

(2003) 05 CAL CK 0016
In the Calcutta High Court
Case No : C.O. No. 15117 (W) of 1996

Sri Amalendu Bera

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2003) 3 CALLT 53 : (2004) 1 CHN 53

Hon'ble Judges : Prabir Kumar Samanta, J

Bench : Single Bench

Advocate : Debasish Das, for the Appellant; Swadesh Ranjan Bhunia and Kishore Dutta for Respondent No. 12, A.B. Chatterjee and Anadi Banerjee for Respondent Nos. 6 to 8, Shyamal Bhattacharjee, for Respondent No. 14 and Bhudeb Bhattacharjee and Alachhaya Sil, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Samanta, J.—This writ petition concerns an appointment in the post of an Assistant Teacher in Work Education and Physical Education Group in Erenda High School in the District of Midnapore. A vacancy in the said post having arisen the respondent school authorities granted permission to fill up the same. Pursuant to such permission the concerned local Employment Exchange was approached by the school authority. The said Employment Exchange had sponsored 20 candidates including the writ petitioner, out of which one had the post graduate degree in Physical Education. The writ petitioner accordingly made a representation before the authority concerned alleging that for the purpose of recruitment in the said post for which permission had been granted by the authority concerned to fill up the same by a graduate candidate. Concerned Employment Exchange had no authority to sponsor a post graduate candidate along with other graduate candidates. The petitioner on such allegation moved a writ petition being C.O. No. 12336 (W) of 1996. The same was finally disposed of by directing the D.I. of Schools (S.E. Midnapore) to consider the said representation of the writ petitioner. The D.I. of Schools during the pendency of

the present writ petition had disposed of the said representation of the writ petitioner by holding that the said representation of the writ petitioner was not tenable in the facts and circumstances of this case as in the selection process no extra weightage would be given to the said post graduate degree holder. In the meantime the Selection Committee had prepared a panel of three selected candidates in order of merits which included the respondent No. 12, another candidate and the respondent No. 14. The respondents No. 12 and 14 have been added as party respondents in the present writ petition on the application of the writ petitioner. The respondent No. 12 is the candidate with post graduate degree in Physical Education who had been sponsored as such by the concerned Employment Exchange.

2. In the present writ petition the petitioner has raised the self same question that the respondent No. 12 ought not to have been sponsored by the concerned Employment Exchange as he had obtained post graduate degree before being sponsored as such and had accordingly alleged that the panel of selected candidates as prepared by the School Authority by including the respondent No. 12 is illegal in the eye of law. While this writ petition was entertained by this Court by an interim order the D.I. of Schools concerned was directed to consider the case of the writ petitioner. The said D.I. of Schools by his order dated 22nd February, 2000 has held that there has not been any illegality and/or irregularity in the preparation of panel as above by the Selection Committee of the School by including the name of the respondent No. 12 in the said panel as the said respondent No. 12 had not been given any extra marks in the selection process because of his post graduate qualification. The said respondent No. 12 had been placed in the top of the panel, has already been appointed in the said post. The respondent No. 14 having had been placed at serial No. 3 in order of merits in the said panel the question of his appointment does not arise as the respondent No. 12 has already been given appointment in the said post. The other candidate who had been placed at serial No 2 in the said panel was though added as party respondent to this writ petition has not made his appearance in this writ petition.

3. In these state of affairs the question has been raised on behalf of the writ petitioner as to whether the entire selection process as also the appointment in favour of the respondent No. 12 upon approval of the panel of selected candidates has been made in accordance with the provisions of law inasmuch as the said respondent No. 12 had been sponsored along with other graduate candidates by the concerned local Employment Exchange even though he had obtained his post graduate degree before being sponsored as such. Mr. Debasish Das, learned advocate appearing on behalf of the petitioner contended that the concerned local Employment Exchange had no jurisdiction to sponsor a post graduate candidate for which the National Employment Exchange was the sole authority. In support of such contention Mr. Das referred to the single Bench decision of this Court reported in 1994 (2) CLJ 450 (Bipadtaran Patra v. The State of West Bengal). In the said case the petitioner was the only candidate having a post graduate degree amongst the candidate sponsored by the

concerned local Employment Exchange for the purpose of recruitment in the post of an Assistant Teacher. The School Authorities refused to allow the petitioner to appear at the interview. The writ petition filed by him for a direction upon the school authority to permit him to appear at the interview was dismissed in view of Rule 4(a) and Rule 6(k) of the Recruitment Rules prescribing procedure for recruitment of teaching and non-teaching staff of secondary schools. In particular Rule 4(a) of the said Recruitment Rules provides as follows:--

"On receipt of the prior permission, the school authorities shall approach the local Employment Exchange for sponsoring the names of the candidates up to honours graduate level and National Employment Exchange for post graduate candidates according to prior permission within seven days."

