

(2014) 07 CAL CK 0068
In the Calcutta High Court

Case No : F.M.A. No. 2538 of 2013 and C.A.N. No. 7244 of 2013

The Hon'ble High Court, Calcutta

APPELLANT

Vs

Sujasha Mukherji

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Citation : (2014) 4 WBLR 881

Hon'ble Judges : Subhro Kamal Mukherjee, J; Sahidullah Munshi, J

Bench : Division Bench

Advocate : Lakshmi Kumar Gupta and Arjun Ray Mukherjee, Advocate for the Appellant; Bikash Ranjan Bhattacharyya, Kishore Dutta and Pratik Dhar, Advocate for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an appeal against judgment and order dated May 15, 2013 passed by Hon'ble Single Judge of this Court in W.P. No. 1132 (w) of 2013, holding, inter alia, that there was procedural impropriety in the process of decision making in the relation to appointment of moderator and in prescribing guideline by the resolution dated August 7, 2012 adopted in the meeting of the Committee comprising of the Hon'ble the Chief Justice and two other Hon'ble Judges of this Court. The Hon'ble Judge held that such decision has caused detriment and prejudice to the writ petitioner and, therefore, the writ petitioner was entitled to the original marks awarded to her in Paper II. Directions were given to recast her position in the merit list, to take her interview and to fill up the vacant post either by her, if she has been selected, or by a candidate, who has, otherwise, been entitled.

2. The writ petition was in connection with selection and appointment in the twenty two (22) vacancies in the cadre of District Judge (entry level) to be filled up in 2012 by direct recruitment from the members of the Bar, by normal promotion and limited competitive examination, in accordance with the West Bengal Judicial (Conditions of Service) Rules, 2004.

3. For such recruitment the High Court at Calcutta, issued a notification dated

March 29, 2012. Six (6) out of the twenty-two (22) vacancies were to be filled up by direct recruitment from the members of the Bar.

4. This case relates only to selection and appointment in such direct recruitment vacancies only.

5. The respondent/writ petitioner, a practicing advocate of this Court, had applied for direct recruitment from the members of the Bar.

6. The recruitment is governed by West Bengal Judicial (Conditions of Service) Rules, 2004. Written test was held in five (5) papers of 100 (hundred) marks each. The pass mark in each paper was 40% (forty per centum), but, in order to qualify, a candidate was to secure 50% (fifty per centum) in the aggregate. For viva voce, 100 (hundred) marks were allotted.

7. The initial result of the written examination showed 177 (one hundred seventy seven) candidates as having qualified. The name of the petitioner was at serial No. 2 and the percentage of marks obtained by her was 57.8.

8. A Committee was constituted comprising of the Hon''ble the Chief Justice and two other Hon''ble Judges for recruitment from both the sources.

9. Considering the broadsheet indicating the marks awarded by various examiners on different subjects, the Committee noted huge variation in the mean marks in some papers in either and/or for both categories of candidates. For this the Committee felt the necessity to appoint moderators in tune with the decision of the Supreme Court of India in the case of Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another, .

10. The matter in which the moderation was to take place was elaborately stated in the said resolution dated August 7, 2012.

11. As a result of such moderation her marks came down to 37 (thirty-seven) only in paper II. The respondent/writ petitioner initially got 55 (fifty-five) marks in paper II. However, the prayer of the respondent/writ petitioner for reassessment was rejected as there was no provision for such reassessment.

12. The respondent/writ petitioner applied under the Right to Information Act, 2002, for copy and inspection of her evaluated answer script of paper II. Inspection was allowed, but copy was not given.

13. She had in her writ petition questioned the authority of the moderator to reduce marks.

14. The directions of the Hon''ble Judge have been indicated above. In substance, the Hon''ble Judge held that the decision making process was faulty inasmuch as the resolution of the Committee was not consistent with the decision in Sanjay Singh (supra) and no agreed norms were fixed among the examiners prior to evaluation of the answer scripts so as to reduce the possibility or the extent of examiner variability.

15. The decision of the Hon''ble Judge, in effect, held that the evaluation and moderation carried out in respect of the examination of papers were faulty as the procedure laid down in paragraph 23 of the judgment in Sanjay Singh (supra) case was not followed.

16. However, the elaborate procedure stated in Sanjay Singh (supra) was in the context of an examination taken by a large number of candidates, whose answer scripts were examined by a large number of examiners.

17. In that fact situation, it was held that a pre-evaluation meeting of examiners was necessary to minimize examiner variability in the matter of awarding of marks. The concept of appointing a head examiner was, also, considered necessary in that context.

18. In any examination system the object should be to make proper selection of candidates, which presupposes that awarding of marks should be rational and some person/persons should bear the responsibility of considering the marks awarded by different examiners on the same subject. If it is found that some examiner has awarded much higher mean mark when compared with that awarded by the other examiners, the situation calls for moderation of marks by a moderator to be appointed for the purpose through test-checking of some answer scripts as may be decided by the person/persons, who felt the necessity of moderation. The wide variations in marks arise as some examiners may be liberal while some may be strict in their appreciation of the answers given by the candidates and in awarding marks, which is referred to as hawk-dove effect. Through moderation, this examiner variability is narrowed down to the extent possible. Even then a total equilibrium is not possible. A total uniformity, howsoever the same may be desired, is unattainable.

19. The anxiety of the Hon''ble Judge for attaining uniformity in the awarding of marks is definitely appreciable, but the system of moderation adopted for the examination under consideration does not appear to be erroneous or faulty, if a pre-evaluation meeting of the examiners is considered essential, as held by the Hon''ble Judge and as the same was found by the Hon''ble Judge not to have taken place, the initial award of marks becomes questionable. Looking at the records of the examination the committee found wide variation in the mean mark awarded by different examiners and to do away with the effect thereof the moderation was suggested with specific guideline as to how the moderation job was to be undertaken. Taking these facts into consideration it will not be proper justice to give credit to the mark initially awarded and to accept such mark in preference to the marks arrived at through moderation.

20. The objective of the resolution dated August 7, 2012 taken by the Committee and the guidelines formulated therein appear to be correct to remove examiner variability.

21. The resolution, obviously, has been taken keeping in mind the observations of the Supreme Court of India in Sanjay Singh (supra).

22. The procedural details have to vary depending on the number of examinees and examiners and other associated factors. A judgment of a Court is not to be read as a statute so as to make every deviation therefrom in procedural matters to be impermissible. On the contrary, in a procedural matter a judgment is the best obeyed by addressing its spirit and objective.

23. The Committee's resolution must be held to be proper and valid, particularly, in view of the provision in rule 27(2) of the West Bengal Judicial (Conditions of Service) Rules, 2004, inasmuch as the conduct of the examination shall be in such manner and subject to such guidelines as may be specified by the High Court from time to time.

24. The Committee drew up the standards on moderation with reference to its own experiences and the nature and scope of examination conducted by it.

25. If the procedure for moderation and the award of marks on the basis of such moderation is upheld, the fact that the respondent/writ petitioner became ineligible by reason of deduction of marks as a result of the moderation cannot be said to be unjust and she, thus, is not entitled to any relief in this proceeding.

26. The impugned judgment and order are, therefore, set aside

27. The writ petition is dismissed

28. The appeal is, thus, allowed. We make no order as to costs.

Sahidullah Munshi, J.

I agree.