

(2018) 04 CAL CK 0057
In the Calcutta High Court
Case No : W.P.S.T. 166 of 2017

UBHASHIS SAHA & ORS.

APPELLANT

Vs

THE STATE OF WEST BENGAL & ORS

RESPONDENT

Date of Decision : 04-04-2018

Acts Referred:

Citation : (2018) 04 CAL CK 0057

Hon'ble Judges : DEBASISH KAR GUPTA,J;SHAMPA SARKAR,J

Bench : Division Bench

Advocate : Subhashis Saha

Final Decision : Dismissed

Judgement

Let the affidavit of service filed in Court today be kept on record.

The subject matter of challenge in this writ application is a final order dated September 20, 2017 passed by the West Bengal Administrative Tribunal,

Kolkata in the matter of Subhasish Saha & Ors. Vs. State of West Bengal & Ors. (In re: O.A. 646 of 2016). By virtue of the order impugned to this

writ application, the original application of the petitioners was dismissed.

The subject matter of challenge in the above original application was an advertisement bearing no.13 of 2016 issued by the Public Service

Commission, West Bengal, and published in the Website inviting applications from the eligible candidates for recruitment of 28 Assistant Professors in

the Government College of Arts and Crafts, Kolkata. All the petitioners possessed the requisite qualifications. They had been working as Part

Time Teacher in the above College at that point of time. All of them were over aged in the light of the age limit prescribed in the above

advertisement, which was 37 years.

It is submitted by Mr. Subhashis Saha, appearing in person for all the petitioners, that a notification for UGC-NET2015 was published prescribing

eligibility criteria for Assistant Professor only or Junior Research Fellowship & Eligibility for Assistant Professor both in the above notification, no

upper age limit was prescribed.

Our attentions have also been drawn towards a memorandum issued by the Government of West Bengal, Higher Education Department, College

Sponsored Branch, bearing no.856Edn (CS)/BR-01/10 dated December 13, 2012 to submit that under paragraph 10 of the above memorandum though

the upper age limit for candidates was fixed at 37 years in an exceptional qualified over aged candidates, it was relaxable. It is also submitted by Mr.

Saha that on an earlier occasion eligible candidates were appointed in the above College relaxing their age limit. However, no document in support of

such claim has been brought on record.

We have heard Mr. Saha at length and we have given our anxious consideration to the facts and circumstances of this case. It is not in dispute that by

the advertisement no.13 of 2016, applications were invited for recruitment of 28 Assistant Professors in the Government College of Art and Craft,

Kolkata (hereinafter referred to as the said College). It is also not in dispute that the upper age limit for the eligible candidate has been fixed at 37

years. No material is produced before us in spite of repeated requests from the Court to show that there is any provision for relaxation of the upper

age limit for the candidates for the concerned posts in connection with the selection process. No material is brought on record to show that there was

departure from the government recruitment rule concerned in relaxing the Assistant Professor in the said College.

On perusal of the final order impugned to this writ application, we find that the learned Tribunal arrived at a conclusion that it was within the domain of

the employer, in this case the State of West Bengal, to fix the upper age limit for the eligible candidates for recruitment of Assistant Professor in the

said College as a matter of executive policy. The learned Tribunal, thereafter, arrived at a conclusion that no relaxation clause had been incorporated

for relaxing the above age limit of the eligible candidates and more particularly so far as the in-house candidates were concerned.

It was also observed by the learned Tribunal that notification for UGC-

NET December 2015 for eligibility of Assistant Professor only or Junior

Research Fellowship & Eligibility for Assistant Professor both had no nexus so far as the recruitment process in question was concerned. The learned

Tribunal further observed that under memorandum dated December 13, 2012 the Government of West Bengal, Higher Education Department, College

Sponsored Branch, prescribed the qualification for recruitment to the post of Assistant Professor in a Government-aided Affiliated Colleges having no manner of application so far as the Government Colleges were concerned.

It is the settled principles of law that recruitment rule has to be followed strictly and not in breach. Reference may be made to the decision of Dr.

M.A. Haque & Ors Versus Union of India & Ors., reported in 1993 (2) SCC page 219 and the relevant portion of the above decision is quoted

below:

“We are also conscious of the fact that candidates in service have a disadvantage as against the fresh candidates in the tests particularly when

they face the tests after a long lapse of time. As against this, however, we cannot lose sight of the fact that the recruitment rules made under Article

309 of the Constitution have to be followed strictly and not in breach.”

Though in a factual context the above settled principles of law was repeated and reiterated in the matter of Arundhati A. Pargaonkar Vs. State of

Maharashtra reported in AIR 1995 SC 962, the same ratio is applicable in this case with its all rigors so far as the point of law is concerned and the

relevant portion of the above decision is quoted below:-

6. Since the Government has been treating the class II on post in purview of Public Service Commission and these posts were not included in the

notification issued on 8th October 1965 by the State Government the Tribunal did not commit any error in recording the finding that the post of

Lecturer in Dentistry in the State of Maharashtra even in 1978 was within purview of the Public Service Commission. Even otherwise the 'temporary

Government Services Regularisation Rules issued by the Government in 1975 should not be held, in the larger interest, to be applicable to those cases

Where the post specially class on service is in purview of the public Service Commission. In Dr. M.A. Haque v. Union of India, (1993) 2 SCC 213

(219) it was observed by this Court:

..... we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in

breach. If a disregard of the rules and the by passing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment

without limit. The fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional

provisions requiring recruitment to the services through the Public service commission. It appears that since this Court has in some cases permitted

regularization of the irregularly recruited employees, some Governments and authorities have been increasingly resorting to irregular recruitments. The

result has been that the recruitment rules and the public Service Commissions have been kept in cold storage and candidate dictated by various

considerations are being recruited as a matter of course.

The claim of the appellant therefore, that she stood regularised under 1975 Resolution can not be accepted. (Emphasis supplied)

In view of the above settled principles of law and taking into consideration the facts and circumstances of this case, we are of the opinion that there is

no irregularity or infirmity in the impugned judgement of the learned Tribunal.

This writ application is dismissed.

There will be, however, no order as to costs.

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