

(2015) 08 CAL CK 0069
In the Calcutta High Court
Case No : W.P. No. 5785 (W) of 2005

Tapan Kumar Deb

APPELLANT

Vs

The Secretary, Panchayat and Rural Development
Department, Government of West Bengal and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Citation : (2015) 4 CALLT 73

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

Advocate : Ekramul Bari and S.S. Mondal, for the Appellant

Final Decision : Dismissed

Judgement

Subrata Talukdar, J.—In this writ application the petitioner challenges the appointment of the private respondent No. 10 to a Group "D" staff post (for short the said post) under the Uttar Dinajpur Zilla Parishad. The petitioner alleges that the appointment of the private respondent No. 10 was the outcome of favouritism and nepotism and therefore prays for setting aside such appointment with a further command to the respondents to prepare a fresh panel on the basis of the interview held on 22nd August, 2004. Mr. Ekramul Bari, Ld. Counsel appearing for the petitioner submits that for filling up the said post the Executive Officer, Uttar Dinajpur Zilla Parishad called upon the Employment Exchange, Raiganj to sponsor the names of eligible candidates. The name of the petitioner was sponsored and the petitioner was called for a written test on 11th July, 2004. In view of the cancellation of the written test further selection was held on 18th September, 2004.

2. The petitioner claims to have performed commendably in both the written test and in the interview. However, the petitioner further alleges that the entire selection exercise was merely an eyewash to select the private respondent No. 10 whose name was subsequently sponsored by the Employment Exchange on 6th April, 2004.

3. Mr. Bari argues that the very fact that the single name of the private respondent No. 10 was subsequently sponsored as the 21st candidate in the panel is enough to show that vested interests were at work to select the private respondent No. 10 over and above the other candidates whose names were earlier sponsored.

4. The second limb of the submissions of Mr. Bari is that as on the date the name of the private respondent No. 10 was sponsored by the Employment Exchange, she was overaged in terms of the requirements of age specified in the advertisement. It is specifically pleaded by the petitioner that out of 85 marks in the written test the petitioner secured 39.5 marks whereas the private respondent No. 10 secured 38 marks. However, in the viva voce test the petitioner was awarded 10.4 marks and the private respondent No. 10 13.4 marks thereby enabling her selection to the said post. Mr. Bari complains of the fact that the marks in the viva voce test were arbitrarily given in order to facilitate the selection of the private respondent No. 10. In support of his submissions Mr. Bari relies upon an unreported judgment of an Hon"ble Single Bench of this Court in WP 11343(W) of 2004 in the matter of Sabita Gole v. State of West Bengal & Ors. delivered on 25th January, 2005.

5. Therefore, citing a parity of circumstances Mr. Bari argues that similar reliefs be granted to the petitioner by cancelling the appointment of the private respondent No. 10 and directing preparation of a fresh panel on the basis of the interview already held on 22nd August, 2004 from the list of empanelled candidates.

6. Strongly arguing for the private respondent No. 10 Mr. Partha Sarathi Bhattacharyya, Ld. Counsel submits that the writ petitioner was an unsuccessful candidate. The selection of the private respondent No. 10 was challenged by the writ petitioner only after he unsuccessfully participated in the selection. The ground now taken is of favouritism and nepotism in the selection of the private respondent No. 10.

7. Mr. Bhattacharyya argues that challenge to a selection after participation in the selection by or on behalf of an unsuccessful candidate has been frowned upon by the Hon"ble Apex Court and this Court through a line of decisions. In support of his arguments on the above point Mr. Bhattacharyya relies upon the following decisions:--

Dhananjay Malik and Others Vs. State of Uttaranchal and Others,

Utpal Roy and Others Vs. State of West Bengal and Others-->

K.H. Siraj Vs. High Court of Kerala and Others,

Manish Kumar Shahi Vs. State of Bihar and Others,

Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Others,

8. Next, arguing on the challenge to the age of the private respondent No. 10 Mr.

Bhattacharyya points out from the affidavit-in-opposition filed on behalf of his client that two vacancies arose to the said post - one for general category and another for OBC category - under the Uttar Dinajpur Zilla Parishad. On 26th February, 2004 the Executive Officer of Uttar Dinajpur Zilla Parishad sent the Form for Notification of Vacancies to the District Employment Exchange, Raiganj. In the Form for Notification of Vacancies the age limit as on 1st January, 2004 was specified to be 18-37 years.

9. Mr. Bhattacharyya thereafter argues that the date of birth of the private respondent No. 10 is 7th of January, 1967 and such will appear from a copy of the admit card issued by the West Bengal Board of Secondary Education for its examination held in the year 1985. Therefore, on the strength of the above noted documents and facts the age of the private respondent No. 10 as on 01.01.2004 was 36 years 11 months and 24 days. Hence, the private respondent No. 10 was well within the prescribed age limit as per the Form of Notification of Vacancies issued by the District Employment Exchange, Raiganj on 26th February, 2004.

10. Mr. Bhattacharyya next submits that although names of eligible candidates were sponsored by the Employment Exchange, Raiganj, in the first phase the name of the private respondent No. 10 appears to have been missed out from being included in the first list. Therefore, by a further memo dated 6th April, 2004 the Employment Officer-in-Charge, Raiganj, District-Uttar Dinajpur mentioned the fact of the name of the private respondent No. 10 having being missed out from the first list although being an eligible candidate and therefore subsequently forwarded the name to the Executive Officer, Uttar Dinajpur Zilla Parishad for inclusion in the zone of consideration.

