

(2013) 03 CAL CK 0022

In the Calcutta High Court

Case No : Writ Petition No's. 11770 (W) of 2005, 21011 (W) of 2006, 14924 (W) of 2009 and 7120 (W) of 2011

Sri Dilip Kumar Pal and Sri Malay Kumar Josh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 3 CALLT 440 : (2013) 5 CHN 302

Hon'ble Judges : P. Mandal, J

Bench : Single Bench

Advocate : Piush Chaturbedi, Mr. Asit Baran Ghosh, Mr. P. Roy, Ms. P. Saha in W.P. 7120W of 2011, Mr. Amal Baran Chatterjee and Mr. Subrata Mukherjee, for the Appellant; Ram Mohan Pal in W.P. 11770(W) of 2005, Mr. Subrata Datta, Sankar Prasad Dalpati in W.P. 14924(W) of 2009, Ms. Chaitali Bhattacharyya and Ms. Tapati Samanta in W.P. 21011(W) of 2006 for the State, for the Respondent

Final Decision : Dismissed

Judgement

P. Mandal, J.—These four applications are disposed of by this common judgment and order as they have arisen out of the same recruitment process.

W.P. No. 11770(W) of 2005:-

This application had been filed by Sri Dilip Kumar Pal, a candidate for the post of Clerk of the Sasanga High School, District Burdwan.

2. He had filed the application praying for a writ in the nature of mandamus directing the respondents to act in accordance with law and for directing the respondents to sponsor the name of the petitioner for the post of clerk and allow the petitioner to appear in the interview for selection to the aforesaid post.

3. While dealing with such an application by an order dated July 26, 2005, the School Authorities had been directed to allow the petitioner to participate in the interview provided it was found that any candidate junior to him in the registration of typing qualification had been sponsored by the Employment

Exchange. It had been recorded that if the writ petitioner succeeded in obtaining appointment, such appointment would abide by the result of the writ petition. The respondents were directed to file an affidavit-in-opposition.

W.P. No. 21011(W) of 2006:-

4. This application had been filed by Dilip Kumar Pal when the concerned District Inspector of Schools (SE), by his order dated May 15, 2006, had cancelled the panel in which he figured as first selected candidate for the post of clerk in the respondent school.

5. The petitioner had challenged the order of the District Inspector of Schools (SE) dated May 15, 2006 on the ground that the said order did not disclose any reasons. The School Authority then decided to proceed with the selection process from the stage of interview of the candidates once more and the petitioner was also invited to participate in the selection process.

6. By an order dated September 15, 2006, the learned Judge had made an interim order that the Authorities would be free to proceed with the selection process up to the stage of sending the panel of selection of candidates accompanied by all papers to the District Inspector of Schools (SE) concerned. The authorities though should receive the panel and all other papers, should not give the decision regarding the question of approval of the panel, without obtaining the leave from the Court. The respondents were directed to file affidavits.

W.P. No. 14924(W) of 2009:-

7. Sri Dilip Kumar Pal had filed this writ petition praying for a writ in the nature of mandamus commanding the respondents particularly the respondent No. 2 to set aside, cancel and/or quash the impugned Memo dated May 11, 2009 issued by the concerned District Inspector of Schools (SE), directing to allow him to resume his duty as clerk of the respondent school and further directing them to release the salary in favour of the petitioner month by month and not to give any effect or further effect to the Memo dated May 11, 2009.

W.P. No. 7120(W) of 2011:-

8. This application had been filed by Moloy Kumar Josh, another candidate for the said post praying for issuance of a writ of mandamus directing the respondents particularly the respondent No. 4 to forthwith forward the panel prepared for the post of clerk of the respondent school in pursuance of the second selection process held on September 21, 2006 upon obtaining the necessary leave from the Hon''ble Court, directing the respondent No. 4 to grant appointment to the petitioner in the post of clerk at the respondent school immediately on receiving approval of the panel from the respondent No. 3 and other consequential reliefs.

9. Upon hearing the learned Counsel for the parties and on going through the

materials on record, I find that the facts as recorded above in the respective applications are correct.

10. Pursuant to the order dated July 26, 2005 in W.P. No. 11770(W) of 2005, the School Authority allowed the petitioner to appear in the interview for the said post of clerk and he stood first in the panel of the successful candidates. Accordingly, the Managing Committee of the school sent the panel of successful candidates to the concerned District Inspector of Schools (SE) for approval. But, the concerned District Inspector of Schools (SE) did not approve of the panel and by the Memo dated May 15, 2006, he directed the School Authority to prepare a fresh panel upon taking an interview of all the eligible candidates and observing the recruitment procedure strictly. Consequently, the petitioner appeared in the said interview held on September 21, 2006. While passing an interim order dated September 15, 2006 in W.P. No. 21011(W) of 2006 it had been recorded that Dilip would be at liberty to participate in the selection process without prejudice to his rights and contentions in the present case.

