
(2004) 03 CAL CK 0002
In the Calcutta High Court
Case No : Writ Petition No. 8859 (W) of 2002

Surendra Nath Roy

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Citation : (2004) 2 ILR (Cal) 1

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Sugata Bhattacharya and Sunil Kumar Pal, for the Appellant; Partha Sarathi Bhattacharya and Subir Debnath for Respondent No. 6 and Tapabrata Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

Kalyan Jyoti Sengupta, J.—The Petitioner approaches this Court third time, to impugn the order of State Education Department officials. As I understand from this petition, on earlier occasion, the Petitioner was partly successful in impugning the order of the Director of School Education,

2. The Petitioner's case is that his qualification of M.A, was not taken into consideration, while allotting marks, on account of qualification in adjudging his performance, at the time of interview, held by the school authority, for appointment to the post of assistant teacher. The old recruitment rules was followed in this case, as at the relevant point of time, the School Service Commission did not come into being. The Respondent No. 6 has been given appointment, after having been declared successful, as the first candidate.

3. It is the grievance of the Petitioner herein all the time that his name was sponsored by the employment exchange with a lesser qualification than that of which should have been forwarded to the school authority. According to the Petitioner, even before the date of-sponsoring the names of respective candidates from the District employment exchange, the employment exchange

concerned duly took note of and recorded the improvement of the Petitioner's qualification as M.A., but inspite of that, his name was sponsored with the qualification B.A. (Hans.) with B. Ed.. In the interview, the Petitioner could secure higher marks than that of the Respondent No. 6, but for taking note of Respondent No. 6's M.A. qualification, he could have had edge over the writ Petitioner. In other words, had the M.A. qualification of the Petitioner been taken note of and consequently sponsored by the employment exchange, then the Petitioner would have been allotted with the marks for the same and could have place over the private Respondent with these marks.

4. The Director of School Education, for the first time decided this issue, against the Petitioner, holding since the employment exchange did not sponsor the name of the Petitioner having qualification of M.A., the question of granting marks on this count did not and could not arise. The Hon"ble Justice Ashim Kumar Banerjee had taken note of this fact and was not happy with the findings of the Director of School Education. So, His Lordship was pleased to set aside the same, asking the Director of School Education to decide the matter, de novo.

5. This time, the Director of School Education has decided again .against the Petitioner, holding that at the time of interview, the Petitioner did not have the requisite qualification, meaning thereby, when the school authority requested the employment exchange to send suitable names, the district employment exchange sponsored the Petitioner's name along with the name of the Respondent No. 6, without mentioning the Petitioner's qualification of M.A. degree. The district employment exchange mentioned that the Petitioner is a B.A. (Hons.), whereas the private Respondent's qualification was noted and/or mentioned as- having M.A. qualification, the aforesaid facts are admitted.

6. In this context, the (earned Counsel "for the Petitioner submits that it is not fault of the Petitioner, "rather fault on the part of the employment exchange, drawing my attention to the communication made by the district employment exchange dated December 21, 1993, being Annex. P-2 and the copy of the Identity Card, being Annex. P-3, whereby and whereunder, it appears that prior to December 21; 1993, the district employment exchange concerned had duly taken note that the .Petitioner had improved his qualification and, as such, recorded his qualification as M.A. in History. By this letter, the District Employment Officer has asked the Employment Officer, P.E. Section, 11, Gamac Street, 1st Floor, to send the Identity Cards to the respective candidates, as early as possible. Therefore, factually, the district employment exchange noted the improvement of qualification of the Petitioner, prior to December 21, 1993.

7. It appears, pursuant to the aforesaid advice, fresh employment registration card, mentioning the improved qualification of M.A. (History) and B. Ed, was issued by the aforesaid Camac Street Office, recording the registration as on January 9, 1994. So, it is clear that long before the holding of interview, the. Petitioner's name was recorded as- having M.A. qualification. Incidentally, it is noted that the date of interview, admittedly, was on February 17, 1994.

