffered from glaring illegalities, the candidate who had appeared for the selection unsuccessfully was not barred from questioning the selection.

17. The petitioner might question the selection. The question is, whether there is any such illegality in the selection process, that calls for interference under Article 226.

18. Mr. Das cited *Union of India (UOI) Vs. K.P. Joseph and Others*, where the Supreme Court held that, the rule that administrative orders conferred no justiciable rights, was subject to exceptions. When the order conferred upon the respondent, the right to have his pay fixed in the manner specified in the order that formed part of the conditions of his service and could be enforced. In this case, there is no right conferred on the petitioner, by Government Orders, that has been infringed.

19. The propositions of law laid down in AIR 1938 281 (Privy Council) *B.N. Mutto and Another Vs. Dr. T.K. Nandi*, , *Union of India Vs. C. Rama Swamy and others*, , *Gurnam Singh v. State of Rajasthan* 1971 SLR 799 are well-established. It is settled law that the intention of a provision of law is ordinarily to be gathered from its language. There can be no question of the Court taking recourse to speculation. It is equally settled that when old rules are substituted by new ones, the new rules would apply. It is nobody's case that the old rules are still in force. The rules of 1st December, 1995 are applicable in this case.

20. In exercise of powers under the extraordinary writ jurisdiction conferred by Article 226 of the Constitution of India, this Court does not sit in appeal on the merits of decisions taken by administrative authorities in legitimate exercise of their powers.

21. Similarly, when applicable rules and/or regulations are capable of more than one interpretation and the appropriate authority proceeds on the basis of one such interpretation, the writ court does not interfere, because another view might be possible, or even more plausible. In this case, the applicable recruitment rules, being the rules of 17th October, 1995, effective from 1st December, 1995 and in particular paragraph 4(g) thereof, provides that the maximum age limit as relaxed for certain categories by government orders from time to time is to be taken into account at the time of selection.

22. In passing the impugned order, the Director of School Education interpreted "government orders" to include the circular No. 3E- 138/19/10491-560B dated 22nd December, 1992 of the Director of Employment.

23. Even if Mr. Das's submission that the said circular is not a Government order is accepted, it is not for this Court to exercise appellate powers over administrative authorities amenable to its writ jurisdiction. The Director of School Education, bona fide, on interpretation of paragraph 4(g) of the 1995 Rules found that upper age limit of 35 years did not apply to in service candidates. The decision does not call for interference of this Court in exercise of its power of judicial review. Both Mr. Sen appearing for the Respondent No. 7 and Mr. Sanyal for the school authorities submitted that it was now well-settled that appointments could not be restricted only to candidates sponsored by the Employment Exchange. Several judgments were also cited in support of the aforesaid proposition.

24. The question of whether candidates not sponsored by the Employment Exchange could have been considered or not, is clearly academic, since the petitioner was duly sponsored by the Employment Exchange. The mis-description in the employment status of the Respondent No. 7 is of no consequence. Even if the respondent No. 7 were described as unemployed in the relevant communication of the Employment Exchange, it may reasonably be presumed that the Selection Committee ascertained the experience, qualification and employment particulars of the Respondent No. 7 at the time of interview.

25. Even if it is assumed that the Selection Committee proceeded on the basis that the Respondent No. 7, was at the material time unemployed and the respondent No. 7 was placed in the first position, on the assumption that she was not employed, that would make no difference. It would be preposterous to suggest that knowledge of employment status would make any difference to the selection.

26. On the other hand, if the employment status were to make any difference to the selection, it could reasonably be contended that the Selection Committee had acted unreasonably and taken into account extraneous factors.

27. There is no such infirmity in the selection and/or approval of the respondent No. 7 or in the impugned order that calls for interference of this Court under Article 226 of the Constitution of India.

28. The writ application is, in my view, thoroughly misconceived and the same is accordingly dismissed. Urgent xerox certified copy of this order, if applied for, be supplied to the applicant expeditiously subject to compliance of the requisite formalities.