
(2014) 02 CAL CK 0085

In the Calcutta High Court

Case No : A.S.T. No. 223 of 2013 and A.S.T.A. 110 of 2013

Souvik Mukherjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Citation : AIR 2014 Cal 85 : (2014) 1 CALLT 618 : (2014) 2 CHN 568 : (2014) 2 ESC 829 : (2015) 1 WBLR 320

Hon'ble Judges : S. Chatterjee, J;P.K. Chattopadhyay, J

Bench : Division Bench

Advocate : Biswaroop Bhattacharyya and Sirsanya Bandyopadhyay, Advocate for the Appellant; Amalendu Mitra, Ms. Sravani Chanda, Kallol Basu, Uttam Kr. Mazumdar, Sujoy Bandyopadhyay, Sadhan Roy Chowdhury and Aniruddha Sen, Advocate for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The appellant herein has preferred the instant appeal assailing the judgment and order dated 18th November, 2013 passed by the learned single Judge and also filed an application for stay. Both the appeal and the connected application have now been listed for hearing. Going through the records, we find that the Public Service Commission, West Bengal issued an advertisement being Advertisement No. 02/2013 for holding the West Bengal Judicial Service Examination, 2013. The appellant/petitioner herein submitted an application in the prescribed format in response to the aforesaid advertisement.

2. In the said application form, the appellant petitioner disclosed that he was in full time engagement in a law firm as an associate. In view of the aforesaid disclosure, respondent Public Service Commission refused to treat the appellant as an eligible candidate for participating in the West Bengal Judicial Service Examination, 2013 and therefore refused to issue the admit card to the said appellant/petitioner. The appellant/petitioner thereafter submitted a representation to the Chairperson, Public Service Commission referring to Rule

49 of the Bar Council of India Rules for allowing the said appellant to appear in the West Bengal Judicial Service Examination, 2013 upon treating the said appellant as an eligible candidate.

3. In the said representation, the appellant herein specifically submitted that the Public Service Commission have no reason to treat the said appellant as an ineligible candidate and refuse to participate in the West Bengal Judicial Service Examination, 2013. The said appellant/petitioner was engaged in Private Law Firms as an associate and had rendered professional services as an advocate. Therefore, according to the said appellant it could not be said that the said appellant had ceased to be an advocate on account of the aforesaid engagement. The Chairperson, Public Service Commission however, did not pass any order in favour of the appellant/petitioner upon considering the aforesaid representation.

4. The appellant thereafter filed a writ petition before this Court. The appellant herein was allowed to participate in the written examination pursuant to the interim order passed by the learned single Judge in the aforesaid writ petition. Undisputedly, the appellant herein was successful in the written examinations conducted by the Public Service Examination but was not called for interview since the writ petition was finally heard and dismissed in the meantime by the impugned judgment and order passed by the learned single Judge, which is now under appeal.

5. Thereafter the appellant/petitioner preferred an appeal assailing the said judgment and order passed by the learned single Judge and also filed an application in connection with the said appeal for staying the operation of the impugned judgment and order under appeal passed by the learned single Judge. A Division Bench of this Court while considering the said application for stay on the earlier occasion passed an interim order in the matter whereby the appellant/petitioner herein was allowed to participate in the interview and the performance of the said appellant was assessed along with other eligible candidates.

6. However, in the aforesaid interim order it was made clear that the appellant herein should not be appointed to any post of Judicial Service on the basis of his performance in the West Bengal Judicial Service Examination, 2013 without obtaining specific leave of this Court. Division Bench also granted liberty to the parties herein to file affidavits in the matter.

7. Now, the appeal and the connected application filed on behalf of the appellant herein have been listed for final hearing before this Court. Assailing the impugned judgment and order under appeal passed by the learned single Judge, learned advocate representing the appellant submitted that the appellant herein had duly satisfied the eligibility criteria mentioned in the advertisement issued by the Public Service Commission for participating in the West Bengal Judicial Service Examination, 2013 and therefore, the said Public Service Commission had no right and/or authority to debar the appellant herein from appearing in the West Bengal Judicial Service Examination, 2013.

8. It has been submitted on behalf of the respondent Public Service Commission that the appellant/petitioner herein was not entitled to practice as an advocate on the date of the advertisement issued for the aforesaid Judicial Service Examination since the said appellant was in full time employment at the relevant point of time.

9. The learned advocate representing the Public Service Commission Authorities submitted that the appellant herein lost his right to practice after accepting a full-time job since full-time salaried employee has no right to practice as an advocate. The learned advocate of the Public Service Commission Authorities also referred to Rule 49 of the Bar Council of India Rules.

