

(2006) 07 CAL CK 0049

In the Calcutta High Court

Case No : C.A.J. (Appellate Side) M.A.T. No. 2131 of 2001

West Bengal Regional School Service Commission, Western
Region and Others

APPELLANT

Vs

Madhusudan Karmakar

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Citation : (2007) 1 CALLT 499 : (2007) 113 FLR 960

Hon'ble Judges : V.S. Sirpurkar, C.J.;Nadira Patherya, J

Bench : Division Bench

Advocate : Saikat Banerjee, for the Appellant;Sadananda Ganguly and Samit Kumar Mondal, for the Respondent

Judgement

V.S. Sirpurkar, C.J.—This appeal is filed against the judgment of the learned Single Judge of this Court allowing the writ petition filed by the writ petitioner/respondent herein. The learned Single Judge has directed that the writ petitioner should be interviewed and if found eligible, his name should be forwarded for appointment against the vacant post of Assistant Teacher in any school. Factual Scenario:

An advertisement was issued inviting applications for the posts of Assistant Teachers in non-Governmental aided schools. These appointments were to be in the various languages as well as other groups like Science group, Arts group like History, Geography, Political Science, etc. or the other groups like Work Education, Physical Education, Commerce, etc. The candidates had to apply on the basis of their eligibility and they were required to appear at the written test and if they were successful in that test they were to be called for personality test-cum-interview. The petitioner applied for the post of Assistant Teacher in English. The petitioner's qualification was that he was a Science graduate having passed his B.Sc. Examination in Bio -Science. Thereafter, it seems that he appeared in Special B.A. Examination in English held by Burdwan University and passed that examination in 1996. While appearing in that examination the total marks in

English subject was 300 marks. He secured 137 marks and thus was declared to have passed that examination. A certificate seems to have been issued in his favour. On this basis he appeared for the written test for the post of Assistant Teacher and he was declared successful. On that basis he was invited for the personality test and was instructed to bring along with him all his testimonials. However, finding his qualification the appellant herein decided not to take his personality test perhaps in view that he was not eligible for the post of Assistant Teacher in English on the basis of his qualification. He, therefore, "challenged the said refusal on the part of the appellant herein by way of a writ petition. The said writ petition was Allowed by the learned single Judge taking the view that he had adequate qualification for being appointed as Assistant Teacher in English since he had appeared for an examination which was comprised of 300 marks and since he had successfully cleared that examination he would be eligible to compete for the post and also for being selected for the post.

2. It is against this judgment that the appeal is filed now by the School Service Commission. Sri Banerjee, learned Counsel appearing for the appellant points out that the view taken by the learned single Judge that passing of Special B.A. Examination in English would be adequate qualification for the post of Teacher in English is patently incorrect. Mr. Banerjee points out, telying on the advertisement that the petitioner cannot even be said to be a graduate in the subject of English because passing of Special B.A. Examination in English does not result in his being conferred upon a degree and he cannot be said to be a graduate in English for that purpose. Mr. Banerjee also urges further that this position is obtained from a Government order dated 13th March, 1992 being No.276-Edn.(S)/4A-5/92. According to Mr. Banerjee this Government order is very clear. It was further submitted by learned Counsel for the appellant that this question was not *res integra* and precisely this very Government order has been interpreted by this Court in the case of *Abu Bakar Baidya v. State of West Bengal and Ors.* 2001 (2) CHN 29. Learned Counsel says that unfortunately this judgment, though pronounced earlier that is on 27th November, 2000, was not brought to the notice of the learned single Judge.

3. As against this Mr. Ganguly, learned Counsel appearing for the respondent/writ petitioner supports the judgment. According to Mr. Ganguly since, the petitioner is a graduate in Bio-Science it cannot be said that he is not a graduate. Relying on the language of the advertisement Mr. Ganguly says that the passing of the Special B.A. Examination in English would mean that the petitioner has actually graduated in that subject. For that matter Mr. Ganguly points out that the writ petitioner/respondent had written exactly those papers which were requited to be written by the student taking English as one of the combination of three subjects and he also appeared in all the papers of English language comprising 300 marks and therefore he could not be said to be a person lacking in knowledge of English or not being a graduate.

4. As regards the Government order Mr. Ganguly says that the language of the

Government order was clear enough and in fact the Government order helps the writ petitioner rather than the appellant, School Service Commission. As regards the aforementioned judgment Mr. Ganguly says that the Division Bench comprising of Justice Ashok Kumar Mathur, Chief Justice and Justice Rohojit Kumar Mitra (As their Lordships then were) did not consider the whole Government order particularly the third paragraph thereof, therefore, we should take a different view.

