

31.08.2021
SL No. 81
Court No. 24
(P.M.)

WPA 11412 of 2017

Sagar Paul
Vs
The State of West Bengal & Ors.
(Via Video Conference)

Mr. Raghunath Adhikary,
Ms. Bandana Maity
... for the petitioner

Mr. S. N. Dutta
... for the respondent Nos. 3 & 4

Mr. Biswabrata Basu Mallick,
Mr. Pinaki Bhattacharyya
... for the State.

In response to an advertisement published in the newspaper for appointment of library clerk in Dr. Kanailal Bhattacharyya College, Howrah the petitioner applied for being appointed in the said post. He participated in the selection process and stood first in the merit panel. Letter of appointment in the post of Library Clerk was issued by the Principal of the College in favour of the petitioner on 1st February, 2016.

The letter of appointment mentioned that the candidate has to remain on probation for a period of one year with effect from the date on which he joined the post. Regarding probation, confirmation and other conditions of service the same is to be guided by the Government Orders and rules as applicable to this category of the post. The letter of appointment was to be treated as cancelled if the

candidate failed to join the post by 8th February, 2016. The petitioner joined the College on 1st February, 2016.

The grievance of the petitioner is that his appointment has not yet been approved by the Director of Public Instruction. The petitioner made repeated representations before the concerned authorities but none have been answered till date.

The petitioner prays for a direction upon the Director of Public Instruction to approve his appointment and fix his pay according to the pay scale, as applicable.

The learned advocate appearing on behalf of the Director of Public Instruction submits, upon instruction, that the College did not submit the necessary documents in connection with the selection process and accordingly his pay fixation and the approval could not be made.

It is the specific case of the Director of Public Instruction that the college authority was asked to submit the requisite documents. Clarification for advertisement in Bengali and English newspapers was sought. There were anomalies in the documents received from the College. Though the college authority submitted a Governing Body resolution, item No. 10, duly attested by the then Principal of the College, but there is no mention of any resolution taken specifying the procedure for selection to the post of Library Clerk.

The resolution specifying the selection procedures is to be adopted by the Selection Committee formed by the

Governing Body. The Governing Body on receipt of the recommendations of the Selection Committee approves the panel.

The College was also required to submit the resolution of the Selection Committee regarding non conducting of written test for the said post and for the distribution of marks for interview and criteria for experience which was taken into consideration at the time of selection.

According to the Director of Public Instruction, the documents forwarded by the College were contradictory to each other. The College did not submit the criteria for experience in the post of Library Clerk and weightage for experience in the marking pattern during interview, except mentioning of the total marks i.e, five, on account of experience.

The College could not produce the clarification on which basis marks were awarded for experience to the candidates.

Considering the documents forwarded by the College, the Director of Public Instruction expressed inability to approve the appointment of the petitioner to the post of Library Clerk of the College.

The learned advocate representing the College authority submits, upon instruction, that the Joint Secretary to the Government of West Bengal by a communicating Memo dated 30th July, 2015 permitted

filling up of one existing vacancy of non-teaching post in Dr. Kanailal Bhattacharyya College. The name of the post was Library Clerk and the pay band and the grade pay were also mentioned in the said memo. The non-teaching post which was sanctioned was to be filled up in accordance with the stipulation mentioned in G.O. No. 585 Edn (CS) dated 9th September, 2008 and the reservation policy as applicable from time to time was to be followed.

The learned advocate has relied upon the aforesaid Government Order dated 9th September, 2008 as well as the reservation policy. The Government Order dated 9th September, 2008 requires the appointing authority to call for names from the Employment Exchange giving wide publicity of the vacancy in the newspaper having wide circulation and also display the vacancy in the office notice board so as to ensure reasonable opportunity of response from eligible candidates for due consideration of their candidature in the recruitment process. The College has produced before this Court the documents to show that the advertisement was published in the newspaper and names were sought for from the employment exchange. Interview letters were also communicated to the candidates who were sponsored by the Employment exchange.

The reservation policy has also been placed. It appears therefrom that according to the notification dated 5th May, 1976 published by the Government of West Bengal, the West Bengal Scheduled Caste and Schedule Tribes

(Reservation of vacancies in Services and Posts) Act, 1976 does not apply to any employment in single post cadre. As the post of Library Clerk in the College is a single post cadre, accordingly the reservation principle is not applicable.

The College has relied on the resolution of the Governing Body. The Governing Body resolved that the vacant post of Library Clerk shall be filled up by the members of the Selection Committee and the criteria that is to be followed at the time of selection has also been mentioned in the resolution book.

It appears that the documents which were forwarded by the College to the Director of Public Instruction has two different versions of the resolution of the Governing body.

The learned advocate for the College specifically submits that one is a draft resolution and the other is the final resolution which was entered in the meeting resolution book that is maintained by the College. The pattern in which the marks is to be awarded is also mentioned there.

It appears from the documents produced by the College authority that the candidates who were present at the time of selection have duly been awarded marks by all the members of the Selection Committee. It appears from the attendance sheet that as many as thirty-four candidates appeared in the selection. A panel consisting three names was prepared. The Selection Committee unanimously resolved that the petitioner who stood first in the panel be

appointed and accordingly the College adopted the resolution to appoint the petitioner in the vacant post. The resolution was acted upon and appointment letter was issued in favour of the petitioner. The petitioner is working in the College since 1st February, 2016.

The selection was never challenged by any candidate. The Selection Committee consisted of eight members, out of which two members were the nominees of the Director of Public Instruction and two members were the nominees of the University of Calcutta. Had there been any error in the selection process, the same ought to have been pointed out by the representatives of the Director of Public Instruction at the time of the interview itself. The fact that the representatives permitted the College to continue with the selection process without any demur and they themselves awarded marks to the candidates and put their signatures in the merit panel implies that the selection process was fair and was conducted in accordance with law.

From the documents produced before this Court it does not appear that there is any such anomaly which stands in the way of approval of appointment of the petitioner and for fixing his pay. All necessary documents seeking approval of the appointment of the petitioner have been forwarded by the College to the Director of Public Instruction long back.

In view of the above, the instant writ petition is disposed of by directing the Director of Public Instruction to

take note of the documents which have been forwarded by the College and thereafter take steps for approval of the appointment of the petitioner and to fix his pay in accordance with law. If required, the Director of Public Instruction shall afford an opportunity of hearing to the College authority for clearing the doubts.

Steps shall be taken in the matter at the earliest, but positively within a period of ninety days from the date of communication of a copy of this order.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)