

(2011) 11 CAL CK 0027
In the Calcutta High Court
Case No : Writ Petition No. 21584 (W) of 2010

Tanmay Mandal

APPELLANT

Vs

The West Bengal Central School Service Commission and
Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2007 — Rule 17
West Bengal School Service Commission Act, 1997 — Section 17

Citation : (2011) 11 CAL CK 0027

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Biswaroop Bhattacharya and Mr. Tarun Kumar Das, for the Appellant; Abhijit Gangopadhyay, for the Respondent

Judgement

Harish Tandon, J.—The petitioner has assailed the action on the part of the respondent authorities in withholding the appointment of the petitioner to the school, the choice whereof was submitted at the counseling held on 8th July, 2010.

2. Pursuant to the advertisement published by the West Bengal Central School Service Commission, Respondent No. 2 herein, and the petitioner applied to the post of Assistant Teacher under Physically Handicapped Category in Work Education Subject. The petitioner, thereafter, was issued an admit card for appearing in the written test held on 13th December, 2009 and was found eligible to appear before the Personality Test Board. After having found successful in the said personality test, the petitioner was called for the counseling organised by the respondent No. 2 and was asked to submit the choice of school. In spite of having produced all the original certificates and testimonials the concerned authority is not taking any steps for issuance of the letter of appointment and/or from issuing the letter of recommendation for appointment to the post for which he has been selected.

3. At the time of moving the instant writ petition, a submission was made on behalf of the School Service Commission that the claim of the petitioner as the physically handicapped candidate has been doubted and the matter is referred to the Burdwan Medical College. But the report has not been submitted by the said authority as yet. On the basis of such submission this court on 04.03.2011 adjourned the matter for two weeks. In spite of the said direction, the report was not filed and the respondents were directed to file affidavit in opposition within 21.04.2011 and the matter was directed to appear on 25th April, 2011.

4. When the matter again appeared on 13.07.2011, there was no representation on behalf of the School Service Commission. This court directed the respondent No. 3 i.e. the Secretary, West Bengal Regional School Service Commission, Western Region to submit a report regarding the status of the applications filed by the petitioner on 27 July, 2011 and directed the petitioner to communicate the said order. In spite of the communications of the said order, nobody appears on behalf of the School Service Commission and as such the respondent No. 3, the Secretary of the School Service Commission was directed to appear personally. Pursuant to the said order, the respondent No. 3 appeared personally on 17.08.2011 and prayed for an extension of time to file affidavit in opposition.

5. The Court after considering the conduct as aforesaid initially inclined to grant the extension subject to the payment of the reasonable costs but the learned Advocate appearing for the School Service Commission makes submission before the Court that his client shall proceed with the hearing of this writ petition in absence of affidavit in opposition.

6. On the basis of the aforesaid submission the matter was taken up on 24.08.2011.

7. Mr. Biswaroop Bhattacharya, the learned Advocate appearing for the petitioner submits that the authorities cannot withheld the recommendations after having found the petitioner successful in written and personality test and such action of the authorities is not supportable in legal sphere. He further submits that it is a duty cast upon the statutory authorities to act within the precincts of the statutory rules and cannot make any departure therefrom by referring the West Bengal School Service Commission (Selection of persons for appointment to the post of teachers) Rules 2007. Lastly, he submits that there is no justifiable reason assigned by the concerned authority for withholding the recommendation for appointment by the authorities.

8. Mr. Abhijit Gangopadhyay, the learned Advocate appearing for School Service Commission vehemently opposes the submission of the petitioner in contending that the disability handicapped certificate issued by the Medical Officer (ENT Surgeon) Suri Sadar Hospital, Birbhum is not genuine. He further submits that the Suri Sadar Hospital, Birbhum is not equipped with requisite instruments which were required for ascertainment of disability and as such the matter has been referred to the Burdwan Medical College. Lastly, it is submitted that the

genuinity of the disability certificate is doubted by the concerned authority and as such the recommendation for appointment is withheld.

9. Having considered the respective submissions as aforesaid, it is undisputed that the concerned authority has withheld the recommendation for appointment of the petitioner. According to the School Service Commission the said recommendation is withheld because of ingenuinity of the disability certificate issued by the Suri Sadar Hospital, Birbhum. Although, the matter has been referred to the Burdwan Medical College but no report has been filed in this writ petition.

10. It is one thing to say that the disability certificate submitted by the petitioner is false and fabricated and/or in-genuine having not issued by the issuing authority but it is altogether different to contend that the disability certificate could not have been issued by the said authority because of the lack of proper infrastructure. In case of former the issuing authority is the best person to say whether the disability certificate is genuine or not, but in later case, there must be an elaborate finding as to the incompetence of the said hospital to issue such certificate, where it is tried to be contended by the respondent authorities that the hospital which has issued the certificate lacks proper infrastructure without specifying the same. It is inconceivable that the statutory authority is brewing eyes on the certificate issued by the government hospital in absence of any government circulars / order by which the certificate issued by the said hospital is not acceptable. The statutory authority of their own whims cannot disregard the disability certificate issued by a government hospital or a medical officer who is competent to do so. Had it been a case that the disability certificate is forged and manufactured, then it is imperative on the statutory authority to dispel the said cloud by referring the said certificate to the issuing authority for its report upon its genuinity. By mere saying that the hospital issuing the certificate lack of infrastructure does not invalidate the certificate issued by authority who is competent to issue the same.

11. As indicated above, there is no material produced before the court by which it can be safely concluded that the disability certificate is not genuine.

12. Rule 17 of the West Bengal School Service Commission (Selection of persons for appointment to the post of a teacher) Rule 2007 postulates that the Regional Commission shall hold counselling with a view to recommend the name of the candidate from the panel for appointment and on such recommendation the concerned School Authority shall issue the letter of appointment to the candidate. The aforesaid statutory rules is framed in exercise of the power conferred u/s 17 of the West Bengal School Service Commission Act, 1997 and thus has a statutory force.

13. I do not find any justification in the purported decision of the School Service Commission in withholding the recommendation for appointment on such flimsy ground. The respondent No. 2 is, therefore, directed to issue the memo of

recommendation for appointment to the post of Assistant Teacher in any school of their choice if they opined that the petitioner cannot be appointed to the school of his choice. Such recommendation shall be issued within 8 weeks from the date of the order and the concerned School Authorities shall thereafter issue the letter of appointment to the petitioner forthwith.

14. The writ petition is thus disposed of.

15. There shall be no order as to costs.

16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

Later

17. After delivery of the judgment, the learned Advocate appearing for the School Service Commission, prays for the stay of the operation of this order, which is considered and rejected.