

(2014) 08 CAL CK 0043
In the Calcutta High Court
Case No : W.P. No. 18192 (W) of 2014

Somnath Orao

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) 08 CAL CK 0043

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : L.K. Gupta, Kallol Basu and Suman Banerjee, Advocates for the Appellant; Amal Kumar Sen and Sabyasachi Mondal, Advocates for the Respondent

Judgement

Ashoke Kumar Dasadhikari, J.—The subject matter of challenge is the order impugned passed by Director of Public Instructions, West Bengal, dated 14th March, 2014 wherein the concerned D.P.I., although approved the appointment of Typist-1, Typist-2, Lady Attendant-1 & Sweeper-1 (Part Time), refused to give approval of six appointments of six Laboratory Attendants including the petitioner in different subjects.

2. Mr. Gupta, learned Counsel appearing on behalf of petitioner submits that by a memo dated 9th February, 2009 the appropriate authority sanctioned six posts of Laboratory Attendants viz. Laboratory Attendant in the department of Physics, Chemistry, Botany, Zoology, Computer and Geography. On that basis college authorities invited application by way of advertisement. Employment Exchange was also informed for sending names for such selection but Employment Exchange did not send names. Writ petitioner applied for the post of Laboratory Attendant in (Zoology) and he passed through written test and thereafter in interview and was empanelled by the selection committee. Panel was prepared following due process and as such there is no illegality. The governing body of the college by its resolution dated 25th January, 2011 approved the panel. Resolution taken by Government Body reads as follows:--

"Atendum-2, Appointment of Gr.-D staff. Principal placed before the meeting the panels for appointment of Group-D staff in the posts of Lab. Attendants, Lady Attendant, Bearers, Peons, Guard and Mali prepared by the selection sub-committee in its meeting dated 15.01.2011 for appointment of non-teaching staff and it was perused and discussed in the meeting.

It is resolved that the panel prepared as above be approved and that the Principal be authorized to issue appointment letters to the persons as below according to the panels, giving seven days of time from the date of receipt of the appointment letters and if any candidate fails to join within the stipulated time the persons next to panel be given appointment out of the panel recommended by the selection sub-committee.

Name of the persons:--

1. Sri Rajesh Paswan (SC) Lab Attendant-1st post.
2. Sri Debdulal Banerjee (Gen) Lab. Attendant-2nd post.
3. Sri Mintu Chakraborty (Gen) Lab. Attendant-3rd post.
4. Sri Som Nath Orao (ST) Lab. Attendant-4th post.
5. Sri Palash Roy (Gen) Lab. Attendant-5th Post.
6. Sri Pranab Chawdhury (Gen) Lab. Attendant-6th post.
7. Sri Rahul Chatterjee (Gen) - Bearer/Peon.
8. Abdur Rahaman (Minority) - Bearer.
9. Sri Sourav Sarkar (Gen) - Bearer.
10. Sri Debnjan Gunguli (Gen) - Peon.
11. Biplab Dey (Gen) - Bearer.
12. Sri Smarat Basu (Gen) - Bearer.
13. Smt. Sabrati Singh (SC) - Lady Attendant.

Also resolved that the persons namely 1) Sri Biman Singh (ST) in the post of Guard (Mor), 2) Sri Soudip Bhattacharjee, (Gen) in the post of Lib. Bearer (Eve), 3) Sri Abhi Ghosh (OBC) in the post of Mali and 4) Sri Debasis Chatterjee (Gen) in the post of peon be appointed out the panel against the resultant vacancies due to retirement/death/promotion of Sri Ganesh Das, Guard (Mor). Late Benoy Mukherjee, Lib. Bearer (Eve), Sri Sachin Kr. Sarkar, Bearer and a creation of a new post of Mali as per staff pattern respectively.

Principal be authorized to issue appointment letters to the above persons and their salaries be given from the college fund till regularization of their appointment by the Govt. of West Bengal in due course."

3. Mr. Gupta submits petitioner's name was in the panel and in view of the resolution dated 25th January, 2011 petitioner was issued appointment letter on 27th January, 2011 by the Principal of Barasat College. Petitioner joined the post on 1st February, 2011 and he is continuing his service. Unfortunately the concerned authorities have not yet approved his appointment and no pay fixation was also made.

4. Petitioner being aggrieved with the impugned inaction moved before this Hon'ble Court filing a writ petition W.P. No. 27240 (W) of 2013 and that writ petition was disposed of on 7th November, 2013 and the following order was passed:--

"Let the affidavit of service filed in Court today be kept with the record.

The petitioner was appointed as a Laboratory Attendant in the Barasat College, Barasat. He joined the said post on 1st February, 2011.

His grievance is that in spite of being duly appointed has neither been approved nor his pay has been fixed by the appropriate authority. The college authority had already sent necessary documents to the respondent No. 3 but in spite of it produced no result. Mr. Gupta the learned Senior Counsel for the petitioner in his usual fairness has drawn the attention of the Court to the fact that the petitioner had made an application under the Right to Information Act to the college and in reply thereto the respondent No. 3 had informed the college that the letter had made appointment in excess of the number of sanctioned posts.