11. By the Memo No. 391 dated February 25, 2009, the concerned District Inspector of Schools (SE) approved of the panel led by Dilip as first. Accordingly, the Managing Committee of the respondent school appointed Dilip as clerk of the respondent school by the Memo dated February 27, 2009 directing him to join within 7 days from the date of receipt of the letter. Dilip joined the said post of clerk of the respondent school on March 2, 2009.

12. By the Memo No. 541 dated March 31, 2009, the concerned District Inspector of Schools (SE) approved of the appointment of Dilip on a salary as admissible under the rules with effect from the date noted against him (w.e.f. March 2, 2009 on usual terms and conditions).

13. Then, by the Memo dated May 11, 2009, the concerned District Inspector of Schools (SE) informed the respondent school that the Office Memo No. 391 dated February 25, 2009 and Memo No. 541 dated March 31, 2009 were not issued in accordance with the orders dated September 15, 2006 passed in W.P. No. 21011(W) of 2006 and as such, those two Memos had been withdrawn by him.

14. Moloy was the first empanelled candidate in the subsequent selection process as indicated above. But, I do not find any paper that the Managing Committee of the concerned school had approved of the panel or that the Managing Committee had sent the said approved panel to the concerned District Inspector of Schools (SE) for approval of the said panel.

15. Reiterating the facts as described above, Mr. Amal Baran Chatterjee, learned Advocate appearing for Dilip, has contended that the District Inspector of Schools (SE) had to withdraw the aforesaid two Memos on the ground those two Memos were not issued in compliance with the Order dated September 15, 2006 in W.P. No. 21011(W) of 2006. Under the circumstances, the concerned District Inspector of Schools (SE) had to face a contempt proceeding being C.P.A.N. No. 578 of 2009 and in order to avoid penalties, he had to withdraw the aforesaid

two Memos in question.

16. Anyway, the interest of the petitioner with regard to the first panel had been secured by the observation that Dilip would be at liberty to participate in the selection process without prejudice to his rights and contentions in the present case (W.P. No. 21011(W) of 2006). Since, the panel was approved by the District Inspector of Schools (SE) and subsequently, the appointment was also approved with effect from the date of joining of Dilip, the concerned District Inspector of Schools (SE), under compelling circumstances, had to withdraw the two Memos in question for irregularities.

17. He has also contended that the earlier Order of the District Inspector of Schools (SE) dated May 15, 2006 did not disclose any ground or irregularities for which the first panel was not considered for approval and as such, under the compelling circumstances, Dilip had to file the W.P. No. 21011(W) of 2006.

18. Thus, he has submitted that appropriate orders should be passed for regularization of the appointment of Dilip.

19. Mr. Piush Chaturbedi, learned Advocate appearing for Moloy, has contended that the concerned District Inspector of Schools (SE) was right in not considering the approval of the first panel as procedures had not been properly maintained by the School Authority. So, he was justified for requesting to prepare a fresh panel upon taking interview of all the eligible candidates and observing the recruitment procedure strictly.

20. He has contended that since the concerned District Inspector of Schools (SE) did not take any permission from the Hon"ble Court as per order the approval of the panel and subsequent approval of the appointment by the concerned District Inspector of Schools (SE) cannot be supported.

21. Mr. Chaturbedi has also contended that the concerned District Inspector of Schools (SE) has the right to approve or not to approve of the panel and appointment and he is to take appropriate steps when irregularities were detected.

22. In support of his contention, Mr. Chaturbedi has relied on the decision of Biswanath Das Vs. State of West Bengal and Others He has contended that the said decision passed by the learned Single Judge was referred to the Larger Bench and accordingly, as per paragraph No. 36, the learned Trial Judge framed three questions for answer and then the Larger Bench decided the three questions holding that the District Inspector of Schools (SE) has power of approving or not approving of the panel forwarded to it by the Managing Committee as the approval includes disapproval of the panel also.

23. Thus, Mr. Chaturbedi has contended that since the District Inspector of Schools (SE) has the power of approval or not approval, he had rightly withdrawn the Memos in question which were issued in violation of the orders of the Hon"ble Court.

24. Ms. Chaitali Bhattacharyya, learned Advocate appearing for the State, has supported the contention of Mr. Chaturbedi and thus, she has submitted that appropriate orders should be passed.

25. Mr. Ram Mohan Pal and Mr. Subrata Dutta, learned Advocates appearing for the State in W.P. No. 11770(W) of 2005 and in W.P. No. 14924(W) of 2009 respectively has supported the contention of Mr. Chaturbedi also.

26. In reply, Mr. Chatterjee has submitted that the facts of the decision referred to by Mr. Chaturbedi are completely different from the present one and as such, the said decision will not be applicable in the instant case.

27. He has also reiterated his submission that the interest of Dilip had been protected by the Order dated May 15, 2006 passed in W.P. No. 21011(W) of 2006.

28. Having due regard to the submission of the respective lawyers of the parties, I find that the first order of the District Inspector of Schools (SE) dated May 15, 2006 being devoid of any sound ground for not consideration of the approval of the panel has been interfered by the Court when the writ petition was moved to that effect. Now, the time has come to take a final decision over the matter for proper adjudication.