5. As a matter of fact it has to be held that the subject is not at all *res integra*. In the aforementioned judgment the factual scenario was almost identical. There also a student had passed his Special B.A. Examination in Arabic and on that basis he was claiming the eligibility for the post of Assistant Teacher in Language group in High and Junior High Schools including Madrasah. This very Government order dated 2nd April, 1993 was referred which is as under:

The undersigned is directed to say that it was decided by the State Government in the Education Department vide G.O. No. 276 Edn. (S) 4 A-5/92 dated 13th March, 1992 that henceforth selection of Assistant Teachers in any language subject in recognised High and Junior High Schools should be made only from amongst candidates who had studied the relevant language as a combination of subjects of at least 300 (three hundred) marks at the graduation level. A candidate having studied a language as an additional subject less than three hundred marks shall not be deemed to be eligible for appointment as a language teacher.

6. After considering the language of the Government order the learned Judges came to the conclusion that the interpretation put by the learned single Judge holding that a person passing Special B.A. Examination in any one subject could not be said to be eligible to apply and compete for the post of teacher was correct. We have gone through the whole judgment and it cannot be said that the Bench did not consider the Government order in its entirety. We respectfully agree with the learned Judges.

7. However, to give additional reasons we would consider the language of the Government order again. It is very clear from the first sentence that the selection was to be restricted for the posts of Assistant Teachers in any languages to only those candidates who had studied the relevant language as combination of subjects of at least 300 marks at the graduation level. The Division Bench had held that the candidate should have studied that relevant language as one of the three subjects (combination) at his graduation level and the said subject should have carried 300 marks. The reference to 300 marks is only by way of adding the further details to the earlier term of combination of subjects. It is a common knowledge that the students who undergo a particular combination of three subjects have to write the papers of 300 marks in each of the combination of subjects. Therefore, in our opinion the reference of 300 marks comes only by way of supplement to the earlier concept that the student must have studied language as one of the combination of three subjects. It is the

further sentence which is tried to be relied upon by Mr. Ganguly is "a candidate having studied a language as an additional subject less than three hundred marks shall not be deemed to be eligible for appointment as a language paper". Mr. Ganguly says that this gives him a right because the petitioner had actually studied English language as an additional subject with 300 marks.

8. In our opinion when a right is created it is always created in a positive language. A right does not emanate from the negative language or by inference particularly as regards the essential qualification. It is nowhere provided in the advertisement that passing Special B.A. Examination in any subject would be an adequate qualification. What was being declared actually was that a candidate having studied language as an additional subject could not be deemed to be an eligible candidate. Again further reference of 300 marks is because of the earlier Government order which was ambiguous about candidates who appeared in any language and had written paper worth 100 marks. Of course this ambiguity was considered in the present Government order and it was clarified that such candidate who had written paper of language during graduation examination but not of 300 marks would not be eligible. It is because of the language of the first paragraph of the said Government order that this reference to the term less than three hundred marks" appears to have been made.

9. Be that as it may, we do not want to dilute on this issue since this question has already been covered by the aforementioned judgment.

10. The learned single Judge has not even referred to the aforementioned Government order. The said Government order was on record which is pointed out by Mr. Banerjee. The judgment is applicable on all fours and we would choose to follow the judgment.

11. It will be further seen that the petitioner cannot be deemed to be a graduate in the subject of English nor can it be held that he holds a valid degree in that subject. He merely holds a certificate that he has passed the examination of Special B.A. in English, which does not mention about a degree. A degree in the subject of English was an essential qualification. A glance at the advertisement would be sufficient to hold that. The petitioner may be a Science graduate but he is not a graduate or a degree holder in "English". Mr. Banerjee has filed a communication from the Burdwan University to that effect. Therefore, the petitioner did not have essential qualification. The learned single Judge has not considered this vital aspect. In the result the appeal would have to be allowed and it will have to be held that the petitioner was not eligible firstly not being a graduate in English as provided by the communication of the Burdwan University and secondly his doing the Special B.A. Examination was not in combination with other subjects and therefore he could not be held to be eligible or competent for the post. The appeal is allowed, the judgment of the learned single Judge is set aside and the writ petition is dismissed. There will be no order as to cost.

12. Urgent xerox certified copy of this order may be supplied to the parties on

the usual undertaking.