Be that as it may, at this stage, we are concerned with the appointments, which were made against the sanctioned posts. Mr. Gupta submits that the representation made by the petitioner to the respondents No. 3 on July 15, 2013 which has been annexed to the writ petition as annexure P5 has not been replied to by the respondent No. 3 nor has any step pursuant thereto been taken by any authority.

In such view of it, instead of keeping the writ petition pending it is disposed of by directing the respondent No. 3 to dispose of this representation dated July 15, 2013 (Annexure P5 to the writ petition) within a period of six weeks from the date of the communication of the order and to communicate the decision to the petitioner within a week thereafter. The respondent No. 3 is further directed to divert the college to transmit all the necessary documents before any such decision in the matter is taken by the said authority.

The writ petition is disposed of.

The petitioner is directed to annex a copy of this representation dated July 15, 2013 while communicating this order to the respondent No. 3.

The writ petition is disposed of.

Since this writ petition is being disposed of without calling for any affidavits, the allegations made therein are deemed to have been denied.

There shall, however, no order as to costs."

5. In view of the aforementioned order respondent No. 3 considered the representation dated 15th July, 2013 giving an opportunity of hearing to the petitioner and passed an order giving approval of appointments in other posts but refused approval of appointments of Laboratory Attendants on the alleged ground that there are some irregularities in the selection process. It was also mentioned that the Inspection Team submitted their report on 30th April, 2012 and they have opined that the mode and process of recruitment against various non-teaching posts and the panel prepared by the college was not in order.

6. Mr. Gupta submitted that the petitioner was never supplied with the copy of the report nor the impugned order specifies the defects in the selection process. He further submits that there was nothing wrong in the selection process. Different panel was prepared for other categories of employees through same selection process and those panels along with the panel of Laboratory Attendants were approved by governing body. Governing body also directed the Teacher-in-Charge to issue appointment letters to the selected candidates. Petitioner was also given appointment. All records including resolution of governing body was sent to the D.P.I. for approval. Although all other panels and appointments were approved, panel of Laboratory Attendants were not approved without any valid reason.

7. Mr. Gupta submitted that the Teacher-in-Charge of the college made some mistakes and on one occasion he issued some intimation to the D.P.I. showing appointments in favour of some more candidates although governing body resolution clearly shows that selection and panel prepared for the posts of six Laboratory Attendants were accepted and specific names of selected candidates including petitioner were mentioned and the governing body also directed to give appointment to the selected candidates. Mr. Gupta further pointed out that in a subsequent resolution the governing body once again considered the matter and took resolution recording names of selected candidates as well as the respective subject. Petitioner was selected as Laboratory Attendant in Zoology. It was also submitted that appointment given to the petitioner was duly communicated to D.P.I. by the Teacher-in-charge. Therefore, the writ petitioner is entitled to have his approval and appropriate pay scale from the date of his appointment.

8. Mr. Gupta, submitted that the concerned Teacher-in-Charge by his subsequent letter admitted his mistake and informed that mistake on the part of the college is bonafide. He also informed that a declaration made by several categories of non-teaching staff who were appointed along with Laboratory Attendants in the form that in the event of regularization of Lab. Attendants of the college working with them with almost same duration of working period, college Principal have no objection from any corner and at any forum or Court of Law.

9. Mr. Gupta, submitted that no copy of Inspection report was ever given either to the petitioner or to the college authority. According to him petitioner being a

selected candidate was given appointment by the college and as such he acquired a right to continue in the said post and he has a right to be confirmed in the post. He submits after petitioner's appointment enquiry report was obtained behind the back of the petitioner without giving any opportunity of hearing. Therefore, the alleged inspection report is not valid and also not at all acceptable in the eye of law.

10. Mr. Gupta, submitted in both resolution taken by the governing body, petitioner's name was approved as a selected candidate would definitely create a right in favour of the petitioner who was given appointment as Laboratory Attendant in Zoology.

11. Learned Counsel appearing for the college authorities submits that some mistakes were made by the previous Principal of the college but the original copy of the resolution shows that petitioner was duly selected through proper selection process i.e., written test and interview. He submits that there is no illegality in holding such selection. According to him, the Employment Exchange was notified but names were not sent and later on college authorities published advertisement inviting applications and all the applicants were issued interview letters. Applicants who were present, in response to the call letters of the college were allowed to take part in the written test and interview. Thereafter panel was prepared and approved by the governing body of the college. All appointment letters were issued.

12. Learned Counsel for the college authorities submitted that subsequently governing body took a resolution giving names of respective subjects in which they were appointed as Laboratory Attendants. According to him, there is no illegality whatsoever. He submitted the petitioner who was issued appointment letter have joined the post long back is continuing without any break.

