
(2008) 04 CAL CK 0032
In the Calcutta High Court
Case No : F.M.A. 838 of 2007

The State of West Bengal and Others APPELLANT
Vs
Sri Uttam Kumar Das RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Municipal Act, 1993 — Section 54, 54(3A), 55(1)

Citation : (2008) 04 CAL CK 0032

Hon'ble Judges : Tapen Sen, J; Sadhan Kumar Gupta, J

Bench : Division Bench

Advocate : Amar Baran Chatterjee, Samar Kumar Dutta and Nilima Das, for the Appellant; Kashi Kanta Moitra and Debasish Das, for the Respondent

Final Decision : Dismissed

Judgement

Sadhan Kumar Gupta, J.—This appeal has been preferred against the judgment passed by the learned Single Judge of this Court on 19th January, 2006 in W. P. No. 17680 (W) of 2001.

2. It is the case of the appellants that the writ petitioner filed the said writ petition under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of mandamus commanding the respondent authority to allow the writ petitioner to appear in the interview for recruitment to a Group "C" post of Egra Municipality. The writ petitioner claimed in his writ petition that he was working in the Egra Municipality on ad hoc basis. In the year 2001, the respondent authority decided to fill up some posts of Group "C" category of Egra Municipality and consequently called for the names from the concerned employment exchange. Accordingly, the employment exchange sponsored the names of eligible candidates to the said municipality. The writ petitioner, who is already working on ad hoc basis in the said municipality, approached the authority by filing application with a prayer to allow him to appear in the interview along with the sponsored candidates. But the municipal authority

refused to accept such request, as made by the writ petitioner. As such, the writ petitioner approached the writ court by filing writ petition being W. P. No. 17680 (W) of 2001 challenging the order of refusal of the municipal authority. Initially the prayer was to the effect to allow him to appear in the interview along with the sponsored candidates. But during the pendency of the petition, on the prayer of the writ petitioner, an interim order was passed by the learned Single Judge directing the authority concerned to allow the writ petitioner to appear in the selection process along with the sponsored candidates and it was further directed that if the writ petitioner could come out successful, then his appointment will depend upon the result of the writ petition.

3. On the basis of such order, the writ petitioner was allowed to appear in the selection test and as he was successful, so his name was empanelled.

4. The respondent authority disputed the claim of the writ petitioner that he was also entitled to appear and take part in the selection test. It is the specific case of the respondents that as per provisions of Section 54 of the West Bengal Municipal Act, unless a person's name is sponsored by the employment exchange, he has got no right to appear in the selection test. Since admittedly the name of the writ petitioner was not sponsored by the employment exchange, so he was not eligible to take part in the selection test. As in spite of the clear provision in the Municipal Act, the Court directed by an interim order to allow the writ petitioner to take part in the selection test, said order was complied with by the municipal authority. But according to them, the writ petitioner could not be given appointment to the post for which he was interviewed, as his name was not sponsored by the employment exchange. The respondent authority however, admitted that the writ petitioner appeared in the selection test on the basis of the direction of the learned Single Judge and as he was successful, so his name was empanelled. But due to the bar, as set out in the Bengal Municipal Act, the writ petitioner could not be given appointment since he was not sponsored by the employment exchange. The respondent authority prayed before the learned Single Judge for dismissal of the writ application.

5. Learned Single Judge heard the writ petition and by his impugned judgment was pleased to hold that there was no illegality in allowing the writ petitioner to appear in the selection test although, his name was not sponsored by the concerned employment exchange and as he was successful in the test and his name has since been empanelled, so the learned Single Judge was pleased to direct the respondent authority to give appointment to the writ petitioner immediately.

6. Being aggrieved and dissatisfied with this order of the learned Single Judge, this appeal has been preferred by the respondent authority. It is the contention of the appellants that the petitioner could not be appointed in a Group "C" post of the municipality, as his name was not sponsored by the employment exchange. In this respect, learned Advocate for the appellants argued that u/s 54(3A) of the Municipal Act there is a bar for such appointment. Section 54(3A)

of the Act provides, as follows:

Recruitment to the posts of officers and other employees not required to be made through the Municipal Service Commission constituted under Sub-section (1) of Section 55, shall be made through the local employment exchange or through such other method as the State Government may determine from time to time.

7. Relying upon this provision, learned Advocate for the appellants argued that as admittedly the name of the petitioner was not sponsored by the local employment exchange, so question of appointing him in the municipality in Group "C" post does not arise at all.

8. On the other hand, learned Advocate for the respondent/writ petitioner submits that in view of the decision of the Supreme Court and other High Courts there could not be any bar for a person to submit application for appointment to Group "C" post of the municipality although, his name was not sponsored by the local employment exchange.

