

D/L
Item No. 4
01.08.2022
KOLE

MAT 186 of 2021
With
IA No. CAN 1 of 2021
Digbijoy Singha Jana
-Vs.-
The State of West Bengal & Ors.

Mr. K. K. Pathak,
Mr. M. M. Roy

...for the appellant.

Mr. Pradip Kumar Roy,
Mr. J. Roy,

...for the State.

Mr. Soumen Kr. Dutta,
Mr. S. Chatterjee,
Mr. S. Dutta,
Mr. A. Kundu,

...for the Society.

By consent of the parties the appeal and the application are taken up for hearing together.

This appeal is directed against a judgment and order dated February 8, 2021, whereby WPA No. 209 of 2021 was disposed of. The operative portion of the order under appeal reads as follows:-

“This court, therefore, directs the Society to complete the process of publication and intimation to the employment exchange of the recruitment to the post of Manager within 15 days from date. Rule 105 shall be strictly complied with in letter and spirit by the Society.

The petitioner shall be entitled to participate in the new recruitment process.

The entire process of recruitment after strictly following the Rules in question shall be completed by the Society within two months from date.”

The respondent no. 5, Khagda Samabay Krishi Unnayan Samity Ltd. (in short the "Samity") is a Cooperative Credit Structure Entity. It conducted a selection process for appointment to the post of Manager. The appellant participated in such process. Since the result of the selection process was not being published, the appellant approached the Assistant Registrar of Cooperative Societies. Upon being called upon to explain as to why the result of the selection process was being withheld, the Samity apprised the Assistant Registrar that the recruitment process stood cancelled pursuant to a decision taken in March, 2020. Fresh selection process could not be initiated by reason of the intervening pandemic. The reasons cited for cancellation of the selection process were that Rule 105 (1) of the West Bengal Cooperative Societies Rules, 2011 requiring publication of advertisement at least in one national daily newspaper and communication to the Local Employment Exchange, had not been complied with.

It appears that the appellant scored the highest mark in the selection process. Contending that the aforesaid reasons are not good grounds for cancellation of the selection process, the appellant approached the learned Single Judge. The learned Judge disposed of the writ petition by giving directions which have been noted above. Being aggrieved, the writ petitioner is before us by way of this appeal.

Rule 105 (1) of 2011 Rules reads as follows:-

"105 (1). Subject to the provisions of rule 104A, all co-operative societies shall notify their

vacancies, other than those required to be reported to the Co-operative Service Commission, through publication of advertisement at least in one national daily newspaper, and to the Local Employment Exchange or to the Director, National Employment Exchange, as the case may be, and ask for names of suitable candidates in terms of the qualifications required of such candidates.”

Learned Advocate for the appellant says that the District Employment Exchange, Egra, East Medinipur, was made aware of the vacancy in the post of Manager but it was not in a position to sponsor candidates since no suitable candidate had applied for the concerned post till November 21, 2019. This would appear from a letter written by the said Employment Exchange to the Secretary of the Samity, copy whereof is annexure “P-3” to the stay application. Hence, the contention that the Local Employment Exchange was not informed is factually incorrect.

Learned Advocate further submits that in any event, by reason of Sections 134A and 134C of the West Bengal Cooperative Societies Act, 2006 (in short the “2006 Act”) read with Rule 104A of the 2011 Rules, Rule 105 shall not apply to the Samity. Sections 134A and 134C (2) of the 2006 Act read as follows:-

“134A. Overriding effect.-Notwithstanding anything contrary or inconsistent contained in this Act or the rules framed thereunder or by-laws of any registered society or orders issued thereunder, the provisions of this Chapter shall have overriding effect.

134C(2). A Co-operative Credit Structure Entity shall have autonomy in all financial and internal administrative matters including the following areas :-

- (a) interest rates on deposits and loans;*
- (b) borrowing and investments;*

- (c) loan policies and individual loan decisions;
- (d) personnel policy, staffing, recruitment, posting and compensation to staff;
- (e) internal control systems, appointment of auditors and compensation for the audit;

Provided that in the case of co-operative Credit Structure Entities other than the State Co-operative Agriculture and Rural Development Bank and Co-operative agriculture and rural development bank, the interest rates on deposits and loans shall be in conformity with the guidelines issued by the Reserve Bank of India:

Provided further that in the case of the state Co-operative agriculture and rural development bank and Co-operative agriculture and rural development banks, the interest rates on deposits and loans shall be in conformity with the guidelines issued by the National Bank.”

Rule 104A of the 2011 Rules reads as follows:-

“104A. Creation of posts.-(1) The board of a cooperative society may from time to time create posts of different categories of employees and officers subject to the provisions of section 43, to assist the cooperative in the performance of its duties and discharge of its function and such creation of posts shall only be made with the approval of the General Body.

(2) The board of a cooperative society shall appoint subject to sub-section (5) of section 94, such officers and other employees in the post created under sub-rule (1).

(3) Nothing contained in this rule shall apply to co-operative Credit Structure Entity which shall have freedom to make its own policy on recruitment, posting and compensation to staff.”

Learned Advocate submits that the provisions of Chapter XIII A of the 2006 Act which include Sections 134A and 134C have overriding effect. Section 134C(2)(d) of the 2006 Act gives autonomy to a Cooperative Credit Structure Entity like the Samity in all financial and internal

administrative matters including personnel policy, staffing, recruitment, posting and compensation to staff. Similarly, according to learned Advocate, Rule 104A (3) of the 2011 Rules gives complete freedom to the Samity to make its own policy on recruitment, posting and compensation to staff.