13. Mr. Sen learned Counsel appearing for the State authorities submitted that the observations of the Inspection team shows that no reminder was sent to Employment Exchange for getting names from the Employment Exchange. Learned Counsel submits that this is one of causes for which this Inspection team raised their doubt about the selection process. According to the learned Counsel the selection process is vitiated because of this reason.

14. Mr. Sen further submitted that against eleven sanctioned posts seventeen appointments were given. He submits appointment letters did not reach the applicants. According to him appointments given by the College are all illegal. He submits decision taken by D.P.I. is lawful and valid. It was submitted that a fresh selection be held given opportunity to the candidates who applied for the posts.

15. Mr. Gupta, assisted by Mr. Basu in reply submitted that the college authorities have informed the Employment Exchange but they did not refer names. Otherwise also the provisions under which Employment Exchange was to be intimated for referring the names of candidates have been declared ultra vires by this Court. He also referred the judgment reported in 2008 (1) CLJ (CAL)

(Prabir Kr. Maji v. State of West Bengal & Ors.). He submitted that State authorities have not preferred appeal. In view of the aforementioned judgment there is no necessity even to inform the Employment Exchange for referring the names.

16. According to Mr. Gupta, the Government circular issued on 9th September, 2008 was duly complied with by the college authorities. Mr. Gupta submitted that there is no such provision for giving reminder to the Employment Exchange. Employment Exchange is obliged to send the names immediately on receipt of the requisition. According to him there is no illegality in the selection process.

17. Mr. Gupta submitted that against eleven sanctioned posts eleven appointments were given. However, previous Teacher-in-Charge of the College made some mistake which was admitted by him. Mr. Gupta submitted that by two resolutions governing body approved panels prepared for filling up eleven sanctioned vacancies recording the names of six selected Laboratory Attendants. Therefore, there cannot be any confusion about the selected Laboratory Attendants. Those six Laboratory Attendants including the petitioner were given appointment. According to him there is no illegality and as such no further selection to be made.

18. I have carefully considered the submissions made by the learned Counsel appearing for the respective parties. It is admitted position that eleven posts were sanctioned out of which six posts for Laboratory Attendants. College authorities informed Employment Exchange for referring names but names were not sent. There is also no provision to send repeated reminders to Employment Exchange. It is not in dispute that college authorities invited applications for different posts including six Lab. Attendants. Writ petitioner being an aspirant candidate in the Zoology stream responded to the invitation and he was called for written test and interview. He appeared in the written test, interview and was selected and also empanelled. It is also evident from the resolutions dated 25th January, 2011 and 16th October, 2012 that panel of six candidates selected for the posts of Laboratory Attendants were approved and the writ petitioner's name was recommended by the governing body for issuing appointment letter. Teacher-in-Charge was directed to take appropriate steps for giving appointment. Petitioner was issued appointment letter and he joined the post. He is continuing his service since the date of joining but D.P.I. did not grant approval to the petitioner. Petitioner had to come up before this Hon'ble Court and this Hon'ble Court passed an order directing the respondent No. 3, Director of Public Instructions to consider the representation of the petitioner upon giving an opportunity of hearing and to pass order. D.P.I. heard the petitioner but refused to grant approval by his impugned order on the alleged ground that there was a report and as per report, mode and process of recruitment held by the college authorities was not in order. It was not specifically mentioned which mode or process was violated. The order is vague in that respect. Surprisingly the impugned report which was used and relied upon by D.P.I. was never supplied

either to the college or the petitioner who is seriously prejudiced. Neither the college nor the petitioner was given opportunity to deal with the alleged report. There is gross violation of principles of natural justice. Therefore, the order impugned is not sustainable in law.

19. So far service of interview letters are concerned there is no allegation by any of the applicants that interview letter was not served or due to delayed service any one failed to appear in the selection process. Although it was mentioned in the order that due to postal lapses some interview letters were not received by the applicants, but there is no such evidence on record to come to such conclusion. Therefore, this finding is without any basis. It is very interesting to note, when D.P.I. granted approval of appointment in the posts of Typist-1, Typist-2 and Sweeper-1 (part time), he did not approve the appointment of the petitioner, although selected through the same selection process. If the entire selection process is vitiated as per report of the Inspection team, then he ought not to have granted approval for the posts of Typists, etc. Therefore, impugned order is a product of non-application of mind. The concerned D.P.I. in fact acted in a partial manner and also caused discrimination and as such the impugned order is liable to be set aside.

20. In view of the aforementioned reasons the impugned decision is not sustainable in law and the decision impugned is set aside. The concerned D.P.I. is directed to grant approval of the panel as well as appointment of the petitioner and pay arrears dues since the date of his joining after giving proper pay fixation, within six weeks from the date of communication of this order. The Finance Department, Govt. of West Bengal is also directed to release fund for such payment without any further delay.

21 This writ petition is, thus, disposed of.

22. There would be no order as to costs.

23. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties.