

(2011) 01 CAL CK 0117
In the Calcutta High Court
Case No : Writ Petition No. 3816 (W) of 2009

Subrata Ghosh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Citation : (2011) 1 CALLT 591

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Kishore Dutta, Bikash Goswami and Amar Kumar Sinha, for the Appellant; Subir Sanyal, Sumita Sen, Saikat Banerjee and Bikash Kandari for State, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—This writ Petitioner has sought for the issuance of writ of mandamus, commanding the Chairman Birbhum District School Council to issue letter of appointment for the post of assistant teacher in any primary school under the said Council.

2. The backdrop of the case is that the Petitioner passed secondary school examination in the year 1991 from Bihar School Examination Board, Patna in first division and subsequently passed the primary teachers training final examination in the first division. The Petitioner enrolled his name in the employment exchange and a call letter was issued for appointment to the post of assistant teacher by the said Birbhum District Primary School Council. The writ Petitioner submitted all the relevant documents. It was subsequently found that the marksheet of the secondary school examination issued to the writ Petitioner by the Bihar School Examination Board, Patna contains a total marks of 98 in natural science group but the same does not tally with the marks obtained by the writ Petitioner in a component subjects. The concerned council directed the writ Petitioner to produce the corrected marksheet within ten days. The Petitioner subsequently submitted the corrected marksheet where from it appears that a

column of practical examination was missing.

3. Since the Respondent authorities did not take any action thereafter, the Petitioner moved a writ application being WP No. 14990(w) of 2000 which was disposed of on 10.11.2000 with a direction upon the Secretary, West Bengal Board of Primary Education to treat the said writ application as a representation and to dispose of the same within two months from the date of communication of the order. Pursuant to the said direction hearing was held on 8.3.2001 and the prayer of the Petitioner was rejected on 16.3.2001 with direction upon the Birbhum District Primary School Council to consider! the candidature of the Petitioner at the time of preparation of the next panel of the eligible candidates if on verification of the marksheet of the Secondary School Examination the same is found genuine.

4. Challenging the said order dated 16.3.2001 the writ Petitioner filed a writ application being WP No. 7905(w) of 2001 before the High Court and the same was disposed of on 5.10.2005 on the basis of an undertaking given on behalf of the Chairman, Birbhum District Primary School Council that the candidature of the writ Petitioner shall be considered in the next panel which is due in the year 2006.

5. The grievance of the writ Petitioner in the instant writ application is that in spite of such direction and/or undertaking the candidature of the Petitioner has not been considered in the next selection process for the year 2006 which started in the year 2007.

6. Pursuant to the order dated 18.6.2009 passed in the instant writ application the Respondents No. 4 and 5 filed affidavit-in-oppositlon and it is contended therein that in the next selection process the Petitioner submitted the bio-data and on the basis of the marks so obtained the Petitioner was kept within the zone of consideration for interview/written test and was in fact called for written test to be held on December 11, 2005. The Petitioner absented himself in the written test and as such he could not be considered for empanelment for the year 2006.

7. Mr. Kishore Dutta, learned Advocate appearing for the Petitioner submits that after an undertaking given by the Chairman of the Birbhum District Primary School Council before this Court and the writ application being disposed of on the basis of such undertaking, the Respondent authorities have acted in gross violation thereof. It is further contended that at the time of the preparation of an earlier panel the Petitioner duly qualified and was only objected at the time of giving appointment on the ground of genuineness of the marksheet of the Secondary School Examination issued by the Bihar School Examination Board, Patna, there cannot be any occasion to go for further selection process. He further contends that such was never an intention of this Court while passing an order dated 5.10.2009 in WP No. 7905(w) of 2001. Mr. Dutta submits that subsequently the Chairman of the Birbhum District Primary School Council

received a letter from the Bihar School Examination Board, Patna wherein it has been categorically stated that the marksheet which was issued is a genuine marksheet and the discrepancy arises due to the fault of the said Board. He submits, therefore, having found such marksheet to be genuine there is no justification in not giving an appointment to the writ Petitioner by the Birbhum District Primary School Council.

8. Mr. Subir Sanyal, learned Advocate appearing for the Council submits that nowhere an unfettered right was conferred upon the writ Petitioner to have his appointment in the next selection process. The tenet of the order of the Secretary, West Bengal Board of the Primary Education which was subsequently affirmed by the High Court in W.P. No. 7905(m.) of 2001, does not imply that the Petitioner should be given appointment in the next panel but what was directed is to consider the candidature of the writ Petitioner in the next panel. He further submits that the writ Petitioner was intimated of the selection process for the year 2006 and the writ Petitioner duly submitted its bio-data and performed other formalities. After being selected in a ratio of 1:5, the Petitioner was called for the written test but the Petitioner did not appear. Thus the Petitioner cannot seek for an appointment.

