

(2011) 09 CAL CK 0043
In the Calcutta High Court
Case No : Writ Petition No. 9801 (W) of 2003

Sri Debi Prasad Banerjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Citation : (2011) 09 CAL CK 0043

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Ashok De, Sakti Padajana, S. Panda and Pranab Chatterjee, for the Appellant; Subir Sanyal, Sumita Sen for Council, Kamalesh Bhattacharya and Gautam Dey for State, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—The Petitioner has assailed the decision of the Chairman, Birbhum District Primary School Council vide memo No. 598 dated 25.04.2003, whereby and where under the said authority issued notice to show cause as to why the letter of appointment dated 04.04.2003 should not be cancelled, quashed and/or with drawn by the concerned District Primary School Council.

2. Briefly stated the facts that the name of the Petitioner was sponsored by the concerned employment exchange for the post of the primary teacher under non-formal category. The Petitioner was called for the interview on 29.11.1993.

3. It should be pertinent to mention that prior to the initiation of the said selection process, several litigations were pending before this Hon''ble Court in relation to the entitlement of the non-formal candidates for appointment as primary teacher under such category. Subsequently, those litigations came to end and it was held that the candidates sponsored under the non-formal category cannot have special advantage.

4. Since by this time, several candidates including the Petitioner were sponsored under the non-formal category and a separate panel was prepared by the

selection committee. It was decided by the chairman of the Adhoc Committee of the Council to send the said panel, after including the name of non-formal candidates in general category.

5. Pursuant to the said decision, the supplementary panel consisting of 111 candidates including the Petitioner was forwarded to the Director of School Education for necessary approval.

6. Since no action was taken by the said authority on the basis of such recommendation, the Petitioner filed a writ petition being W.P 1551 (w) of 1997 before this Court which was disposed of with a direction upon the Director of School Education to consider the matter in accordance with law upon giving an opportunity of hearing to the Respondent No. 1 therein.

7. Pursuant to the said order passed in W.P. 1551 (w) of 1997, the director of school education took the decision by rejecting the claim of the Petitioner on the ground that the supplementary panel was prepared upon giving some special weight age to the non-formal candidates. Against the order of rejection, some of the empanelled candidates of the supplementary list filed writ petition being W.P. 17218 (w) of 1997 which was disposed of on 26.04.2000 by directing the concerned authority to take a decision regarding the approval of the panel without giving any special weight age as non-formal candidates.

8. Subsequently, it was decided in the meeting of the council that the non-formal candidates who secured the higher marks than the last cut off marks fixed under the unreserved general category shall be approved and the panel so prepared, was again sent to the director of the school education for granting the approval. It is stated that the last cut off marks under the unreserved general category was 19.33 and the candidates under the non-formal category who secured the same or the higher marks were empanelled. In terms of the said decision, the candidates who were the Petitioners in W.P. 17218 (w) of 1997 were empanelled and the name is sent for approval.

9. The other left out non-formal candidates including the Petitioner who were not empanelled inspite of the said decision moved before this Court by filing a writ petition being W.P. 8460(w) of 2002 and this Court on 27.06.2002 directed the Chairman, District Primary School Council to consider their candidatures in accordance with law. Ultimately, the names of the candidates who could secure the said last cut off mark i.e 19.33 or above were sent for approval and the name of the Petitioner was included therein. Ultimately, the said panel was approved and the candidates who were found successful including the Petitioner were given letter of appointment.

10. Some of the unsuccessful candidates raised an objection to the inclusion of the name of the Petitioner in the approved panel as the qualifying marks set up was not secured by the Petitioner.

11. On the basis of the said complaint, the authorities issued the impugned

notice to show cause as to why the appointment letter of the Petitioner should not be cancelled.

12. Although, no affidavit-in-opposition is filed by the Respondent authorities but the Chairman, Birbhum District Primary School Council filed an application for vacating the interim order being CAN 831 of 2003 which was directed to be heard along with the main writ petition by this Court.

13. Mr Ashok Dey, learned Senior Advocate appearing for the Petitioners submits that awarding different marks on the basis of the year of qualifying Madhyamik examinations is irrational and unreasonable. He further submits that by such act, the authorities cannot make classification within the class. He vehemently submits the candidates who have passed the Madhyamik Examination at an early period of time but got themselves registered with the employment exchange subsequently, cannot get better advantage than the candidate who registered himself prior to the said registrant but passed the Madhyamik examination at latter period of time. Thus he submits that there is no justification in taking any decision for cancellation of the appointment letter issued to the Petitioner.

14. Mr. Subhra Sanyal, the learned Advocate, Birbhum District, appearing for the counsel submits that the mistakes are capable of being rectified by the authorities. He succinctly argues that the authorities found from the record itself that the marks which have been allotted to the Petitioner was on the basis of miscalculation. He thus submits that the instant writ petition should not be entertained.