9. In view of such submissions of the learned Advocates for both the sides, it appears that the moot question involved in this matter is, whether the petitioner had accrued any right to be appointed notwithstanding the fact that his name was not sponsored by the local employment exchange but he appeared in the interview as per interim order granted by the learned Single Judge by his order dated 9/11/2001. It has already been pointed out that Section 54(3A) provides for appointment in Group "C" post from the candidates, names of which were sponsored by the local employment exchange. Admittedly, the name of the petitioner was not sponsored by the local employment exchange. But that does not mean that the petitioner is debarred from making any application to the appropriate authority for his appointment for such a post. Law in this respect has been clearly defined by the Supreme Court in the decision reported in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, wherein Supreme Court observed, as follows:

In addition the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

10. Same principle was laid down in the full Bench decision of this High court as reported in 2005 (2) CALLJ 161 *Rabindra Nath Mahato v. The State of West Bengal and Ors.* wherein it was observed that a person whose name is not sponsored by the employment exchange has also a right to participate as a candidate in a selection process initiated by the authority, by submitting application directly to the authority, provided he has got requisite qualification.

11. So, cumulative effect of all these decisions lead us to the conclusion that a person can apply for a particular post if he has got requisite qualification although his name is not sponsored by the employment exchange and if such application is made, then the authority concerned should consider his case along with others in the selection process and thereafter if he succeeds then there is no bar for giving appointment to such a candidate.

12. It is the admitted position that by virtue of the interim order of the learned Single Judge, the petitioner was allowed to appear in the interview along with other candidates whose names were sponsored by the local employment exchange for selection to the post in question. It is also the admitted position that the petitioner was successful in the said selection test and his name was empanelled. But the authority is reluctant to give him appointment solely on the ground that his name was not sponsored by the local employment exchange. But from the decisions, as cited above, it appears that the authority cannot do any discrimination in respect of a candidate whose name was sponsored by the local employment exchange with that of a candidate who submitted the application directly. The main criterion that is to be considered for such appointment is, whether the candidate in question succeeded in the selection test or not. Since the writ petitioner was successful in the selection test and his name was empanelled, we find no reason as to why he should not be given appointment for the post for which he was interviewed.

13. So far as this writ petition is concerned, it appears that before the selection test, he was working in the Egra Municipality for quite a long time on ad hoc basis. Although, this appointment cannot give him a right to be selected to the post for which selection process was undertaken as per rules. In the decision reported in *Dr. Surinder Singh Jamwal and another Vs. State of Jammu and Kashmir and others*, , the Supreme Court observed to the effect that the ad hoc appointments would be only temporary appointments de hors the rules, pending regular recruitment without conferring any right to regularisation of service.

14. However, in paragraph 2 of this judgment the Supreme Court observed to the effect that -

Since the respondents have been continuing as ad hoc doctors, they shall continue till the regularly selected candidates are appointed. They are also entitled to apply for selection. In case any of the respondents are barred by age, the State Government is directed to consider the cases for necessary relaxation under Rule 9 (3) of the age qualification. If any of the respondents are not selected, the ad hoc appointment shall stand terminated with the appointment of the selected candidate.

15. So, the legal position, as it appears from this decision is that even a person who is working on ad hoc basis in respect of a permanent post has a right to submit application before the authority to be considered in the selection test in respect of such permanent post. There cannot be any bar in that respect. So far

as the present case is concerned, admittedly the writ petitioner was working in the post in question on ad hoc basis. As such, he had every right to submit an application with a prayer to the authority to allow him to appear in the selection test for being considered for the post in question. Exactly same thing happened here when the petitioner being holder of the post on ad hoc basis submitted an application to be considered for the permanent post. We find nothing wrong in this respect. In addition to that it has already been pointed out that the petitioner had every right to file an application to that effect before the appropriate authority to be considered for the post in question although his name was not sponsored by the employment exchange and it is for the authority to consider his candidature along with the other persons whose names were sponsored by the employment exchange. We have already pointed out that the case of the petitioner suits with the legal position, as discussed above. It is undisputed that the petitioner was allowed to appear before the selection committee for selection test along with other sponsored candidates and as he came out successful, so he was empanelled by the authority. If that is the position, then we find no reason as to why the authority concerned should not give appointment to the petitioner in respect of the post for which he was interviewed. Learned Single Judge, in his impugned judgment, discussed all these points in detail and thereafter was of the opinion that the petitioner being successful in the selection test, should be given appointment forthwith by the authority concerned. We fully agree with this decision of the learned Single Judge and we do not find any reason for interference with the said judgment.

16. Under such circumstances, we have got no hesitation to hold that the learned Single Judge was right in observing that the writ petitioner was entitled to be appointed to the Group "C" post of Egra Municipality as he was successful in the selection test. We do not find any merit in this appeal and as such, in our considered opinion, same should be dismissed.

17. In the result, the appeal is dismissed on contest but without cost. The judgment, as passed by the learned Single Judge on 19/1/2006 in W. P. No. 17680 (W) of 2001 is confirmed.

18. Let a certified photocopy of this judgment be handed over to the parties on urgent basis, if applied for.

Tapen Sen, J.

19. I agree,