In this connection, learned Advocate submits that Chapter XIII A was introduced in the 2006 Act by way of amendment by Section 2 of the West Bengal Cooperative Societies (Amendment) Act, 2010 with effect from January 18, 2011. The statement of objects and reasons of the said Act reads as follows:-

“It has been considered necessary and expedient to amend the West Bengal Co-operative Societies Act, 2006 with a view to reviving the Short Term Rural Co-operative Credit Structure and making it a well managed and vibrant medium to serve the credit needs of rural populace especially the small and marginal farmers, and to bring the system to an acceptable level of health by way of introducing legal and institutional reforms necessary for their democratic, self-reliant and efficient functioning and also taking measures to improve the quality of management.”

Learned Advocate for the appellant submits that keeping in mind the object of the 2010 amendment Act, the provisions of Chapter XIII A of the 2006 Act and Rule 104A of the 2011 Rules should be given an interpretation which will uphold complete autonomy of a Cooperative Credit Structure Entity like the Samity in matters of recruitment. Hence, it is not necessary for an entity like the Samity to advertise the vacancy in a post in a national daily newspaper. Further, the consolidated pay for the post being Rs. 9,000/- only, no person from outside the State of West Bengal would

apply for the post or participate in the selection process. Learned Advocate submits that the grounds for cancellation of the selection process being not sustainable in law, such cancellation ought to be set aside and the selection process should be carried to its logical conclusion by granting appointment to the candidate who performed the best, i.e, the appellant.

We have not called upon the respondents to make submissions as we are of the considered view that Rule 105 of the 2011 Rules very much applies to entities like the Samity. No doubt, Section 134A of the 2006 Act gives overriding effect to the provisions of Chapter XIII A of the said Act. However, a non-obstante clause comes into play only when there is a conflict between two provisions of a statute or similar provisions in two similar statutes. In case of such a conflict, the provision which has been given overriding effect by incorporating therein a non-obstante clause, prevails over the other provision which is in conflict.

In the present case, Section 134C(2)(d) of the 2006 Act gives autonomy to an entity like the Samity in the matter of recruitment. Hence, the requirement in Rule 105 of the 2011 Rules that a vacancy has to be reported to the Local Employment Exchange for sponsoring candidates, may not apply to an entity like the Samity to the extent there is a conflict between the two provisions. In any event, a Rule framed under a statute must yield to a substantive section of the statute. However, this issue is academic in the present case as it appears from the records that the District

Employment Exchange was informed about the vacancy in the post of Manager. The Employment Officer-in-Charge of the said Employment Exchange wrote to the Secretary of the Samity on November 22, 2019 intimating that the Employment Exchange was not in a position to sponsor any candidate for the vacancy.

In so far as the requirement of publication in a national daily newspaper is concerned, we are of the view that the same ought to be followed by an entity like the Samity. There is no conflict between this requirement in Rule 105 of the 2011 Rules and the provisions of Rule 104A or Section 134C(2)(d) of the 2006 Act. None of the said provisions spell out as to how recruitment is to be made by an entity like the Samity. It is one thing to frame a policy and another to frame Rules for implementation of such policy. While Section 134(C)(2)(d) of the 2006 Act and Rule 104A of the 2011 Rules grants autonomy to an entity like the Samity to frame its own policy of recruitment, those provisions are silent as regards the process of recruitment.

Recruitment to a public post must be done following a completely transparent procedure and ensuring that the factum of vacancy in the post concerned is circulated amongst the maximum number of people. This would ensure that all aspiring candidates get an opportunity of participating in the selection process, be he/she a resident of the State of West Bengal or a resident of any other part of the country. Such wide circulation would also enhance the

possibility of the most meritorious and deserving of the aspiring candidates being selected for the post in question.

Article 16 of the Constitution of India, in so far as the same is relevant for the present purpose reads as follows:

“16. Equality of opportunity in matters of public employment._ (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

The equality of opportunity enshrined in Article 16, in our opinion, extends to employment or appointment to any office under a statutory or public authority.

In view of the aforesaid, we are unable to accept the appellant’s contentions. Further, even accepting the appellant’s submission that he ranked first amongst the successful candidates, that *per se* would not give him a vested right to be appointed irrespective of there being infraction of statutory rules pertaining to conduct of the selection process. The learned Judge directed completion of the selection process within two months from the date of the order impugned after complying with all statutory rules. At the time of admission of this appeal, a Coordinate Bench passed an order on February 25, 2021, the material portion whereof reads as follows:-

“Accordingly, while the parties are permitted to file their respective affidavits-in-opposition and Reply respectively within a period of two weeks from this date and a further period of one week thereafter, the fresh recruitment exercise on the terms as directed to be

conducted by the Hon'ble Single Bench shall continue with the caveat that the said Cooperative Society/the respondent nos. 5, 6, 7 and 8 to this appeal shall take leave of this Court before giving appointment to any successful candidate."

We are told that the fresh selection process has been completed but no appointment has been given to the best candidate in view of the aforesaid interim order. It is pertinent to note that the appellant chose not to participate in the selection process. He says that he did not do so since that would have made his present appeal infructuous. This is a misconceived stand. He could have participated in the selection process without prejudice to his rights and contentions in the present appeal.

In view of the aforesaid, we find no infirmity in the order under appeal. The appeal and the connected application are, accordingly, dismissed. Naturally, the *interim* order stands vacated. There will be no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)