29. As recorded above, the first panel prepared by the Managing Committee was approved of by the District Inspector of Schools (SE) subsequently and even when the appointment was given by the Managing Committee to Dilip, the said appointment was also approved by the District Inspector of Schools (SE) with effect from the date when Dilip joined the respondent school. The concerned District Inspector of Schools (SE) had to withdraw the two Memos in question on the ground that those two Memos were not issued in compliance with the order dated September 15, 2006 passed in W.P. No. 21011(W) of 2006. For proper appreciation of the matter, it is noted that by the order dated September 15, 2006, this Hon"ble Court directed the concerned authorities to proceed with the selection process up to the stage of sending the panel of selected candidates accompanied by all the papers to the concerned District Inspector of Schools (SE). That authority, though shall receive the panel and all other papers, shall not give the decision regarding the question of approval of the panel without obtaining leave from this Court. In order to exonerate himself from the contempt proceeding referred to above, the District Inspector of Schools (SE) had withdrawn the two Memos in question.

30. As noted above, Dilip had joined the respondent institution on the basis of the first panel and so far as to the preparation of the first panel, the learned Advocates for the State could not show what irregularities had been committed by the School Authority in the matter of preparation of the first panel by the Managing Committee of the respondent school. Accordingly, I am of the view that the Memo dated May 15, 2006 issued by the respondent District Inspector of Schools (SE) cannot be supported. Though, I agree that as per decision of Biswanath Das (supra), the District Inspector of Schools (SE) had the right to

approve or not to approve of the panel, but, in order to make his order sustainable, sufficient reasons must be recorded so that on perusal of the order, it could be understood why the panel was not considered by the concerned District Inspector of Schools (SE) for approval. Accordingly, I am of the view that the Memo dated May 15, 2006 should be set aside and the same is, therefore, set aside.

31. The selection of Dilip having been made by following the rules for recruitment as appearing from the materials on record in the first interview and he was given liberty to participate in the second interview without prejudice to his rights and contentions in W.P. No. 21011(W) of 2006, I am of the view that there is no ground to reject the first panel prepared by the School Authority. So, the approval of the first panel and in consequence, the approval of the appointment of Dilip by the concerned District Inspector of Schools (SE) must be done afresh. Appropriate orders shall be passed accordingly in view of the order dated September 15, 2006 in W.P. No. 21011(W) of 2006.

32. Accordingly, by this order, it is accorded that the leave for approval of the first panel is granted. Since, the matter is pending for a long time, the District Inspector of Schools (SE) should be directed to approve of the panel and appointment subsequently within a specified period afresh. The District Inspector of Schools (SE) had rightly withdrawn the Memo Nos. 391 dated February 25, 2009 and 541 dated March 31, 2009 by the Memo No. 102/LS dated May 11, 2009.

33. Accordingly, the applications being W.P. No. 11770(W) of 2005 and W.P. No. 21011(W) of 2006 should be allowed and the same are allowed accordingly. The W.P. No. 14924(W) of 2009 should be allowed upon giving certain positive directions upon the respondents as indicated above.

34. In consequence, Moloy cannot get any relief and his application being W.P. No. 7120(W) of 2011 should be dismissed and is, therefore, dismissed.

35. In summary, the following orders are passed in respect of these applications:-

36. The writ petition being W.P. No. 11770(W) of 2005 is allowed in terms of the interim order dated July 26, 2005 passed in the said writ petition.

37. No order as to costs.

38. The W.P. No. 21011(W) of 2006 is allowed and the prayer (a) as made at page No. 15 is hereby granted.

39. No order as to costs.

40. The W.P. No. 14924(W) of 2009 is allowed to the extent indicated below.

41. The Memo No. 391 dated February 25, 2009 having been issued by the District Inspector of Schools (SE) in violation of the Hon"ble Court's direction had been rightly withdrawn. Similarly, the Memo No. 541 dated March 31, 2009

had been rightly withdrawn by the concerned District Inspector of Schools (SE). So, the prayer (a) of the writ petition at page No. 27 is hereby refused.

42. The concerned District Inspector of Schools (SE) is hereby directed to accord approval of the panel of Dilip as appearing as Annexure P-5 at page No. 45 of the W.P. No. 14924(W) of 2009 afresh within a period of two weeks from the date of communication of this order. Thereafter, he shall accord approval of the appointment of Dilip by following the rules within two weeks from the date of communication for the purpose from the School Authority.

43. The prayer (b) as made at page No. 27 of the writ petition being W.P. No. 14924(W) of 2009 is hereby granted and the respondents particularly the respondent Nos. 3 & 4 are directed to take necessary steps in this regard at early preferably within 60 days from the date of communication of this order.

44. No order as to costs. The W.P. No. 7120(W) of 2011 is dismissed.

No order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

Later--

After delivery of the judgment and order, Mr. Piush Chaturbedi, learned Advocate for the petitioner in W.P. No. 7120(W) of 2011, prays for stay of the operation of impugned judgment and order.

Upon due consideration of the entire matter, I am of the view that his prayer cannot be accepted.

Accordingly, the prayer for stay is refused.