11. Mr. Bhattacharyya further points out that pursuant to the vacancies to be filled up to the said post the Employment Exchanges of both Raiganj and Islampur were directed to sponsor the names of eligible candidates. On 23rd March, 2004 the Employment Exchange, Raiganj sponsored the names of 14 general category candidates and 17 OBC candidates. Thereafter on the 6th April, 2004 the name of the private respondent No. 10, which was missed out, was sponsored. On 12th April, 2004 the Employment Exchange, Islampur sponsored the names of 6 general category candidates and another 6 OBC candidates. Therefore, a total of 21 candidates have been sponsored from both the Raiganj and Islampur Employment Exchanges in the general category and 23 candidates also from both the Exchanges in the OBC category for the said two posts.

12. Taking this Court to the West Bengal Regulations of Recruitment in State Government Establishment and Establishment of Public Undertakings Statutory Bodies, Government Companies and Local Authorities Act, 1999 (for short the 1999 Act) which came into force on 3rd November, 1999 and guided the selection in issue in this writ petition, Mr. Bhattacharyya argues that under section 10 of the 1999 Act it is provided as follows:--

"10. The number of candidates submitted to the appointing authority shall be in such ratio as the appointing authority may prescribe:

Provided that the ratio shall not be less than 20 candidates for each vacancy."

13. Therefore, Mr. Bhattacharyya argues that in terms of section 10 the stipulation is that the number of candidates sponsored shall not be less than 20 for a particular post and there is no upper limit to the number of names that can be sponsored. It is an admitted position that the private respondent No. 10 is the 21st candidate to be sponsored under the general category. In such view of the matter since, the name of the private respondent No. 10 although eligible was missed out by the concerned Employment Exchange at Raiganj from the first list, having regard to section 10 of the 1999 Act (supra) there is no illegality in sponsoring such a name subsequently following the prescription of section 10 of the 1999 Act (supra).

14. Mr. Bhattacharyya next argues that the onus of proving mala fides in the selection of the private respondent No. 10 lies heavily on the petitioner. Mala fides is required to be pleaded in sufficient details and the names of the persons allegedly involved in the commission of such mala fides acts, including a description of their deeds, is required to be placed before this Court in black and white. The persons responsible for the mala fides act are also required to be impleaded as parties to the writ petition.

15. In support of his above arguments Mr. Bhattacharyya relies upon the following decisions:--

I.K. Mishra Vs. Union of India and Others,

Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others,

All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others,

Dr. J.N. Banavalikar Vs. Municipal Corporation of Delhi and another,

Purushottam Kumar Jha Vs. State of Jharkhand and Others,

Jasbir Singh Chhabra and Others Vs. State of Punjab and Others, .

16. Mr. Bhattacharyya therefore argues that from the four corners from the writ petition the materials disclosing mala fides are not decipherable. Ld. Counsel makes the final point that the private respondent No. 10 joined service in the year 2005 and has been confirmed in such service in the year 2008. She is now working for the last 10 years.

17. It is a trite proposition of law that a settled appointment should not be readily disturbed by courts unless there is an overwhelming nature of proof that such appointment was the result of favouritism and nepotism. In support of his above argument Mr. Bhattacharyya relies upon the following decisions:--

Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others,
AIR 1988 SC 3268 (at para 6)

18. Mr. Rezaul Hossain, Ld. Advocate appears for the respondent-Uttar Dinajpur Zilla Parishad and submits that the selection process was fair and in accordance with law. Mr. Hossain points out that the necessary legal steps were taken by the authorities to call for names from the Employment Exchanges and thereafter to conduct the written test and the interview. After completion of the detailed process including candidates from the two Employment Exchanges, the private respondent No. 10 was considered to be successful in the general category and therefore granted appointment in accordance with law.

19. Having heard the parties and considering the materials on record this Court finds itself in unison with the arguments advanced by Mr. Bhattacharyya that the writ petitioner has been unable to furnish details of the mala fide action complained of by him in the selection process. The apprehension expressed by the writ petitioner of mala fides in the selection process can be gathered from the only fact that the name of the private respondent No. 10 was separately sponsored. Such apprehension is answered by the communication of the Employment Exchange Officer-in-Charge, Raiganj dated 6th April, 2004 to the Executive Officer, Uttar Dinajpur Zilla Parishad recording the fact that the name of the private respondent No. 10 was missed out from inclusion in the first list.

20. This Court also finds the allegation of a separate sponsoring of the name of the private respondent No. 10 untenable on the ground that following the provisions of the 1999 Act the Employment Exchanges were empowered to supply more than 20 names if such names, as enrolled with the Employment Exchanges, fit the eligibility criteria. There appears to be no dispute either with the fact that the private respondent No. 10 was within the age limit of 18-37 years as on the date of the Form for Notification of Vacancies viz. 01.01.2004.

21. This Court is further persuaded to notice that the allegations of favouritism and nepotism levelled by the writ petitioner lack in depth and substance. Such allegations primarily stem from a biased perception of the events which accompanied the selection. This Court finds that the selection was adequately broad based by inviting two Employment Exchanges to sponsor names of eligible candidates and ultimately 21 candidates in the general category and 23 candidates in the OBC category featured to be within the zone of consideration.

22. With regard to allotment of marks to the written test and to the interview respectively, this Court does not notice any infraction of settled procedure and authority. No details of any favouritism alleged to be shown to the private respondent No. 10 at the interview could be spelt out by the writ petitioner except that the private respondent No. 10 was given higher marks at the interview although she secured lower marks in the written test. It is not a universal phenomenon that in both the written test and in the interview a candidate is required to maintain parity in marks. For the above reasons the

selection of the private respondent No. 10 to the said post is not interfered with.

WP 5785(W) of 2005 stands dismissed.

Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.