

(2019) 08 CAL CK 0254

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 9806 (W) Of 2019

Suman Hazra

APPELLANT

Vs

West Bengal College Service Commission & Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0254

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Soumya Majumder, Chabbi Roy, Atasi Ghosh, A. Chowdhury, P.R.Mondal, Bandana Das, Uday Narayan Betal, Kingsuk Mondal, Debabrata Chatterjee

Final Decision : Disposed Of

Judgement

Samapti Chatterjee, J

The petitioner has filed the present writ petition assailing the impugned order of de-reservation of the post no. 6 initially earmarked for unreserved category but subsequently marked as reserved OBC-A category by the corrigendum dated 5th June, 2019.

Mr. Majumder, learned advocate appearing for the petitioner submits that in response to the advertisement dated 16th July, 2018, the petitioner applied through online for the post of Assistant Professor in Anthropology as an unreserved candidate. Therefore, the petitioner was asked to appear in the interview. Accordingly, the petitioner appeared in the interview which was held on 4th January, 2019. Ultimately, on 27th May, 2019 the merit list was published wherefrom it reveals that the petitioner's name is appearing under post no. 6 as unreserved category for the post of Assistant Professor in Anthropology. All on a sudden, on 5th June, 2019 a corrigendum was published thereby deleting the post no. 6 as unreserved category and further included the same as OBC-A category. Hence the present writ petition.

Mr. Majumder, learned advocate appearing for the petitioner submits that in a public holiday on 5th June, 2019 the Controller of Examination has deleted the post no. 6 which was earmarked for unreserved thereby mentioning the same as reserved for OBC-A category. This is illegal, arbitrary and very much contrary to the existing law. In support of his contention, Mr. Majumder draws the Court's attention to the sub-resolution 6 of resolution 3 the same is quoted below.

"The Commission shall display a list of all such recorded vacancies (to be called the 'existing vacancies') category-wise (Unreserved, SC, ST, OBC-A, OBC-B and PWD) in its website prior to publishing any provisional merit panel for recruitment of Principals, Assistant Professors and Librarians, in order to facilitate a transparent counselling process".

Mr. Majumder further contends that there is no whisper in the advertisement that post no. 6 is reserved for OBC-A category. Only after the merit list was published, by the impugned corrigendum dated 5th June, 2019 the authority has changed the unreserved post as reserved under OBC-A category. Therefore, though the petitioner appeared before the counselling on 10th June, 2019 but the petitioner was not allowed to opt for any college. Accordingly, Mr. Majumder submits that the Court should quash the impugned corrigendum dated 5th June, 2019 thereby directing the West Bengal College Service Commission to recommend the petitioner's name as unreserved category for the post of serial no. 6 for Assistant Professor in Anthropology for the Sree Chaitanya College.

Per contra, Mr. Mondal, learned Senior Counsel appearing for the West Bengal College Service Commission submits that it is the fault on the part of the College to mention the post no. 6 as unreserved one, though as per roster the post no. 6 is reserved for OBC-A. It is further submitted by Mr. Mondal that only on 3rd June, 2019 the Principal of Shree Chaitanya College rectified that mistake thereby informing that the post of Anthropology is reserved for OBC-A category and it is not for general category candidate. Pursuant to that information the Commission issued the corrigendum dated 5th June, 2019 thus stating, inter alia, that the post of Assistant Professor in Anthropology for Shree Chaitanya College is reserved for OBC-A category and not for general category. Mr. Mondal further contends that the Commission has issued the corrigendum dated 5th June, 2019 only on the basis of the information made by the college on 3rd June, 2019. Therefore, in conclusion Mr. Mondal submits that there is no illegality and/or infirmity and/or ambiguity in the impugned corrigendum dated 5th June, 2019 as has been demonstrated by Mr. Majumder.

In this upshot, being prima facie satisfied, this Court earlier restrained the West Bengal College Service Commission to recommend any name for the post of Assistant Professor in Anthropology for Shree Chaitanya College for a specific time. Thereafter, this Court also directed the Principal, Shree Chaitanya College, Habra, North 24 Parganas to appear personally before this Court on 10th July, 2019. Accordingly, the Principal of the said College appeared personally on that date fixed. Thereafter, his appearance was dispensed with.

Now, Mr. Uday Narayan Betal, learned advocate for the Principal of Shree Chaitanya College, the respondent no.5 submits that the proforma of 2018 was sent by the Principal to the College Service Commission wherefrom it is revealed under clause 4(a) that the roster position of 6 post vacancy in second circle is inadvertently mentioned as un-reserved though it is reserved for OBC-A.

The proforma of roster position was vehemently opposed by Mr. Soumya Majumdar, learned advocate for the petitioner.

Mr. Majumdar submits that the date of vacancy occurred on 22nd November, 2016. At that point of time the post no.6 was declared as un- reserved. Then under what manner it can be converted as reserved for OBC-A by the purported corrigendum not explained. He further submits that the College Service Commission was under obligation to examine all the documents before publishing merit panel. Unfortunately, that obligation has not been duly complied with by the College Service Commission.

Mr. Betal submits that according to the merit list the petitioner was selected. Since some mistake was occurred in the 100 point roster thereby mentioning that the post no.6 is un-reserved although it was subsequently rectified thereby mentioning that the said post no.6 is reserved for OBC-A by corrigendum dated 5th June, 2019.

Considering the submissions as advanced by the learned advocate for the parties and after perusing the records, I find that initially the post no.6 was earmarked as un-reserved category but subsequently marked as reserved OBC-A category by corrigendum dated 5th June, 2019. But it is apparent from the record that when the vacancy was occurred on 22nd November, 2016 the post was considered as un-reserved category. It is evident from the merit list that the petitioner holding the 6th position in general category. Therefore, I direct the College Service Commission to consider the original requisition dated 23rd May, 2018 where the post no.6 was mentioned as un-reserved and thereafter take step for recommending the petitioner's name and forward the same to the respondent no.5. Such exercise shall be completed within two weeks. The respondent no.5 after receiving such recommendation shall take step for giving appointment to the petitioner to the post of Assistant Professor in Anthropology without any further delay but positively within one week thereafter.

I also direct the college authority to declare the next post of the roster as reserved for the OBC-A category.

With this direction, this writ petition is disposed of.

No order as to costs.

Let photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned advocate for the parties on usual undertakings.