

(2001) 12 CAL CK 0043
In the Calcutta High Court
Case No : C.O. No. 5425 (W) of 1996

Sri Tusharkanti Banerjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2002) 1 CALLT 435

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Subir Sanyal, for the Appellant; Milan Bhattacharjee, Monoranjan Jana and Rabindranath Dutta, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Ray. J.

1. Heard the learned advocates for the parties. This matter was heard for two days. Learned Advocate for the petitioner concluded the argument. The School Authority was directed to file affidavit giving the details of the requisition of vacancies prior permission order and the employment exchange letters as were addressed by the School Authority. Such affidavit has been filed with copy to the writ petitioner. Yesterday, the matter was taken up but adjournment was prayed for on behalf of the petitioner. Time was granted. Today, at the time of hearing, the petitioner is absent. In view of the completion of the argument by the petitioner, the matter is taken up for final hearing today.

2. It is the case of the petitioner that he is qualified with M.A. degree in Political Science. The vacancy as mentioned in the prior permission order and as issued by the District Inspector of Schools (SE), Midnapore was for higher secondary section and accordingly the minimum qualification required to be prescribed was M.A. or Honours in any particular subject. But in the prior permission, the qualification prescribed was only Honours graduate in Political Science and

necessary training qualification of B.T/ B.Ed. It is contended by the writ petitioner that since the vacancy relates to higher secondary section and as per Circular No. HSC/73/79 dated 30th March. 1997, the minimum qualification as prescribed by the council is 2nd Class Post-Graduate Degree in the subject, or allied subject, or second class Honours degree in the subject or allied subject, the order of prior permission was bad in law and accordingly despite the fact that selection process was completed whereby writ petitioner was placed in the second position in the panel, will not debar the petitioner from challenging such prior permission order and the process of selection. It is further contended by the petitioner that for non-mentioning of higher qualification, i.e. the post-graduate qualification, the petitioner could not be selected as a first candidate. The petitioner has challenged Clause 6(a) of the Recruitment Rules Issued by the Director of School Education. West Bengal under Memo No. 2066-G.A. dated 27th October, 1995 as ultra vires upon contending Inter alia that the limitation as prescribed regarding allotment of marks for such higher qualification was not legal and valid. It is further contended that a higher qualified candidate always be preferred. In a nutshell, it is the challenge of the petitioner that the selection of the first candidate of the panel was bad in law and his non-selection to be as a first candidate also was arbitrary. The petitioner has prayed for the following reliefs in the writ application:

"(a) a declaration to the effect that Clause 6A of the procedure for the Recruitment are ultra vires of Articles 14 and 16 of the Constitution of India and Clause 6(b) of the procedure for Recruitment.

(b) A writ of or in the nature of a writ of a Mandamus commanding the Respondents and/or each one of them, more particularly the respondent No. 3 to cancel, withdraw, set aside or recall the fixation of qualification as B.A (Hons.) preferably Trained in his prior permission granted to the School Authorities of Kshetra Mohan Vidya Bhavan. Centre for appointment to the post of Assistant Teacher in political Science and to substitute the same by fixing the qualification "M.A. In Political Science preferably Trained".

(c) A writ of or in the nature of a writ of Mandamus commanding the respondents and/or each one of them to award marks for the qualification of M.A. In Political Science to the petitioner in the manner as indicated in the procedure for recruitment and to recast the panel after awarding such marks in accordance with the Rules:

(d) A writ of or in the nature of a writ of certiorari directing the Respondents and/or each one of them to certify and transmit the entire records relating to the selection and preparation of the panel in question so that, upon perusing, conscionable justice may be done by quashing the same:"

3. This writ petition has been opposed by the School Authority as well as by the private respondent No. 10 who stood first in the panel. It is submitted by the School Authority that in terms of the prior permission order since the District

Inspector of Schools concerned directed to select a candidate qualified with B.A. (Hons.) in Political Science preferably with B.T./B.Ed., no marks were allotted for Post Graduate Degree in favour of the writ petitioner. It is further contended that the selection committee acted in a bonafide way by following the Recruitment Rules, 1995 which is applicable herein. He further contends that once the petitioner appeared in the selection process, took his chance of success and being failed to succeed as 1st candidate of panel, cannot challenge the same. The learned advocate for the respondent No. 10 has submitted that in terms of the Recruitment Rule of 1995, panel was finalised by the Managing Committee and approval of such panel was accorded by the District Inspector of Schools concerned. Thereafter, in terms of the appointment letter as issued by the Managing Committee of the school, the respondent No. 10 has already joined in the school and is getting his salary and other service benefits. It is further contended that there was no illegality committed by the members of the Selection Committee in the matter of selection.