8. In the petition, it has been mentioned that the concerned district employment exchange sponsored the names of suitable candidates on January 21, 1994. But, Mr. Tapabrata Chakraborty, learned Lawyer appearing for the State submits that actually, sponsoring was done, as it has been informed by the Secretary of the school concerned, at the early stage of hearing before the director of School Education, on January 6, 1994, The Petitioner has stated on oath that sponsoring was done by the employment exchange as on January 21, 1994. I- think, the State being the concerned employment exchange could have come with an affidavit, producing the records, to state what is the correct date of sponsoring. It is the special knowledge of the State Respondents, viz. the employment exchange officer, to state the actual date. When the State Respondents have not come up with any affidavit to rebut the Petitioner's contention that the date of sponsoring is on January 21, 1994, I have no option but to hold that the date of sponsoring was on January 21, 1994. -

9. The learned lawyer for the Petitioner then contends that the date of sponsoring is immaterial in this matter, as on the date of interview, it is shown from the records that the Petitioner's name was registered with improved qualification. The Petitioner placed this registration card and also produced the M.A. certificate before the interview board, but inspite of that, no marks was given to the Petitioner on this count of having, higher qualification, whereas, the Respondent No. 6 has been benefited with this privilege and, as such, gross discrimination has been meted out. This vital question of law has been totally ignored by the Director of School Education. He submits that a Division Bench of this Court has authoritatively decided in a matter reported in Sankar Das v. Arup Kumar Das 1999 (1) C.L.J. 11 that in a case of this nature, the date of interview is the "cut off date, so as to adjudge the qualification of a particular candidate.

10. Mr. Partha Sarathi Bhattacharya, learned Lawyer appearing for the Respondent No. 6 submits that the Director of School Education has not done anything wrong, under the law. The Petitioner's name was not sponsored by the local employment exchange, mentioning the qualification of M.A. So, the sponsoring Memo, is the only document, which is to be and has to be reckoned with, to decide the question of qualification. The Petitioner might have improved his qualification, however, the same was not recorded duly on the date of sponsoring. Under this system, the district employment exchange concerned is to sponsor the names, having taken advice of the Camac Street office, which is the only authority to take note of the improved qualification, in case of the candidates having already been registered.

11. In support of his submission, he has relied on a Division Bench judgment of this Court, reported in Pintu Acharyya v. The State of West Bengal 1997 (2) C.L.J. 428, wherein it has been held that the qualification mentioned by the employment exchange in the sponsoring Memo, is the only document to adjudge the-qualification, at the time of interview.

12. Mr. Tapabrata Chakraborty, learned Lawyer appearing for the State submits

that since no advice was given by the Camac Street office to the district employment exchange, the district employment exchange sponsored the name of the Petitioner having qualification of B.A. and did not mention the qualification of M.A., as all the departmental procedure was not complete. Therefore, he contends that there was no mistake, either on fact or in law, on the part of the employment exchange in sponsoring the name of the Petitioner, in the way it has been done.

13. Having heard the learned Counsels for the parties and considering the materials produced before me, the point raised by the parties for decision of this Court is that whether the Director of School Education was justified to ignore the Petitioner's qualification of M.A., on the date of interview, as the Petitioner's name was not sponsored by the employment exchange with the M.A. qualification, or not. It appears, the Division Bench judgment of this Court, reported in *Sankar Das v, Arup Kumar Das* (supra) has of course, without considering the previous other decision, particularly; the decision cited by Mr. Bhattacharya, reported in *Pintu Acharyya v. The State of West Bengal*(Supra) has held that on the date of interview, if a candidate satisfy the selection committee, as regards his qualification, then the selection-committee is bound to take note of the improved qualification. However, in the earlier Division Bench decision of this Court, it has been decided just other way and held that the selection committee is to go by the sponsoring Memo, of the employment exchange, as far. as the qualification is concerned and subsequent improvement of the candidate will not matter.