15. Mr. Kamalesh Bhattacharyay, learned Advocate appearing for the states submits that the mistake once detected cannot be allowed to remain on record and the authorities should rectify such mistake. He further submits that the mistake does not confer any right on the person who but for such mistake does not have any right.

16. Having considered the respective submissions made at the bar, it is undisputed that the Petitioner candidature was sponsored by the concerned employment exchange under the non-formal category. The Birbhum District Primary School Council prepared the panel for each category including the non-formal category. Several litigations prior to the commencement of the selection process was pending before this Hon"ble Court in relation to the claim that some special privilege should be given to the non-formal candidates. Those litigations were disposed of during the currency of the selection process where it has been held that the non-formal candidate cannot get a special privilege. Since by that time, the panel under the non-formal category was prepared the council decided to send the said panel for approval which did not find favour by the director of the school education who declined to approve the same.

17. However, some of the candidates moved before this Court and this Court directed the concerned authority to consider the candidature of those non-formal candidates under the unreserved category without giving any special privilege.

On the basis of such order passed in the said writ petition instituted by some of the candidates i.e 13 in numbers, the District Primary School Council sent the names of those 13 candidates to the director of the school education for taking decision with regard to the approval. The other deprived candidates, 82 numbers including the Petitioner, moved before this Court in separate writ petition which was disposed of with the direction upon the said authority to consider the candidature of those candidates who have secured the requisite marks set up for sending the names of the said 13 candidates.

18. There is no dispute that the authorities in terms of the said order sent the name of the Petitioner along with other candidates having score 19.33 marks to the director of the school education for granting approval. The said authority ultimately approved the panel and an appointment letter is issued to the Petitioner. The concerned authority on the basis of a complaint of some of the unsuccessful candidates found that the total marks calculated on the basis of the marks awarded under different heads were miscalculated as instead of 17.33, the Petitioner is shown to have been awarded 19.33 marks. Immediately, after detecting the said mistake, which is nothing but arithmetical mistake, the authorities issued the impugned notice to the Petitioner.

19. It is sought to be contended by the Petitioner that awarding different marks on the basis of the passing the Madhyamik examination or equivalent is irrational, unreasonable and brings the classification within the class.

20. Mr. Dey, the learned Senior Advocate by citing an example demonstrated that if the candidate who passed Madhyamik examination much prior period of time but registered himself subsequently, the said candidate shall have edge over, the candidate who passed the Madhyamik examination after the said candidate but promptly registered himself with the employment exchange before the said registrant. According to him, such irrational and unreasonable awarding of marks is not permissible.

21. At the first place, the point agitated by Mr. Dey, the learned Senior Advocate sounds melodious but if the same is considered on the aspect of principle of acquiescence and estoppels it does not stand to those parameters.

22. Admittedly, the Petitioner participated in the said selection process and was found successful. A case has been made out in the writ petition that the method of awarding marks was not known to the Petitioner or the authorities never disclosed at an early point of time. It is inconceivable where several litigations were initiated by the different candidates including the Petitioner before the court, the Petitioner was not aware of the methodology adopted by the selection committee.

23. Even otherwise, at this stage where large number of candidates have already been appointed, any order disrupting and/or canceling the selection process on such account would render all the appointments already made liable to be cancelled and unless the persons who shall be affected by such order are made

party to the proceeding, the court should not embark to decide such question.

24. This Court cannot like lose sight of the fact that by impugned notice the authorities have called for the reply from the Petitioner on the basis of the facts said therein. The authorities have not taken any decision by canceling the appointment of the Petitioner without giving an opportunity of hearing.

25. The court shall be slow and circumspect in entertaining the writ petition where the challenge is thrown to a show cause notice.

26. I do not find any justification to interfere with the said show cause notice in this writ petition in absence of patent illegality being committed by the Petitioner.

27. Therefore, the writ petition is devoid of merit and is hereby dismissed. The considerable period of time has elapsed because of the pendency of this writ petition, more particularly, in view of the fact that the Petitioner after the service of the show cause immediately approached this Court, a sufficient time should be given to the Petitioner to give reply to the said show cause notice.

28. The Petitioner is, therefore, permitted to file reply to the impugned notice within four weeks from the date and the said authority shall, thereafter, proceed to decide the matter in accordance with law. It is hereby made clear that the parties shall take all points available to them and the said authority shall decide those points independently without being influenced by any observation made herein in accordance with law.

29. The writ petition is, therefore, devoid of merit.

30. Thus, the writ petition is, hereby, dismissed.

31. There shall be no order as to costs.

32. Urgent Photostat certified copy of this order if applied for, be given to the parties on priority basis.