4. Considering the rival contentions of the parties, the only point for decision in this writ application rests upon the interpretation of clause 6(a) as well as the relevant other rules of Recruitment Rules, 1995. Prior permission order was issued under Memo No. 246-S dated 18th January, 1996 by the District Inspector of Schools concerned whereby the vacancy was declared for selection of a candidate qualified with B.A. (Hons.) in Political Science preferably with B.T./B.Ed. In terms of the Recruitment Rules. 1995 as effective from 1st December. 1995. The school was required to ask the names of candidates from the employment Exchange concerned. The learned Advocate for the petitioner has submitted by referring the circular letter of West Bengal High Secondary Council as appearing at page 15 paragraph 12 of the writ application that M.A. qualification was required to be prescribed in the prior permission order and non-prescription of such has violated the provision of circular letter of Higher Secondary Council. The relevant provision of Circular letter as relied upon by the learned advocate for the petitioner is quoted herein below in extenso:-

WEST BENGAL COUNCIL OF HIGHER SECONDARY EDUCATION.

Circular No. HSC/73/79

Dated: 30.3.1979.

It is hereby notified that the council has been pleased to stipulate the conditions of eligibility for appointment of teachers of General Stream Courses, as mentioned hereunder:

(i) Minimum Qualification--Second Class Post-Graduate Degree in the subject, or allied subject. Or Second Class Honours Degree in the subject or allied subject. In case of appointment of personnel with Post-Graduate or Hons. Degree in allied subject, prior approval of the Council will however, be necessary.

(ii) Desirable qualifications: Teaching experience in recognised institutions:

Provided that the teachers who were actually engaged in teaching the old Higher Secondary Education Courses (11 year) of the West Bengal Board of Secondary Education as on 31.12.75 will be deemed to possess eligible qualification for teaching the General Stream subject in the plus Two Courses."

5. On a bare reading of the aforesaid circular it is clear that minimum qualification as prescribed is either second class Post Graduate Degree or second Class Honours degree in the concerned subject or allied subject. Hence, any of the qualifications, namely, second class Post Graduate Degree or second class Honours Degree is the minimum qualification for appointment of a teacher in a Higher Secondary section. In the view of the matter prescribing the qualification as of Honours degree in Political Science by the District Inspector of School concerned in the prior permission order, did not infringe the provision of Circular letter as alleged by the petitioner and accordingly, there is no illegality in such prior permission letter. The contention of the petitioner that in terms of Clause 6(b) of the Recruitment Rules 1995 the Managing Committee was empowered to allot marks for Post-Graduate Degree has no basis to stand. Clause 6(a) regarding allotment of the marks provided, inter alia, as follows:

"6. Allotment of Marks: No marks shall be awarded to the candidate for any academic or training/professional qualification above the qualification mentioned by the D.I. of School (SE) in the prior permission. No claim or evidence regarding qualification/age or any candidate shall be accepted after the interview.

(b) The Selection Committee shall assess those recognised qualifications which are relevant to the post from school level and award marks accordingly."

6. Under Clause (6) it is clear as it starts with the word "no" coupled with a mandatory provision "Shall" that no marks could be awarded for academic or training qualification above the qualification mentioned by the District Inspector of Schools (SE) in the prior permission order. In the said prior permission order, as annexed at page 10 of the Affidavit-in-opposition by the respondent No. 5, it appears that the qualification prescribed was B.A. (Hons.) in Political Science, preferably with B.T./B.Ed. Admittedly, the petitioner did not challenge the said prior permission order and fixation of only B.A.(Hons.) qualification prior to his appearance before selection committee. Hence, in terms of Clause 6(a), the petitioner was not entitled to claim marks for his master degree since in the prior permission letter such qualification was not prescribed. The members of the selection committee were required to act in terms of the statute. I.e. the Recruitment Rules as prescribed. Accordingly, non-allotment of any marks for master degree in favour of the petitioner did not vitiate the selection when rule 6 is clear to this effect putting an embargo upon the members of the selection committee to allot any marks above the qualification as prescribed by the District Inspector of Schools concerned. Hence, non-allotment of marks in favour of the petitioner for a such master degree did not vitiate the selection. Besides, the petitioner himself appeared in the selection process and took a chance. Hence, applying the doctrine of approbate and reprobate the petitioner is now not

entitled to challenge the same when he failed to secure the first position in the panel. Reliance may be placed on the judgments reported in *State Bank of Patiala and others Vs. S.K. Sharma*, ; (1992) 2 SCC 539 . the case of *P.R. Deshpande*, Further it is settled by the judgment of the apex Court that applying the doctrine of estoppel in terms of Section 115 of the Evidence Act, an unsuccessful candidate cannot challenge the selection process. Reliance may be placed to the judgments of the case *Union of India and Another Vs. N. Chandrasekharan and Another*, and the case reported in 1986 SCC 285 (*Omprakash Shukla v. Akhileswar Shukla*) .