14. Having considered all aspects of the matter, I think the recruitment procedure, under the old recruitment rules is that the sponsorship of the employment exchange concerned is one of the condition for entertaining the candidature of the candidates. Sponsoring was done no doubt. Factually, the district employment exchange did not mention the Petitioner's qualification of M.A. Now, the question is whether on "the. date of sponsoring, the Petitioner's name could be sponsored with M.A. qualification by the employment exchange or not. The employment exchange did not sponsor the name of the Petitioner with M.A. qualification for its own fault. From the material produced before this Court, I find on December 21, 1993, the same district employment exchange recorded and noted the Petitioner's improvement of qualification and also advised the Camac Street counter-part to record and register the Petitioner's name. It appears further that on January 9, 1994, the Petitioner's name was recorded and registered as having qualification of M.A. Therefore, I fail to understand, why the inspite of recording the Petitioner's improvement of qualification, in the sponsoring Memo, the Petitioner's improved qualification was not mentioned.

15. The Petitioner did everything, long before holding of interview or even sponsoring of the names, hoping that the employment exchange concerned will do the needful, as expeditiously as possible. The Petitioner did not apply for recording improvement of qualification in" anticipation of the selection process

and it was done bona fide and contemporaneously. I think, the employment exchange officer concerned had taken his own time to do it in a procedural manner and by this process, the Petitioner's name could not be sponsored with M.A. qualification, if the date of sponsoring is on January 6, 1994. If the date of sponsoring is on January 21, 1994, then as a matter of course, the district employment exchange office, or for that matter, the Central Employment Exchange should be straight way blamed, for this inaction. Therefore, the decision of the earlier Division Bench in this case has no applicability at all. If the employment officer for his own fault and lapses, did not sponsor the name of any candidate and in spite of the candidate having done everything before the date of interview, or for that matter, before the date of sponsoring, then technicalities will not stand in the way.

16. This aspect of the matter should have been enquired into by the Director of School Education. Therefore, I hold that the Director of School Education has not applied his mind to decide the issue properly. He has gone mechanically and without following the observations of Justice Banerjee.

17. Mr. Bhattacharya then submits that his client has been appointed and serving for a long time. So, his continuous service should not be disturbed, even if the Petitioner succeeds on merit. In support of his submission, he has relied on a decision of Supreme Court, reported *Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others*, In my view, this decision is not at all applicable, as the case before the Supreme Court was related to "an improper appointment and here, it is not a case of improper appointment. It is a case of absolutely illegal and unfair adoption of selection process. The Petitioner has been" deprived of his due and legitimate allocation of marks, as regards his improved qualification, whereas, the Respondent No. 6 was favoured with the same. It is strange, even having noted the improved qualification and sponsoring the private Respondent's name as M:A., the Petitioner's qualification was ignored. Mr. Tapabrata Chakraborty has tried to explain orally, that the ministerial work was not complete on the date of sponsoring and that is why, it was not possible to send the name of the Petitioner with improved qualification. This step was resorted to for the so-called technicalities, over which the Petitioner has no hands and it is unfortunate that the Petitioner's name was not sponsored with the improved qualification, in spite of the same being duly recorded. As such, the Petitioner should not suffer for the laches of the employment exchange officer.

18. Therefore, I set aside the order of the Director of School, Education. I direct the District Inspector of Schools to re-cast the panel prepared, maintaining the name of the writ Petitioner, as well as, the private Respondent and he must allocate the marks on account of the M.A. qualification, under the law to the Petitioner. While doing so, if the Petitioner comes to be the first candidate, his appointment shall be given by the Respondent, school authority. This shall be done within a period of eight weeks from the date of communication of this order.

19. The salary which have been received by the private Respondent, should not

be returned, as he has acted and worked bona fide and his continuation in this service, during this period, should be excluded in case of determination of age limit, if he wants to apply afresh, to any selection process and this period will be treated as his experience and all this period should be excluded from the age of the private Respondent,

20. The writ petition is allowed. There will be no order as to costs.. This judgment and order, however, will be subject to the result and decision of the Appeal, which is said to have been pending before the Appeal Court, being M.A.T. No. 3110 of 2001, against the order of Justice Ashim Kumar Banerjee.

21. Xerox certified copy of this order, if applied for, be supplied to the applicant.