9. Mr. Saikat Banerjee, learned Advocate appearing for the state Respondent adopts the submission made by Mr. Subir Sanyal and submits that the writ application is devoid of any merit and is liable to be rejected.

10. Having considered the submission made as above, the Petitioner's candidature was considered at the time of selection process of 1999 the Petitioner duly complied all the formalities and was empanelled but the appointment could not be made because certain discrepancies were detected in the marksheet of the Secondary School Examination held by the Bihar School Examination Board, Patna. Subsequently by a letter the said Board duly intimated to the Chairman, Birbhum District Primary School Council that the marksheet is genuine. Since the process of selection was complete so far as 1999 selection process is concerned, an opportunity was given to the writ Petitioner by the Secretary of the Board of Secondary Education, which was confirmed by this Court, directing the Chairman, Birbhum District Primary School Council to consider the candidature of the writ Petitioner at the time of preparation of the next panel. On a perusal of the above orders it cannot be deciphered that an unfettered right was conferred upon the Petitioner to have its appointment without facing the selection process. What was intended is that the candidature of the writ Petitioner shall be considered at the time of preparation of the next panel which obviously does not mean that the Petitioner should be appointed at the time of filling the next vacancies. Thus the argument so advanced by the writ Petitioner that this Court while affirming the order of the Secretary of the Secondary School Education directed the appointment to be made is not tenable.

11. There is another aspect where the writ petition cannot be allowed is that in a

next selection process which started in 2007 the Birbhum District Primary School Council duly intimated the writ Petitioner of the same and the writ Petitioner voluntarily, consciously and without any objection and/or demur submitted his candidature by filing all the documents and was empanelled to be eligible for a written test. The Petitioner did not appear in the written test, thus became not eligible to be appointed at the post of the primary teacher.

12. If the writ Petitioner interpreted the order of the Secretary, West Bengal Secondary Board which was confirmed by this Court, to be an order by which a direction was made to give an appointment to the writ Petitioner, there was no point in submitting his candidature in the next selection process. The Petitioner was aware of the purport of an order and its real meaning and applied his candidature in the next selection process and after having participated in the selection process, the Petitioner cannot turn around and assert that once having clear of the selection process in the preparation of an panel in an earlier selection the Petitioner cannot be subjected to the same process at the time of preparation of the subsequent vacancies.

13. The Supreme Court in case of Pannalal Binjraj Vs. Union of india (UOI), denied the relief on the ground that if the Petitioner acquiesced to the jurisdiction of an authority then they are not entitled to invoke the jurisdiction of the Court and their conduct would disentitled them to any relief in the hands of the Court. In another judgment, the Supreme Court in case of Prasun Roy Vs. Calcutta Metropolitan Development Authority and Another, observed that long participation and acquiescence in the proceedings, precludes a party from contending that the proceedings were without jurisdiction. The support can also be had from a judgment of the Supreme Court in case of Suneeta Aggarwal Vs. State of Haryana and Others, where in the similar circumstances the apex Court refused to grant discretionary relief in favour of the Appellant. In the said case also the Appellant participated into the selection process held on 15.7.1996 wherein the name of the Appellant was placed in serial No. 2 and the selection Committee recommended the name of the Appellant for the said post. The Vice-Chancellor disapproved the same and directed the said post to be readvertised. On the strength of the said order of readvertisement, another Selection Process started on 10.1.1997 and the Appellant therein appeared before the Selection Committee without any kind of protest. After the participation in the subsequent selection process the Appellant therein challenged the said order of the Vice-Chancellor whereby an order for readvertisement was made. In such perspective the apex Court dismissed the writ application of the Appellant holding that having appeared before the Selection Committee without any protest and having taken a chance the person is estopped by her conduct to challenge the earlier order. In the said case there was no pleading as to the participation into the next selection process in the writ application.

14. The facts involved in this writ application are similar to the facts involved in the above noted case. The writ Petitioner has also not stated within the length

and breadth of the writ petition about his participation in the next selection process. It is only in the affidavit-in-opposition filed by the Chairman, Birbhum District Primary School Council an assertion is made about the participation of the writ Petitioner in the next selection process, above fact has not been specifically denied in the reply filed by the writ Petitioner. Thus the principles laid down in the case of Suneeta Aggarwal (supra) squarely applies in the instant case.

15. The Petitioner is estopped from challenging the action of the Respondent authorities in considering the candidature of the Petitioner at the time of preparation of the next panel having aware of his own right. If having known the true meaning of the orders passed in an earlier writ application the Petitioner then and there, at the time of receiving the information of selection process started subsequently, would have objected. The Petitioner waived his right by participating in the selection process at the time of preparation of the next panel.

16. The writ application is, thus, devoid of any merit and is dismissed.

17. It is however made clear that if the writ Petitioner is otherwise entitled to be considered in the selection process for preparation of the next panel his candidature shall be considered in accordance with law prevalent at that point of time.

Urgent xerox certified copy of this order be given to the parties, if applied for.