7. Furthermore, in the instant case, the petitioner intended to challenge the vires of Clause 6(a) of the Recruitment Rules after being unsuccessful to secure the first position in the panel. The petitioner cannot do such. In the judgment of *Omprakash Shukla v. Akhileswar Shukle*, reported in (1986) SCC 285, the point has been decided by the apex Court. It is held by the apex Court in the said case, that a candidate when appeared in any competitive examination, he was expected to know about its Constitution and validity of examination, hence, he cannot assail its Constitution and validity of examination later on. Applying the apex Court judgment, the writ petitioner now cannot challenge this Clause 6(a) at this present moment as ultra vires, when the petitioner appeared in the selection process and subjected himself for determination of his merit before the selection committee. Hence, applying the doctrine of estoppel as well as waiver, the petitioner is debarred from challenging the same. Furthermore, there is no foundation regarding such challenge of said Clause 6(a) of Rules as ultra vires, save and except the contention that higher qualification to be considered upon relying on Clause 6(b) of said rule. Clause 6(b) is to be read in context to the Clause 6(a). It is now a settled legal proposition that while interpreting the provision of statute, harmonious construction must be made. Taking into account of the Clause 6(b) in the light of the Clause 6(a) of Rule 6 of Recruitment Rules, 1995, the contention of the learned Advocate fails. However, learned Advocate for the petitioner submits that Clause 6(b) will prevail over the Clause 6(a). The contention as made by the learned Advocate for the petitioner in interpretation of the statute cannot be legally accepted in view of the specific provision under Clause 6(a) with the word "no" and a mandatory word "Shall". This point has been considered by the judgment of the Division Bench reported in 1999(I) CLJ 11 at para 9 wherein it is held that Clause 6(a) is the determining factor in the matter of allotment of the marks on qualification prescribed. Furthermore, on a bare reading of Clauses 6(a) and 6(b), this Court is not finding any dispute about non allotment of the marks in respect of those qualifications as are not prescribed in the prior permission. Clause 6(b) only provides that selection committee shall assess the recognised qualifications which are relevant to the post from the school level which means that no qualifications which are not recognised by any Board and/or University would be considered by the Selection Committee. The words in Clause 6(b) are not in contrast with Clause 6(a). Clause 6(a) relates to separate provision about allotment of marks directing the

members of the Selection Committee to allot marks only in respect of the qualifications which are not above the qualification prescribed by the District Inspector of Schools concerned in the prior permission. Hence, this Court is not finding any conflict in between the Clause 6(a) and Clause 6(b) as both the two Clauses are not different issue and in that view of the matter the submission of the learned Advocate for the petitioner that Clause 6(b) will prevail over Clause 6(a) has no substance and such contention is accordingly rejected.

8. Furthermore, in terms of the Recruitment Rules of 1995, the petitioner even was not eligible to appear as a post graduate candidate before the Selection Committee. Under Clause 4(a) the Managing Committee is required to approach the Exchange for sponsorship of the names which reads as follows:

"4(a). On receipt of the prior permission and subject to the provisions in Section 3(b) hereof, the school authorities shall approach the local Employment Exchange for sponsoring the names of the Employment Exchange candidates upto Honours Graduate level and National Employment Exchange for Post Graduate candidates, according to prior permission within 7 days."

9. On a bare reading of such Clause 4(a), it appears that the school authority shall approach the local employment exchange for sponsoring the names of the candidates up to Honours graduate level whereas for sponsorship of the name upto Post Graduate level, the National Employment would be invited to sent the names. In the Instant case, from the affidavit of the school authority it appears that the school authority in view of prior permission fixing qualification of Honours Graduate in Political Science approached the local Employment Exchange. In the notification of vacancy as appearing at page 13 of the affidavit of School Authority, it appears B.A. (Hons.) in Political Science with training qualification of B.T/B.Ed. was mentioned and the School Authority wanted the names from the local Employment Exchange. By forwarding letter dated 20th February, 1996 which is annexed at page 14 of such affidavit of School Authority, it appears that the local Employment Exchange namely, the District Employment Exchange, Contai which is termed as local Employment Exchange since the National Employment is at Calcutta (Bentlnk Street) had referred the names from Its roll. From the list, it appears that the local Employment Exchange in terms of Clause 4(a) of the Recruitment Rules when it was required to sent the names of only honours graduate, submitted the names of six candidates out of 20 candidates who are qualified with M.A. including the petitioner who were not entitled to have the sponsorship of names from the local Employment Exchange. Under the Employment Exchange Regulation, the post graduate degree holders are required to enlist their names in the National Employment Exchange whose office is situated at Bentlnk Street, Calcutta and all the requisitions from different Schools all over the West Bengal relating to the vacancy whereof post graduate candidates were eligible, were required to be placed to National Employment Exchange at Bentlnk Street Calcutta. Further once the names of candidates either graduate or honours graduate are enlisted in the local Employment

