

(1998) 12 CAL CK 0012
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, W.P. No. 7785 (W) of 1997

Sukdev Sutradhar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Board of Secondary Education Act, 1963 — Section 45

Citation : (1999) 2 CALLT 129

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Mr. Manik Ch. Das, Mr. Milan Bhattacharjee and Mr. Tulsidas Maity, for the Appellant; Mr. R.L. Maity, Mr. P.S. Deb Barman, Mr. L.C. Bihani and Miss S. Mukherjee, for the Respondent

Judgement

1. The facts leading to the filing of the writ petition are that the petitioner who is having the qualifications of B.A. Hons. in History, M.A. in History and also B.Ed, was sponsored by the Employment Exchange for filling up the post of Assistant Teacher in History. The interview for the said post was held on 6.9.95.

2. The respondent No. 8 it is stated was illegally sponsored by the Employment Exchange inasmuch as, at the relevant time his degree of M.A. in Modern History was not recorded with the Employment Exchange and only the qualification of M.A. in Ancient Indian History, Culture and Archaeology was recorded.

3. Seventeen (17) candidates participated in the interview (those names were sent by the Employment Exchange). The Selection Committee prepared a panel of three candidates which was approved by the Managing Committee and sent to the District Inspector of Schools (SE), Birbhum on 10.10.96 for approval. The respondent No. 8 being unsuccessful in the interview filed a writ petition to which the petitioner herein was not a party and the said application was disposed of by an order dated 7.6.96 directing the District Inspector of Schools (SE) to dispose of the representation of the respondent No. 8 in accordance with the law. In

purported compliance therewith, the District Inspector of Schools (SE) directed the school authorities to recast the panel by awarding marks to the respondent No. 8 for M.A. qualification in Ancient Indian History, Culture and Archaeology.

4. The school authority, however, did not recast the panel as directed and there upon the respondent No. 8 filed another writ application. The petitioner herein intervened and after having heard the petitioner, the matter was disposed of by an order dated 17.12.96 by His Lordship the Hon'ble Justice Shree Ranga Mishra in C.O. No. 17997(W) of 1996 directing the Director of School Education to consider the writ petition as representation of the petitioner and to dispose of the same in accordance with the law after affording a hearing to all necessary Parties. The Director of School Education in compliance with the aforesaid direction held that the opinion of the District Inspector of Schools dated 18.5.96 for recasting the panel awarding the marks for M.A. degree in Ancient Indian History, Culture and Archeology to the respondent No. 8, Surya Kanta Mondal, stands and thereby disposed of the matter.

5. The said order of the Director of School Education dated 21.3.97 in Memo. No. 478(4) G.A. has been assailed in the above writ petition.

6. After having heard to learned counsel for the respective parties and perusing the impugned order as also the annexures filed on behalf of the respective parties, it is seen that the petitioner as also the respondent No. 8 have been sponsored by the Employment Exchange. The prior permission granted by the District Inspector of Schools for filling up the post of Assistant Teacher by his memo dated 31.5.95, the qualification prescribed is "Hons./M.A. History preferably trained.

7. In the list sponsored by the Employment Exchange, the qualification of the respondent No. 8 was mentioned as "M.A. /B.Ed. The respondent No. 8 has M.A. in Ancient Indian History, Culture and Archeology which degree was acquired by him in 1990 from Vishwa Bharati University with 58.5% marks. The respondent No. 8 passed B.Ed. examination in 1992. He has also passed M.A. In Modern History in 1994 obtaining 46.25% marks. The Selection Committee has not awarded the respondent No. 8 any marks for his M.A. In Ancient Indian History, Culture and Archeology wherein he obtained 58.5% marks and which were recorded by the Employment Exchange while forwarding the list of sponsored candidates instead marks have been awarded to respondent for his qualification M.A in Modem History which was neither reported nor recorded by the Employment Exchange.

8. In the impugned order dated 21.3.97. the Director of School Education has noted that the prior permission was issued to the school to appoint one Assistant Teacher having qualification "Hons. M.A. in History preferably trained" not mentioning whether it was Modern History or Ancient Indian History. Culture and Archeological History. The respondent No. 8 was registered as M.A. in Ancient Indian History, Culture and Archeology though the petitioner had latter obtained

M.A. degree in Modern History but that qualification was not recorded in the Employment Exchange. On those facts, the Director of School Education held that the respondent No. 8 Surya Kanta Mondal was entitled to be awarded marks for the M.A. degree in Ancient Indian History for which degree his name was actually sponsored by the Employment Exchange. The Selection Committee not having awarded him marks for that degree, the panel was directed to be recasted.

9. The short point for consideration in the instant case, therefore, is whether the M.A. degree in Ancient Indian History, Culture and Archeology of respondent No. 8 should have been taken into consideration by the Selection Committee.

