

(1995) 12 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No. 11861 of 1995

State of W.B. and Another

APPELLANT

Vs

Bandan Bayen and Others

RESPONDENT

Date of Decision : 07-12-1995

Acts Referred:

West Bengal (Secretariat Common Cadre) Rules, 1984 — Rule 4, 7

Citation : (1996) 1 AD 388 : (1995) 9 JT 227 : (1995) 7 SCALE 306 : (1996) 1 SCC 627 : (1995) 6 SCR 304 Supp

Hon'ble Judges : K. Ramaswamy, J;B. L. Hansaria, J

Bench : Division Bench

Advocate : Tapas Chandra Ray, Mridula Ray Bhardwaj and Alok Kumar Biswas, for the Appellant; M.N. Krishnamani, Sarla Chandra, Bijan Kumar Ghosh and P. Choudhuri, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. The only question in this appeal is whether the respondents are governed by the Rules for the regulation of the recruitment to the clerical service of the Secretariat and certain other offices of the Government of West Bengal issued in Notification No. 2083-F dated July 21, 1954 of the West Bengal Boards Miscellaneous Rules, 1955 for appointment to the Lower Divisions. The facts are not in dispute. The appellant called for the names from the Employment Exchange in the notification for recruitment. Calling their names, the appellants prescribed passing of the written exams and typing with 30 w.p.m. speed as qualification apart from other qualifications. Pursuant thereto, the names of the candidates have been sent 545 candidates were qualified in the written examination and were required to pass the typing test. After conducting the typing test, respondents 44-189 had passed the test and the other respondents did not pass the test. Consequently, they could not be appointed. When they had approached the High Court under the Art. 226 for necessary directions, the

learned single Judge dismissed the writ petition. But on appeal, the Division Bench in F.M.A. No. 648/91 by order dated April 27, 1992 set aside the order of the learned single Judge directed that the appointment of respondents 44-189 were not upset. Yet directed that the respondents be appointed. Feeling aggrieved, this appeal by special leave has been filed.

3. Pursuant to our directions dated November 2, 1995, the appellants have placed on record the relevant Rules relating to the Schedule 2, 2-A as enumerated in Rule 4 of the Secretariat Rules referred to hereinbefore. In form of notification it is stated in column 3(c) thus:

Qualification required:

School Final or its equivalent. Must have Knowledge in English Typing with a minimum speed of 30 words p.m. Such knowledge in typing is not essential for the physically handicapped persons.

Under Rule 65 of the West Bengal Board's Miscellaneous Rules, 1955 qualifications for permanent appointment to the Lower Division are specified of which condition (d) provides that:

In the case of vacancies in the district or sub-divisional offices an examination of candidates should be held after due notice within the period mentioned in Rule 62 to select the best persons for the posts. The examination will be held in English and Bengali to test (a) handwriting (b) knowledge in English and Bengali (c) general knowledge and intelligence. There will be one paper to be answered in two hours. The test for type- writing will be for half an hour. A candidate should be able to transcribe accurately from legible handwriting at a rate of not less than 30 words per minute and the paper will be marked on the basis of a penalty of five words for every mistake e.g. misspelling, wrong spacing, wrong paragraphing. One letter typed over another, etc. The manuscript will be such as is used in ordinary Government Correspondence and percentage of errors permissible shall not be more than 5 percent. The examinations should be held by the District officer or by any senior Gazetted officer to whom he may delegate the duty.

As noted earlier, pursuant to the advertisement and prescription of the qualification, the respondent Nos 1 to 43 had appeared and sat for the examination. They were qualified in the written examination. They had also appeared for the typing test and therein they were not qualified. The question thus emerges whether the West Bengal Services (Secretariat Common Cadre) Rules, 1984 (for short 'the Rules') issued under proviso to Art. 309 of the Constitution would be applicable to the method of recruitment of L.D.Cs. to be appointed in the district and sub-divisional offices. The Rules themselves clearly envisage that they are applicable to Secretariat Common Cadre Rules. Rule 4 which is relevant in this case postulates that notwithstanding the provisions of the West Bengal (Classification Control and Appeal) Rules, 1971, the competent authority to make the recruitment is envisaged in Rule 7. Rule 4 would be

applicable to the list of departments specified in the schedule. Schedule has been appended and clause (iv) envisages 'Department of Land and Land Reforms'. At the end it is stated under the head 'Offices' '1. Board of Revenue, West Bengal.

4. Relying upon these rules, Shri M.N. Krishnamani, the learned Senior counsel for the respondents 1-43 contended that the respondents working in the Department of Land and Land Reforms are controlled by the Board of Revenue. Therefore, they are required to be governed by the Rules which though initially prescribed pass of the typing test but it is not a condition for appointment. The qualification could be acquired during probation. That rule subsequently was deleted, consequently, the respondent, Nos. 1-43 need not pass the accounts test. We find no force in the contention.

5. It is seen that the Rules themselves would clearly indicate that they are applicable to the Secretariat and the Offices mentioned in the Schedule. Department of Land and Land Reforms mentioned in the Schedule is a Department in the Secretariat. In the 'Offices' it is mentioned the Board of Revenue. It would thus be seen that Secretariat is a separate wing and the Board of Revenue is the Head of the Department. That gets manifested when we see Schedule 2 and Schedule 2-C attached to the West Bengal Public Service Commission Regulation, 1937. It clearly enumerates various clerical establishment, stenographers and typist of the Secretariat and typists in all the departments. They are all heads of Departments. That was also manifested in Schedule 2-C including the Inspector General of Prisons and the Conservator of Forests. It would thus be seen that the regulations for recruitment through Public Service Commission are in respect of clerical establishment, stenographers and typists of the Secretariat and the heads of the departments. Regulation 31 excludes other departments which envisages thus:

It shall not be necessary to consult the Commission with respect to the matters specified in clauses (a) and (b) of Sub-section (3) of Section 266 of the Act for any service or post not included in Schedule "C" annexed hereto the appointing authority for which is an authority subordinate to the Provincial Government.

6. In other words, except those mentioned in Schedule 2 and 2-C, all other departments in other respects the district and sub-divisional offices stand excluded by operation of Regulation 31 of the West Bengal Public Service Commission Regulation 1937. Once they stand excluded from the recruitment by the Public Service Commission, the necessary concomitant result would be that they are governed by the Board's miscellaneous Rules, 1955. They clearly envisage passing of typing as a qualification for appointment as a LDC in the district and sub-divisional offices. It would, therefore, be clear that the recruitment was properly and legally made, respondent Nos. 1-43 and 114-120 having appeared and failed in typing examination, cannot now turn round and contend that the said rules are inapplicable and the Rules are applicable to them. Our view gets support also from the decision of this Court in C.A. 4531/92, dated October 22, 1992.

7. In case of future recruitment, it may be open to the respondent Nos. 1-43 and 114-120 to appear for the examination and claim their, right to be considered for recruitments as LDCs. In the event if any of them happen to be barred by age, necessary relaxation of age may be given and they may be considered according to rules.

8. The appeal is accordingly allowed and the order of the Division Bench is set aside and that of the learned single Judge stands confirmed. No costs.