Exchange and thereafter in view of enhancement of qualification to post graduate degree when a candidate enlists his name in the National Employment Exchange, his name from the local Employment Exchange automatically is deleted as he gets the chance of sponsorship as a post graduate degree holders for necessary call from relating to the requisition as would be sent to the National Employment Exchange by the employer. In the Instant case, under Clause 4 of the Recruitment Rules, name of the petitioner and other post graduate degree holders were not permissible to be referred to from local Employment Exchange and in that view of the matter, the writ petitioner even had no right to appear before the Selection Committee due to his disqualification of reference from local Employment Exchange. Now. the question is even for such appearance of the petitioner along with other five candidates qualified with master degree, whether the selection process was vitiated. The answer would be "no" as the members of the Selection Committee has considered all of them as honours graduates and thereby meted out equal treatment in respect of the candidature, so far as the candidates qualified with master degree. Hence, the selection process, for this ground cannot be said to be vitiated but it was a lapse to follow Employment Exchange Regulation on the part of the Employment Exchange who referred the names. The respondent No. 10 is a candidate qualified with B.A. Honours in Political Science with B.Ed. In the prior permission, the preferable qualification has been prescribed as B.T./B.Ed., i.e. a trained candidate. Though the qualification has been prescribed as preferential qualification, yet the training qualification has a different value.

10. In the case *Andhra Kesari Educational Society Vs. Director of School Education and Others*, and in the case *Ram Sukh v. State of Rajasthan* reported in 1989 (2) SCC 189. the apex Court held that the trained candidate would be preferred to an untrained candidate for the purpose of imparting better education to the students concerned.

11. The aforesaid two judgments namely *Andhra Kesari Educational Society* (supra) and *Ram Sukh* (supra) was relied upon by the Three Judges Bench of apex Court in the *State of Rajasthan Vs. Shri Shyam Lal Joshi and others*, . the relevant paragraphs 12 and 13 is quoted hereinbelow in extenso:

"12. In view of the limited recognition that has been granted to NTCs the holders of NTCs cannot claim appointment as general teachers and can only be appointed to the post of craft teachers in the craft for which they hold the NTC. For teaching subject other than the craft for which they hold the NTC the position of the holder of NTC is no different from that of an untrained teacher. The need for appointment of properly trained teachers has been emphasised by this Court in *Andhra Kesari Educational Society v. Director of School Education* wherein it has been observed: (SCC p. 399, para 20).

"It is, therefore, needless to state that teachers should be subjected to rigorous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill-trained or sub-standard teachers would be detrimental to our

educational system; If not a punishment on our children."

13. In the context of appointment of Primary School teachers this Court in *Ram Sukh v. State of Rajasthan* has laid down: (SCC p. 192. paras 6 and 7).

"We are not less sympathetic to the petitioners who are out of job but we cannot forget the welfare of those who are not before the Court. They are the tiny tots who require proper handling by well trained teachers.

The Primary School teachers are of upmost importance in developing a child's personality in the formative years. It is not Just enough to teach the child alphabets and figures, but much more is required to understand child psychology and aptitudes. They need a different approach altogether. Only trained teachers could lead them properly. The untrained teachers can never be proper substitute to trained teachers."

12. Though the purpose, object and utility factor of such training qualification was applied with reference to the case of primary teachers but same is squarely applicable even to the teachers of secondary section of a 10 class High School wherein also for the interest of the students and to provide best educational facilities and to impart such properly and effectively. This Court is of the view that the trained teachers to be preferred then the untrained one even to the secondary section.

13. Having regard to the said judgments of the apex Court, since in the Instant case, the respondent No. 10 who has been selected, is a trained candidate. In comparison to the candidature of the petitioner who had no training qualification B.T. or B.Ed., selection of the respondent No. 10 as a 1st candidate in the panel cannot be said as Illegal or arbitrary. By selecting the respondent No. 10 the students are getting a trained candidate as their teacher which is in tune with the judgment of the apex Court.

14. Hence, considering all the relevant factors and on the basis of above findings and observation this Court is not finding any merit to allow this writ petition and accordingly the same is dismissed. There shall, however, be no order as to costs since, the appointment of respondent No. 10 was subject to the result of the writ petition and the approval of such appointment was also given on 4th July. 1996 by the District Inspector of Schools concerned with said rider, the District Inspector of School concerned is directed to send the corrected approval order upon deleting the clause "subject to the writ application". Such corrected approval order to be issued within a month from the date of communication of this order.