10. It is not in dispute that the Selection Committee has not awarded marks to the petitioner for his qualification M.A. in Ancient Indian History Culture and Archeology as according to the Selection Committee, the said qualification is not relevant and the panel was prepared based upon the qualification in M.A. in History. The respondent. No. 8 was sponsored by the Employment Exchange on the basis of his M.A. degree in Ancient Indian History Culture and Archeology which was recorded by it and not on the basis of the M.A. degree in Modern History.

11. The learned counsel for the petitioner submitted that the impugned order passed by the Director of School Education is not valid in law nor in conformity with the directing Issued by the court dated 17.12.96 in C.O. No. 17997(W) of 1996. Reliance has been placed by the learned advocate for the petitioner upon the statement of the learned Judge in his order dated 17.12.96 to the effect that the controversy requires investigation of facts and also looking into syllabus, calendar and other relevant documents. It is the contention of the learned counsel for the petitioner that the Director has not considered the syllabus and thereby ignored the relevant parameters. I cannot accede to the said contention as the direction of the court was to consider the representation of the petitioner. The writ petition itself was directed to be treated as representation and the Director of School Education was directed to consider the same In accordance with the law after affording an opportunity to the necessary parties within a time frame.

12. The next contentions strenuously urged before court by Mr. Milan Bhattacharjee, the learned counsel for the petitioner was that the selection committee which comprises inter alia, experts in the subject awarded marks for M.A. qualification in Modern History which is relevant for the syllabus of the school level, while M.A. in Ancient Indian History, Culture and Archeology is not the appropriate and relevant subject and it is not even the full-fledged school subject. It is rather the subject for specialisation having no nexus with the syllabus laid down by the education authority.

13. It was further submitted that the Selection Committee awarded marks to the petitioner, private respondent No. 8 including all other candidates for M.A.

qualification in History and not for the degree in Ancient Indian History.

14. Learned counsel for the petitioner sought to place reliance upon the syllabus prescribed by the West Bengal Board of Secondary Education and submitted that M.A. in History covers 80% of the said syllabus whereas M.A. in Ancient Indian History, Culture and Archeology covers only 20% of the said Syllabus.

15. Mr. L.C. Bihani, learned senior counsel appearing on behalf of private respondent No. 8 submitted that the respondent No. 8 has the basic qualification prescribed for the post and is duly eligible for appointment to the post in question. It was asserted that the respondent No. 8 has passed B.A. (Hons) in regular course in History from Burdwan University in the year 1987 in 2nd class (annexure--A). Respondent No. 8 thereafter passed M.A. in 2nd Class in Ancient Indian History, Culture and Archeology in the year 1990 from Vishwa Bharati University obtaining marks equivalent to 58.5% (annexure--B). Respondent No. 8 passed B.Ed, examination from the University of Calcutta in the year 1992 in 2nd class. Respondent No. 8 appeared in Modern History as external student in Part--I examination in the year 1993 and in Part-II Examination in the year 1994 and obtained marks equivalent to 46.75% from University of Burdwan.

16. It was contended by Mr. Bihani, learned senior counsel for the respondent No. 8 that the Selection Committee is bound by the Recruitment Rules and to consider and award marks in the light of the prior permission of the D.I. and the Recruitment Rules. The action of the Selection Committee by ignoring the post graduate qualification of the petitioner in M.A. in Ancient Indian History, Culture and Archeology, the said action was ultra-vires the Recruitment Rules and beyond the powers of the Selection Committee which has been duly rectified by the order of the Director of School Education impugned in the present writ petition.

17. It is well settled and the Supreme Court has repeatedly held that the decisions of academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invertedly consists of experts on the subjects relevant to the selection.

18. In Indian Airlines Corporation Vs. Capt. K.C. Shukla and Others, held as under;

"... Adjusting equates in exercise of extraordinary Jurisdiction is one thing but assuming the role of selection committee is another. The court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the offer was not promoted or selected contrary to law. it can issue necessary direction. For instance a candidate denied selection because of certain entries in his character roll which either could not be taken into account or had been illegally considered because they had been

expunged the court would be within jurisdiction to issue necessary direction. But it would be going too far if the court itself evaluates fitness or otherwise of a candidate, as in this, case."

19. In *Kumari Nilima Mishra v. Dr. Harinder Kaur Paintal & Ors.* AIR 1990 SC 402, it was held as under;

"It is not unimportant to point out that in matters of appointment in the academic field the court generally does not interfere. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, , this court observed that the courts should be slow to interfere with the opinion expressed by the experts in the absence of malafide alleged against the experts. When appointments based on recommendations of experts nominated by the Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which Chancellor had acted. See also the decisions in *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, and *Dalpat Abasaheb Solunkey v. S. Mahajan* (1990) 1 SCR 305 at Pp.309-310 : (AIR 1900 SC 434 at P.438)."