4. Before going into the aforesaid question as raised in this writ petition, it is necessary to decide as to whether the petitioner is a party aggrieved for the purpose of moving this writ petition. Evidently the writ petitioner had been interviewed and considered for selection by the Selection Committee of the School. It has been stated in the affidavit-in-opposition filed by the respondent No. 12 that the petitioner was placed at serial No. 13 in order of merits upon selection amongst the 14 candidates who were interviewed by the Selection Committee. The writ petitioner has not made out a case on the basis of any material that he was likely to be included in the panel of three selected candidates in the event the said respondent No. 12 had not been considered for selection. Even on the basis of his ranking in order of merits as per the selection he was not entitled to be included in the panel of three selected candidates and as such the petitioner is not an aggrieved party in respect of the panel prepared by the Selection Committee of the School. Because he has not been deprived in any event of a legal right of being included in a panel of selected candidates. The Supreme Court in the decision reported in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, held that in order to have the focus standi to invoke certiorari jurisdiction the petitioner should be an aggrieved person. If it is demonstrably clear that the petitioner has not been denied or deprived of a legal right, he has not sustained injury to any legally protected interest, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something, he has not been subjected to a legal wrong, he has suffered no legal grievance, he has no legal peg for a justiciable claim to hand on, then he is not a person aggrieved. On the principle as above as laid down by the Supreme Court and also upon consideration that the petitioner has not been able to establish that because of the selection of the candidates as above, his right for being included in the panel of selected candidates has been directly affected, the petitioner cannot be termed as an aggrieved person for the purpose of recruitment in the said post. Therefore, I am of the view that the writ petition on behalf of the petitioner is not maintainable. In this connection the contention of the respondent No. 14 in support of the writ petition cannot also be accepted inasmuch as he had not approached this Court independently by alleging and Illegality whatsoever in the process of selection. That apart the /

respondent No. 14 has already been included in the panel of selected candidates at serial No. 3 in order of merits. In order of merits he was not entitled to be appointed even if the respondent No. 12 who was placed at the top of the panel had not been included in the panel of selected candidates. The respondent No. 14 having had not challenged the process of selection all through out and further having had been included in the panel of selected candidates cannot be allowed to raise objection against the selection made and/or appointment made in favour of the respondent No. 12 at this stage and that too through the writ petition of the writ petitioner in which he was made a party respondent by the petitioner and not at this instance.

5. On the other question as to the authority of the local Employment Exchange to sponsor a post graduate candidate reference may be made to the procedural instructions issued from time to time on placement of candidates by the Director of Employment. In one such instruction contained in Memo No. DNES/SL. No. 2/1985/(3E-137/3/84/dated 29.5.1985), it has been stipulated as under;--

"Normal Employment Exchange will accept vacancies of teachers requiring Degree/Hons., in a subject with or without B.T/B.Ed as the minimum qualification and submit from the combined L.R. of Graduate and Secondary Post-Graduate cards (received from P & E office). The P & E office will deal exclusively with those vacancies of secondary teachers where minimum hiring requirement is a post graduate degree."

6. Upon reading of the said instruction it does riot leave any doubt in the mind that the National Employment Exchange i.e. P & E office of the Employment Directorate will sponsor candidates with post graduate qualification only where minimum eligibility criteria is post graduate degree. The concerned local Employment Exchange is absolutely within its jurisdiction to sponsor a post graduate candidate for a post for which the minimum qualification is graduate provided such candidate has been retained as being a registered candidate with the concerned Employment Exchange even if his post graduate qualification has been noted and registered with the National Employment Exchange. Chapter 11 of the National Employment Service Manual (Vol. I) prescribes the categories of candidates to be considered as professional and executive standard candidates. It has been laid down therein that in case a candidate with post graduate qualification desires to be considered for vacancies (other than professional and executive standard) notified to the local Employment Exchange, a secondary index card will be prepared in respect of him and maintained at the local Employment Exchange. This stipulation makes it clear that a candidate having the qualification of professional and executive standard if desires to be considered for vacancies notified to the local Employment Exchange, then he would be entitled to be sponsored by the local Employment Exchange provided he notifies his intention to that effect. From the supplementary affidavit filed on behalf of the respondent No. 12 it appears that he made a representation before the National Employment Exchange (P & E Section) for being sponsored by the

concerned local Employment Exchange in relation to the post for which the eligibility criteria is less than post graduate degree. On the said representation employment officer of the Directorate of Employment permitted the concerned local Employment Exchange to sponsor the name of the respondent No. 12 for which he is eligible. The said representation was clear to the extent that he did not at any point of time want his registration with the concerned local Employment Exchange to be treated as withdrawn upon being registered with the National Employment Exchange with his post graduate qualification. On the contrary the petitioner all along requested the Employment Directorate to consider his candidature for being sponsored for a post for which the minimum requisite qualification is not a post graduate degree. This in the facts and circumstances as above and in view of the procedural instructions issued by the Employment Directorate on placement candidates it cannot be said that the concerned Employment Exchange had acted illegally by sponsoring the name of the respondent No. 12 who is a post graduate degree holder for the purpose of recruitment in the post of an Assistant Teacher with eligibility criteria of graduate degree as approved by the D.I. of Schools. The aforesaid procedural instructions are to be treated as binding instructions and consequently required to be followed by the authority concerned. The administrative instructions not having the force of law are also required to be followed as guiding principles has been recognised by the Supreme Court in the case of Naga People's Movement of Human Rights Vs. Union of India (UOI), : of the said report and in the decision of Khet Singh Vs. Union of India (UOI), of the said report. In view of the aforesaid decisions of the Supreme Court and more particularly in view of the specific procedural instructions as above issued by the Employment Directorate in relation to the sponsoring of candidates with post graduate degree for the purpose of recruitment in the post for which minimum requisite qualification is not post graduate degree, the decision of the learned single Judge as above of this Court cited on behalf of the writ petitioner cannot be applied in the facts and circumstances of this case. In all such consideration there is no merit in this writ petition, and hence the same is dismissed and the interim order if there be any in the above writ petition shall stand vacated.