

(2011) 03 CAL CK 0052
In the Calcutta High Court
Case No : Writ Petition No. 19146 (W) of 2003

Sukumar Hazra

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 CAL CK 0052

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Anil Kumar Chattopadhyay, for the Appellant;Tulsidas Maity, for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—In this writ petition, the Petitioner has prayed for issuance of mandamus directing the Respondents to issue an appointment letter to the writ Petitioner after condoning the age bar in compliance of the order dated 20.11.1998 passed by G.R. Bhattacharjee, J in WP No. 10802 (w) of 1998.

2. The case of the Petitioner is that he appeared for the interview held for the appointment of the assistant teacher by the Howrah District Primary School Council and was empanelled under serial No. 1483 after obtaining 34 marks. In spite of being empanelled, the appointment letter was not issued and the Petitioner filed a writ petition being WP No. 10802 (w) of 1998 before this Court praying for a direction upon the Respondent authorities to absorb the Petitioner as assistant teacher of the primary school. The said writ application was disposed of with a direction upon the concerned authorities to consider the case of the Petitioner along with other candidates according to the recruitment rules in case of any future vacancy. On the basis of the said order, several representations were made by the writ Petitioner praying for his absorption as assistant teacher in terms of the order of this Court passed in WP No. 10802 (w) of 1998. The aforesaid representations were disposed of by the Director of the School

Education, West Bengal holding that the Petitioner may be allowed to apply for the post of the assistant teacher in future vacancy. Lastly, the writ Petitioner submitted his candidature in the selection process initiated in the year 2002. The writ Petitioner has moved this writ application praying for his absorption as a primary teacher in terms of an order of this Court passed on 20.11.1998 in WP No. 10802 (w) of 1998.

3. The Respondents were directed to file the affidavit-in-opposition. Only the Respondent No. 2 filed affidavit-in-opposition and it has been specifically contended that although the Petitioners were allowed to submit their bio-data and testimonials but they were not called for the written test as they were over-aged and an embargo is created under the Recruitment Rules of 1991.

4. In reply the writ Petitioner has contended that the age bar should have been condoned and the Petitioner should be appointed to the post of assistant teacher.

5. Mr. Anil Kumar Chattopadhyay, learned Advocate appearing for the Petitioner submits that the right of the Petitioner is already crystallized in the order dated 20.11.1998 passed in WP No. 10802 (w) of 1998. He submits that after the said order there is no further scope of putting the Petitioner to a further selection process and the Petitioner should be absorbed to the post of assistant teacher. He succinctly argued that the Petitioner should be appointed to the post of assistant teacher by relaxing the age bar and relies upon a Division Bench judgment of this Court in case of Ratan Kumar Saha and Ors. v. State and Ors. reported in 1997 (1) CLJ 501.

6. Mr. Tulsidas Maity, learned Advocate appearing for the Respondent No. 3 contends that there is no conferment of right of appointment upon the writ Petitioner in terms of the order dated 20.11.1998 passed in WP No. 10802 (w) of 1998. He succinctly argues that the Petitioner was not found eligible under the rules notified in Memo No. 786-Edn.(P) dt. 2.11.1991 (hereinafter referred to as the Recruitment Rules of 1991) and as such their candidature was rejected. By contending so he submits that the age bar cannot be relaxed and the Recruitment Rules which applicable to the said selection process are to be strictly adhered to.

7. Having considered the submission of the respective parties, it is undisputed that the Petitioner was empanelled in the selection process initiated in the year 1993. He was not given an appointment as he could not secured the cut-off mark fixed by an authority for giving an appointment to the post of assistant teacher. The writ Petitioner challenged such action before this Court in WP No. 10802 (w) of 1998 and prayed for a direction upon the concerned authority to give him an appointment to the post of assistant teacher. The writ application was disposed of on 20.11.1998 on the following:

In case in future any vacancy arises for the post of the Assistant Teacher in primary school, in that case the Petitioner will have the liberty to apply for such post and the concerned authorities shall consider the case of the Petitioner along

with the other candidates according to the recruitment rules. The writ petition stands disposed of accordingly.

(Emphasis supplied)

8. Thus what was conferred upon the writ Petitioner in the said order, was a liberty to apply in future vacancies for the post of assistant teacher along with other candidates according to the Recruitment Rules. By no stretch of imagination it can be said that any unbridled right is conferred upon the writ Petitioner to be appointed to the post of an assistant teacher in case of any future vacancy. Even there was no unfettered right given to the writ Petitioner for being considered in contrary to the Recruitment Rules.

9. From the various representations made it appears that the writ Petitioner consistently took a stand that the right of the writ Petitioner has been crystallized for appointment to the post of assistant teacher by order dated 20.11.1998 passed in the earlier writ petition. The authorities have taken stand while disposing of one of such representations that the Petitioner should be considered along with other candidates in the case of any future vacancy in accordance with the Recruitment Rules. Precisely for such reason the Petitioner was called for submission of the bio-data and testimonials in the recruitment process initiated in the year 2002 and the said recruitment process as it appears was conducted by taking recourse to the Recruitment Rules of 1991. One of the eligibility criteria enshrined in the Recruitment Rules of 1991 is that the person should not be below 18 years and above 40 years of age. The candidature of the writ Petitioner was rejected on the ground that the upper age limit fixed for the appointment to the post of assistant teacher is 40 years and the Petitioner has crossed the said upper age limit.

10. A point came up for consideration before the Division Bench in Mat No. 544 of 2009 as to whether the court exercising jurisdiction under Article 226 of the Constitution of India has the power to relax the age bar which is fixed under the statutory rules. The Division Bench held that in absence of any provision under the statutory rules for relaxation of the age limit so prescribed by the selecting authority, the high court in exercise of power under Article 226 of the Constitution of India cannot confer right upon the writ Petitioner to appear at the process of selection.

11. However, the earlier Division Bench in case of Ratan Kumar Saha (supra) directed the authorities to consider the candidature of the applicants therein after condoning the age bar, specifically observed that the said judgment would not be treated as a precedent having been passed in the facts and circumstances of the said case. The Division Bench in case of Ratan Kumar Saha (supra) had no occasion to deal with the point whether the court, exercising powers under Article 226 of the Constitution of India can relax the age limit fixed under the statutory rules when the powers to relax is not provided therein. Thus the said judgment cannot be a pointer to an issue as enumerated above.

12. Apart from this the prayer of the writ Petitioner is that he should be absorbed and be given appointment to the post of an assistant teacher in terms of the said order dated 20.11.1998 passed in the earlier writ petition. As already indicated, the said order dated 20.11.1998 did not confer any unbridled right upon the writ Petitioner for such appointment, even the court in the said order observed that the case of the Petitioner should be considered in accordance with the recruitment rules. Thus if there is an embargo created in the recruitment rules for being considered for appointment to the post an assistant teacher, the Petitioner cannot be considered eligible for such appointment.

13. In view of the discussion and finding made hereinabove, the writ application is devoid of any merit and is accordingly dismissed.

14. However in the peculiar facts and circumstances there shall be no order as to costs.

15. Photostat certified copy of this order, if applied for, be given to the parties on urgent basis.