

(2019) 01 CAL CK 0059

In the Calcutta High Court

Case No : Wp. State Admin Trib. (Wp.St) 100, 101 Of 2018

Tanmoy Mandal & Anr.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 01 CAL CK 0059

Hon'ble Judges : Dipankar Datta, J; Bibek Chaudhuri, J

Bench : Division Bench

Advocate : Rita Patra, Swapan Datta, Dipankar Das Gupta, Tapan Mukherjee, Bibekananda Tripathy

Final Decision : Dismissed

Judgement

These two writ petitions have been heard analogously, having regard to the common questions of law and fact involved in it. This common judgment and order shall govern the same.

The petitioners are aggrieved by identical orders dated 23rd August, 2018 passed by the West Bengal Administrative Tribunal (hereafter the 'tribunal') whereby original applications filed by them (O.A. 663 of 2018 & O.A. 661 of 2018), were dismissed.

It appears on perusal of W.P.S.T. 100 of 2018 that a notification dated 7th November, 2017 was issued inviting applications for engagement of Self Employed Labour Organisers (SLOs). The petitioners having applied, were called for viva-voce. They were required to attend together with all testimonials (i.e. Admit Card & Mark-sheet of Madhyamik or equivalent examination, Adhar/Voter I-Card/Employment Exchange Card as residential proof) in original. While the petitioners were awaiting a final decision on selection of suitable persons for engagement as SLOs, they were surprised to find a fresh notification dated 25th June, 2018 issued by the respondents for engagement of SLOs. Challenging the

notification dated 25th June, 2018, they had approached the tribunal seeking, inter alia, the following relief :-

- a) Direct the concerned respondents to set aside and/or cancel the Notification No. Labr./421/(LC-LW) dated 25.06.2018 regarding engagement of Self Employed Labour Organisers (SLOs) under Malda District in Malda Sadar Sub-Division and not to give any further effect in respect on notification dated 25.06.2018;
- b) Direct the concerned respondents to consider the interview dated 28.11.2017 of the applicants as per the Notification No. 2252 GE dated 07.11.2017 and issue forthwith appointment letters to the applicants after considering their eligibility criterion for engagement as SLOs as per previous panel.
- c) Direct the concerned respondents to produce all the records pertaining to the instant case so that conscionable justice may be administered upon the applicant.

The tribunal proceeded to dismiss the original application upon consideration of the reason assigned by the respondents for cancellation of the earlier process. According to the respondents, majority of the candidates who had offered their candidature lacked proficiency in computer operation. The tribunal was of the view that the respondents were competent to cancel the selection process that had been initiated earlier, if there exists sufficient reasons therefor. The order also records a prayer having been made on behalf of the petitioners that dismissal of the original application should not be construed as a disability on the part of the petitioners to participate in the ensuing selection process. Upon considering such prayer, the tribunal granted liberty to the petitioners to participate in the selection process, if eligible, and if the selection process was not over by then.

Ms. Patra, learned advocate for the petitioners has, however, disputed the recording made by the tribunal in the concluding portion of its order. She submits that no such submission was made by her warranting the liberty that the tribunal granted.

Ms. Patra has also contended that once a selection process is initiated, the same cannot be cancelled by the respondents and the candidates who might have offered their candidature acquire a vested right to have such selection process completed in accordance with law.

The decision of the Supreme Court in J & K Public Service Commission and others Vs. Dr. Narinder Mohan and others, reported in (1994) 2 SCC 630, has been relied on by Ms. Patra in support of her submission.

Having heard Ms. Patra, we are not persuaded to agree with her. Mere initiation of a selection process does not vest the candidates with any right to claim that the process must be taken to its logical conclusion. A candidate can claim limited right once the selection process is finalised, and not before. That is not the case here. Also, if there are genuine reasons that disables the recruiting authority

from taking the selection process forward after the candidates have been interviewed but prior to publication of the merit list/panel, it is at liberty to cancel the process and initiate a fresh process. This is, however, subject to one condition, i.e., the decision taken by the recruiting authority must not suffer from mala fides. Mala fide has to be pleaded and proved.

We have perused the original application in between the lines. We do not find any pleading therein that the respondents, with a view to exclude the petitioners from being engaged as SLOs, deliberately took a decision to nullify the earlier process and to commence a fresh process, thereby depriving them of any vested right.

Paragraph-10 of the decision in Narinder Mohan (supra) having been relied upon by Ms. Patra, we have perused the same. Point involved therein was entirely different. All that the said decision lays down, to the extent relevant for the present purpose is, every eligible candidate, participating in a process for direct recruitment, is entitled to be considered consistent with the right guaranteed by Articles 14 and 16 of the Constitution.

Here, it is not a case where the petitioners have been singled out and subjected to discriminatory treatment; on the contrary, the entire process has been cancelled due to the reason noted above. Proficiency in computer operation was one of the qualifications required to be possessed by the candidates, although it is not too clear whether it was an essential or a desirable one. The decision to cancel the process was taken because of dearth of candidates having such qualification. That this decision is not based on facts, has not been shown. We are of the view that it is within the province of the respondents to decide whether they would carry a process of selection further or not, on facts and in the circumstances. In any event, the petitioners could have some chance of success if they had at least pleaded that the respondents with a mala fide intention decided not to conclude the selection process despite the petitioners having proficiency in basic computer operation. Unfortunately, the basic pleading that is required to succeed on a claim that an action of the respondents is mala fide and calling for judicial interdiction and rectification, is not to be found anywhere in the original applications.

In view thereof, the decision in Narinder Mohan (supra) is of no assistance to the petitioners.

In such circumstances, we find no reason to interfere with the decision of the tribunal. The writ petition stands dismissed. There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

Photocopy of this order, duly countersigned by the Assistant Court Officer, shall be retained with the records except WPST 101 of 2018.