

14.09.2022
S/L No.45
KS

W.P.A. 15392 of 2017

Raj Kumar Bhattacharyya
-Vs.-
The State of West Bengal & Ors.

Mr. Amitava Chaudhuri
Mr. M. Choudhuri
Mr. N. Roy
.....For the Petitioner
Syed M. Ali
.....For the College Authority
Mrs. Chama Mukherjee
Mrs. Paromita Pal
.....For the State

Petitioner has challenged the order of the Joint Secretary to the Government of West Bengal, Higher Education Department dated March 24, 2017 whereby the prayer of the petitioner for approval of the panel for appointment to the post of Clerk and the approval of the service of the petitioner as a clerk in Tehatta Sadananda Mahavidyalaya (for short “college”) was rejected.

The petitioner claims to have been appointed to the post of clerk in a permanent post vide the letter of appointment dated April 6, 2015. Petitioner claims to have joined the said post on the very next day i.e. April 7, 2015. The grievance of the petitioner is

that the petitioner is not getting the salary in terms of the pay scale attached to the said post.

Mr. Chaudhuri, learned advocate appearing for the petitioner submits that the order dated March 24, 2017 is an unreasoned order. He further submits that the respondent no.2 was swayed by the fact that the college authority published the result of the written test and the interview on the same day and issued appointment letter on the subsequent day. He submits that the petitioner applied pursuant to the advertisement made by the college authorities for appointment to the said post. He participated in the test for selection to the post in question and being successful was allowed to join as clerk in the college. He submits that the petitioner cannot be penalized for the fault, if any, of the college authority. He refers to a decision of the Hon'ble Supreme Court of India in the case of *Nayagarh Co-operative –Vs.- Narayan Rath & Anr.* reported at *AIR 1977 SC 112* and submits that since the petitioner joined the service sometimes in April, 2015 and was allowed to continue till date, it is undesirable to invalidate such appointment. He further submits that the Government Order No.1077 Edn. (CS) dated November 23, 1998 referred to by the respondent no.2 in the impugned order could not have been applied to the case of the petitioner.

Mrs. Mukherjee, learned advocate appearing for the State submits that the college authority did not follow Government Rules and the prescribed norms for making appointment to the post of Clerk. She further submits that the respondent no.2 after hearing the parties and considering the relevant Government orders have passed the order dated March 24, 2017 which, according to Mrs. Mukherjee, is a reasoned order.

Heard learned advocates for the parties and perused the materials placed.

It appears from the Memo No.910-Edn(CS)/4E-29/2014 dated 12th November, 2014 that the non-teaching posts sanctioned for the college shall be filled up subject to strict observance of the recruitment rules as stipulated in Government Order No.585-Edn (CS) dated 9th September, 2008 and Memo No.915 – Edn (CS) dated 19th November, 2007 and the reservation policy as applicable from time to time.

It further appears from the Memo No. 585-Edn (CS) dated 9th September, 2008 that the appointing authority were required to obtain the names from the employment exchange in addition to giving wide publicity of the vacancies in the newspapers having wider circulation and also displaying the vacancies on the office notice board so as to ensure reasonable opportunity of response from the eligible candidates.

It is evident from the order dated March 24, 2013 that the college authority in their submission before the respondent no.2 has admitted in writing that they have deviated from the Rules/prescribed norms to make appointment of the petitioner to the post of clerk.

The respondent no.2 after considering the materials on record including the Government Orders and Rules for recruitment of the post of clerk passed the order dated March 24, 2017. The respondent no.2 arrived at a factual finding that the selection process conducted by the college authority is defective not only in procedural terms but also lacks transparency and the same was done in undue haste. Such factual finding arrived at by the authority cannot be interfered with by the High Court under Article 226 of the Constitution of India exercising the powers of judicial review.

Mr. Chaudhuri, learned advocate, however, could not justify as to why the Memo dated 23.11.1998 relied upon by the respondent no.2 in the order dated 24.03.2017 is not applicable to the case of the petitioner.

It is well-settled that judicial review under Article 226 of the Constitution of India is not directed against the decision but against the decision making process. This Court is of the

considered view that there is no infirmity in the decision making process in the instant case.

The decision relied upon by Mr. Chaudhuri, learned advocate for the petitioner in the case of *Narayan Rath (supra)* is not applicable to the facts of this case as in that case the appointment had been acquiesced by the authority and the said appointment was treated to be valid by such authority which is not the case on hand as the appointment letter of the petitioner specifically states that such appointment is subject to the approval of the Director of Public Instruction.

Mr. Chaudhuri at this stage made a last attempt to protect the appointment of the petitioner by contending that the appointment of the petitioner is not illegal but the same may be treated to be an irregular one and this Court can direct regularisation of his appointment.

Petitioner joined the post of clerk on 17.04.2015 which was subject to the approval of the competent authority. Upon the prayer for approval being rejected on March 24, 2017, petitioner approached this Hon'ble Court and his claim that he is still continuing in the post of clerk is only by virtue of an interim order passed by a co-ordinate bench on 14.11.2017. Therefore, the petitioner failed to bring his case within the exceptions carved out in paragraph 53 of the decision in the case of **Secretary, State of**

Karnataka and Others Vs. Umadevi (3) and Others reported in (2006) 4 SCC 1. The prayer for regularisation made by Mr. Chaudhuri is thus rejected.

For all the reasons as aforesaid, this Court do not find any reason to interfere with the order dated march 24, 2017 passed by the respondent no.2.

Accordingly, the writ petition being W.P.A. 15392 of 2017 stands dismissed without however any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.)