10. Mr. Amalendu Mitra, learned advocate representing the respondent Public Service Commission Authorities specifically urged before this Court that the appellant herein after accepting a full-time job had lost his right to practice and his enrolment as an advocate in the roll of the State Bar Council deemed to be suspended automatically. Mr. Mitra further submitted that the appellant herein was not entitled to practice as an advocate on the date of advertisement issued for the aforesaid Judicial Service Examination and therefore was not eligible to sit for the said examination.

11. Mr. Mitra also submitted that the respondent Public Service Commission has rightly debarred the appellant/petitioner herein from appearing at the West Bengal Judicial Service Examination, 2013 on proper grounds.

12. Mr. Kallol Basu representing the respondent No. 6 adopted the arguments advanced on behalf of the respondent Public Service Commission Authorities.

13. The Public Service Commission, West Bengal in the Advertisement No. 02/2013 specifically mentioned the qualifications necessary for a candidate to participate in the West Bengal Judicial Service Examination, 2013. The prescribed qualifications mentioned in the aforesaid advertisement issued by the Public Service Commission, West Bengal are set out hereunder:-

Qualification: (I) A citizen of India or such a person of other nationality as declared eligible by Government of India; (II) A degree in Law from any University or Institution affiliated to any University recognized by the State Government or the Central Government; (III) Enrolment as an advocate in the roll of Bar Council of any State or Union Territory in India on the date of advertisement for the examination; (IV) Ability to read, write and speak in Bengali (not required in the case of Nepali speaking candidates of three Hill Sub-divisions of Darjeeling District, viz., Darjeeling Sadar, Kalimpong and Kurseong).

14. There is no dispute that the appellant/petitioner herein fulfilled the eligibility criteria mentioned in the advertisement since the appellant is a citizen of India and obtained the degree of Law from the University of Calcutta, a University recognized by the State Government/Central Government. The appellant is also enrolled as an advocate in the roll of the Bar Council of West Bengal.

15. The learned counsel representing the Public Service Commission Authorities submitted that the appellant/petitioner herein had voluntarily suspended his right to practice as an advocate by accepting a full-time salaried job and therefore, the said appellant was not entitled to appear in the West Bengal Judicial Service Examination, 2013.

16. Mr. Mitra relied upon Rule 49 of the Bar Council of India Rules. The relevant portion from the aforesaid Rule 49 is set out hereunder:-

49. An Advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practise as an Advocate so long as he continues in such employment.

17. From the aforesaid Rule, it is clear that an advocate after accepting full-time job should intimate the concerned Bar Council and is not entitled to practise as an advocate so long he would be in the full-time job.

18. The appellant herein furnished certain information with regard to his engagement with the law firms in answer to the queries mentioned in Column No. 15 of the Application Form as hereunder:-

15. (a) Are you presently employed? (Write "Yes" or "No"): Yes

(b) If yes, give details:

In answer to query No. (a) of Column No. 15 appellant herein wrote "Yes". The said appellant also disclosed the fact that he had served in a law firm in Delhi and subsequently in Mumbai as associate. On the basis of the aforesaid information disclosed by the appellant herein, respondent Public Service Commission Authorities arrived at the conclusion that the appellant herein did not fulfill the eligibility criteria for participating in the West Bengal Judicial Service Examination, 2013 and therefore debarred him from appearing at the aforesaid Judicial Service Examination. The appellant herein disclosed his later engagement with the respective law firms which were not properly considered by the Public Service Commission Authorities.

19. The learned advocate of the appellant submitted that the Public Service Commission Authorities were confused by the aforesaid information disclosed by the appellant herein in the Application Form and erroneously arrived at the conclusion that the appellant herein was not eligible to participate in the West Bengal Judicial Service Examination, 2013 without asking any further information and/or clarifications from the appellant herein.

20. The learned advocate of the appellant submitted before this Court that the respondent Public Service Commission Authorities should have examined the engagement letter issued by the law firms before arriving at the conclusion that the appellant herein was a full-time salaried employee on the date of

advertisement issued for the said Judicial Service Examination.

21. Scrutinizing the engagement letters, we find that the appellant herein was never appointed as full-time salaried employee by the law firms. As a matter of fact, the appellant herein was a party to a retainer agreement. In order to avail the services of the appellant herein as a lawyer concerned Lawyers" Firm/ Solicitors" Firm retained the appellant as an associate against monthly fees. The acceptance of the retainer by the appellant herein against monthly fees could not be treated as a full-time employment against monthly salary. The retainer agreement of a law firm in respect of an advocate cannot be equated with the letter of appointment in respect of a full-time salaried employee.