20. The parameters of judicial review in exercise of its jurisdiction under Article 226 of the Constitution are thus circumscribed and jurisdiction of writ court is only to see whether opinion expressed by the experts in the absence of malafide, the selection process is in accordance with the rules or whether the selection process is vitiated by contravention of any statutory or binding rule having the force of law. A writ court will not lightly interfere in academic matters nor sit as a court of appeal and try to reassess the relative merits of the candidates. The assessment on merits as made by the authorities including the Selection Committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of appellate body.

21. For the said reasons, the limited questions for consideration in the instant writ application is whether there has been any violation or contravention of the statutory provisions or rules having the force of law by the Selection Committee.

22. Section 45(b) of the West Bengal Board of Secondary Education Act confers power upon the State to make rules as regards composition, powers and functions of the Managing Committee of the Institutions which would, by necessary implication, include the restriction on such power by the Board. Rule 28 of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 (for short 1969 rules) has been framed by the State Government in exercise of its power conferred upon it u/s 45 of the Act.

23. The Director of School Education in exercise of its power conferred upon him under clauses (1) and (11) of sub-rule (1) and clause (1) of sub-rule (2) of Rule 28 of the Rules for Management of Recognised Non-Government Institutions

(Aided and Unaided), 1969 has from time to time Issued directions, which he was so empowered to do, as regards recruitment of teaching and non-teaching staff. Such directions have been held to be statutory in nature in various decisions of this High Court.

24. In 1993, a fresh direction has been issued by the Director of School Education and in Rule 6(a) thereof, It was stated as under;

"No credit shall be given to the qualification other than the qualification mentioned by the DIS (SE) in the prior permission and mentioned by the Employment Exchange."

25. In *Pintu Acharyya v. State of West Bengal & Ors.*, reported in 1997 (2) CLJ 428, after referring to the section 45 of the West Bengal Board of Secondary Education Act and the 1969 Rules, it was held as under:

"In view of the statutory provision aforementioned there cannot be any doubt that the Selection Committee was bound to follow the recruitment rules which has a statutory force. Even the circulars Issued by the Director of School Education were required to be followed by the Selection Committee. The 1993 Rules having come into force with effect from 20.5.93 would govern the recruitment process as the same began on 30th June, 1994. The Selection Committee or for that matter this court also, thus, could not have Ignored the relevant statutory provisions."

26. In *Pintu Acharyya's* case (supra), the court was considering the question whether the B.Ed, qualification of the writ petitioner in that case could have been taken into consideration by the Selection Committee which was not reported nor recorded in the local employment exchange. The Division Bench after a detailed examination of the various judgments on the subject held that the B.Ed, qualification which was not recorded by the employment exchange could not be taken into consideration by the Selection Committee in view of the rule position.

27. In the light of the above, it must be held that the Selection Committee was not justified in taking into consideration the post graduate qualification of the respondent No. 8 and ignoring the qualification as recorded by the Employment Exchange when it sponsored the name of the respondent No. 8. The Selection Committee's action in doing so and giving credit to the post graduate qualification other than the qualification mentioned by the employment exchange as regards respondent No. 8 was in clear violation of the statutory Rule 6(a) of 1969 Rules. The Director of School Education is vested with the power to grant approval of the selection made by the Selection Committee and as recommended by the Managing Committee. He is thereby empowered to consider as to whether the selection process is in accordance with the Recruitment Rules. The Director of School Education has taken note of the illegality i.e. of the contravention of the Rule 6(a) by the Selection Committee, in his impugned order, and issued appropriate directions. No legal infirmity, in the circumstances, can be found with the said order of the Director of School Education impugned in the above writ

petition.

28. The instant case is not one where the court is required to consider whether the respondent No. 8 is having requisite qualifications for the post in question. The respondent No. 8 has fulfilled the eligibility criteria. He has the requisite qualifications i.e. Hons. degree in History as also Post Graduate degrees of M.A. both in Modern History, as well as ancient Indian History, Culture and Archeology. The said qualifications were obtained by the petitioner prior to the permission granted by the District Inspector of Schools for filling up the post in question. The only question before the Selection Committee was whether the respondent No. 8 was entitled to be awarded marks for his post graduate qualification as recorded by the employment exchange. The post graduate qualification of respondent No. 8 as recorded in the employment exchange was in History and had, therefore, to be taken into consideration for awarding marks as prescribed in Rule 6. The prior permission issued by the D.I. of Schools (SE) does not specify the nature of post graduate degree in History. The same could not, therefore, be ignored by the Selection Committee nor can it be said that the employment exchange had erroneously sponsored the name of the respondent No. 8. It was not open to the school authorities or the Selection Committee to act unilaterally or in violation of the statutory rules.

29. For the reasons aforesaid, the writ petition must fail and is accordingly dismissed but in the circumstances without any order as to costs.

30. Petition dismissed