
(2019) 08 CAL CK 0239

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 13407 (W) Of 2018

Tamima Nasrin

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0239

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Sabir Ahmed, Subir Sanyal, Ratul Biswas, Bhaskar Prasad Vaisya, Siuthia Bala

Final Decision : Dismissed

Judgement

Protik Prakash Banerjee, J

Affidavit-in-opposition filed in Court be kept with the record.

This is the second round of litigation before this Court. In the first round of litigation the writ petitioner prayed for an alleged mistake in filling up her roll number in the online application which had led to her candidature being cancelled being reversed on the ground that it was a mistake she had corrected. A coordinate Bench by an order dated February 6, 2018 was pleased to direct as follows :-

"That being the scenario in my considered view since the petitioner has admitted her mistake not only that after detection of mistake immediately the petitioner made representation before the authority to consider the same, unfortunately, authority was sitting tight over the petitioner's representation. Therefore, in my considered view justice would be subserved if the Secretary, West Bengal Board of Primary Education is directed to consider and take a decision sympathetically in respect of petitioner's representation. Accordingly, I direct the Secretary, West Bengal Board of Primary Education to take a decision in respect of petitioner's representation dated 16th February, 2017 within six weeks from the date of

communication of this order after giving an opportunity of hearing to the petitioner or her authorized representative and thereafter communicate the decision to the petitioner within one week. Needless to mention that, if the decision is in favour of the petitioner that will not create any precedent in future."

Thereafter the respondent authorities, being the West Bengal Board of Primary Education, after giving the petitioner an opportunity of being heard was pleased to decide on the representation. By the order impugned dated June 15, 2018 as in Annexure P-7 to the writ petition the respondent authorities have rejected her prayer holding that in the opinion of the Secretary the rectification of the mistake is not lawful and assigned specific reason for it.

Mr. Ahmed, learned Advocate appearing on behalf of the petitioner submits that the said reason is not sufficient or lawful since an allegation has been made of impersonation by the petitioner and an allegation that the petitioner did not appear at the time of scrutiny, verification, viva and counseling against the roll no.115001954 though the original roll number of the petitioner was 115001955 against which she qualified in TET.

Mr. Ahmed further submits that if the attendance sheets of the date of scrutiny are brought before this Court it will be found that the scrutiny and the interview were held on the same date and the petitioner had appeared before the board on such date and had caused the roll number corrected under the counter-signature of the board.

This is the second round of challenge to the decision of an authority by way of judicial review. The mandate was not to allow the representation of the petitioner but to consider it sympathetically. 'Sympathetically' is a word, which is subjective in nature. The petitioner did not go to the coordinate bench for clarification of what is meant by the word 'sympathetically' if there are statutory rules. Under the statutory rules the selection process contains a declaration made by the petitioner which is reproduced at the end of the online application disclosed by the writ petitioner at page 21 of the writ petition itself.

"i) All the statements made in this application are true and correct. In the event any of the information being found to be false or incorrect or any ineligibility being detected before or after the issue of recommendation/ appointment letter, my recommendation/ appointment letter, my recommendation/ appointment is liable to be revoked/ rescinded and/or cancelled and appropriate legal action be initiated against me either by the West Bengal Board of Primary Education (WBBPE) or other lawful authority.

ii) My eligibility shall also be finally verified by the concerned recruiting agency/ appointing authority and if found that I was not eligible, my candidature for recruitment shall be cancelled.

iii) Further declared that I shall be abided by the recruitment rules framed by the Government of West Bengal and WBBPE."

In that view of the matter once the fact regarding the wrong roll number is admitted by the petitioner whether it was a mistake or impersonation as alleged by the respective parties has nothing to do with or whether the matter will be considered sympathetically or not. The respondents have gone on the word of law and the online application itself which shows that in the event of any information being found to be false or incorrect then the recommendation of appointment is liable to be revoked/ rescinded or cancelled. In the instant case even before the stage of appointment the petitioner says after counseling by choosing the school and/or at the time of scrutiny the petitioner pointed this out to the respondents. The respondents had, according to them, no alternative but to cancel the candidature of the petitioner because of such declaration in the online application form. When the coordinate Bench directed disposal of the representation of the writ petitioner no mandate was given as to how this was to be done. Accordingly, unless I find the order to be perverse on the face of it or somehow shocking to my conscience even if I disagree with it I am powerless to intervene. Accordingly I decline to judicially review this order on the grounds mentioned above.

Even if the petitioner is correct in submitting that the authorities allowed the petitioner to correct the roll number at the time of scrutiny that would at best operate as estoppel on the respondent authorities though the respondents are relying upon statutes and statutory rules for the selection process against which no estoppel can operate.

The writ petition is dismissed.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be delivered to the learned Advocates for the parties, upon compliance of all formalities.