22. Furthermore, the retainer of a firm cannot be part-time or full-time since during the period of retainer, a retainer cannot entertain any client prejudicing or affecting the interests of the law firm. The appellant/petitioner herein had unnecessarily complicated the matter while furnishing the information in respect of the queries mentioned in Column No. 15 of the Application Form which ultimately prompted the Public Service Commission Authorities to declare the appellant/petitioner herein as ineligible candidate for participating in the West Bengal Judicial Service Examination, 2013.

23. The appellant/petitioner all along knew that the retainer agreement with any firm could not be treated as full-time employment in the firm as a salaried employee specially when retainer fees could not be treated as salary. Therefore, the appellant herein had no occasion to furnish confusing information regarding his engagement as retainer in the law firms which had misled the Public Service Commission Authorities.

24. Mr. Uttam Mazumdar, learned advocate representing the Bar Council of West Bengal submitted before this Court that the appellant herein is still enrolled as an advocate under the Advocates Act, 1961 in the roll of the Bar Council of West Bengal.

25. Public Service Commission, in our opinion, had no authority to come to the conclusion that the appellant herein had ceased to be an advocate in view of accepting the retainer in a law firm since the Bar Council of West Bengal never took any such decision in respect of the appellant herein under the Advocates Act, 1961. Bar Council is the competent authority to take any decision in respect of an enrolled advocate and not the Public Service Commission. The respondent Public Service Commission Authorities neither asked the appellant herein to furnish any explanation with regard to his engagement with the law firms as an enrolled advocate nor even consulted the Bar Council of West Bengal in order to ascertain the validity of the enrollment of the said appellant as an advocate. The Public Service Commission Authorities exceeded its jurisdiction and authority by coming to the conclusion that the enrollment of the appellant herein as an advocate was not valid on the date of advertisement issued for the West Bengal Judicial Service Examination, 2013 notwithstanding the fact that the

enrollment of the appellant as an advocate in the roll of Bar Council of West Bengal was never cancelled and/or even suspended by the Bar Council of West Bengal.

26. An Advocate can under no circumstances automatically cease to be an Advocate unless specific order is passed by the Bar Council in accordance with law removing and/or suspending the name of the said Advocate from the roll of the concerned Bar Council. In the present case, the appellant-petitioner herein therefore, cannot automatically cease to be an Advocate or even deemed to cease to be an Advocate on the date of the advertisement issued by the Public Service Commission authorities for the West Bengal Judicial Service Examination, 2013 in the absence of any deeming clause.

27. We are of the opinion that the learned single Judge while deciding the matter did not decide the issues in their correct perspective and erroneously upheld the decision of the Public Service Commission Authorities to the effect that the appellant herein was not eligible to appear in the West Bengal Judicial Service Examination, 2013.

28. Scrutinizing the retainerhip agreement and all other relevant records including the enrollment certificate of the appellant issued by the Bar Council of West Bengal and further considering the submissions of the learned counsel of the respective parties, we are of the opinion that the retainerhip agreement of the appellant with the respective law firms could not be treated as full-time employment against monthly salary since the appellant herein was never appointed by the concerned law firms by issuing letter of appointment and the appellant herein also did not receive any monthly salary. The said appellant undisputedly accepted the retainerhip fees only for providing his services.

29. The retainerhip agreement did not establish employer-employee relationship between the appellant and the concerned Lawyers' Firm/Solicitors Firm. The appellant herein being the retainer could not appear before any court of law prejudicing the interests of the concerned law firm which had retained the appellant herein but legally there was no bar for the said appellant to appear before any court of law without prejudicing the interests of the concerned law firms since the retainerhip agreement between the parties herein could not debar the appellant from appearing before a court of law so long the said appellant is enrolled as an advocate in the roll of the Bar Council, West Bengal.

30. In any case, the appellant herein was duty bound to appear in Court on behalf of the clients of the concerned law firms which retained the appellant, if necessary.

31. For the aforementioned reasons, we hold that the appellant herein was duly enrolled as an advocate in the roll of Bar Council of West Bengal on the date of advertisement issued by the Public Service Commission for holding the West Bengal Judicial Service Examination, 2013 and fulfilled all the prescribed qualifications mentioned in the qualification clause of the said advertisement No.

02/2013.

32. In the aforesaid circumstances, the decision of the respondent Public Service Commission debarring the appellant herein from appearing at the West Bengal Judicial Service Examination, 2013 cannot be sustained in law and the same is therefore, quashed.

33. For the identical reasons, impugned judgment and order under appeal passed by the learned single Judge cannot be sustained and the same is therefore, set aside. The respondent authorities herein are directed to take appropriate steps for recruitment of the appellant in West Bengal Judicial Service on the basis of his performance in the West Bengal Judicial Service Examination, 2013 along with other successful candidates.

34. With the aforesaid directions, we allow both the application as well as the appeal without awarding any cost.

35. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Samapti Chatterjee, J.

I agree.