

Item-8. 04-07-2023

FMA 4070 of 2014
CAN 3 of 2022

sg Ct. 8

Pranab Kumar Mondal
Versus
State of West Bengal & Ors.

Mr. Lal Ratan Mondal, Adv.

...for the appellant

This appeal is arising out of a judgement and order dated 27th February, 2009. The appellant was sponsored by the Employment Exchange. He had a better claim than Dhruba who was recruited by the School without having the requisite qualification. However, in view of the fact that the recruitment process was initiated solely on the basis of the names sponsored by the Employment Exchange and not being followed by a public notice inviting candidature for the said post, the learned Single Judge, inter alia, has passed the following order:

“For these reasons, I make the following order. Dhruba's writ petition is hereby dismissed. Pranab's writ petition is disposed of ordering as follows. The school authority shall publish the employment notice inviting applications from all eligible candidates. The notice shall be published once in any vernacular daily widely circulated in the district. All terms and conditions regarding eligibility shall be clearly mentioned in the employment notice. Eligibility of candidates responding to the employment notice shall be examined and thereafter the selection committee shall be duly constituted. The selection committee shall consider all the eligible candidates including the candidates sponsored by the employment exchange. CAN No. 62 78 of 2007, not appearing, is treated as on the day's list by consent of counsel for the parties and it is hereby dismissed. There

shall be no order for costs.”

The writ petitions filed by the Dhruba and the Pranab were heard together and disposed of by the order dated 27th February, 2009. The writ petition filed by Dhruba was dismissed. Dhruba preferred an appeal before the Hon’ble Division Bench. The Hon’ble Division Bench, by an order dated 2nd July, 2018, dismissed the appeal with the following observations:

“Mr. Biswas has placed before us the decision of a Full Bench reported in 2005(3) CHN 337 (Rabindra Nath Mahata -vs- State of West Bengal and Ors.). While answering the question referred to the Full Bench, it was observed at paragraph 26 that a person whose name is not sponsored by the employment exchange has a right to participate in a selection process. There can be no dispute with regard to the proposition of law laid down in the said decision, but we find that as a necessary corollary, law has been subsequently laid down by the co-ordinate Bench in its decision in Gayanath Rajbanshi (supra) that not a single candidate but all candidates who are eligible should be given opportunity to participate in the selection process notwithstanding that their names have not been sponsored by the employment exchange. It is true that the decision in Rabindra Nath Mahata (supra) was not noticed in Gayanath Rajbanshi (supra), but nothing turns on it. The judgment and order dated 15th October, 2007 is binding inter partes and such of the points decided by that decision would operate as res judicata in subsequent stages of W.P. 983(W) of 2007. The decision in Rabindra Nath Mahata (supra) does not, therefore, aid Dhruba.

We are, thus, of the considered opinion that the learned Judge by making a direction on the school authority to proceed with the recruitment process afresh, did not commit any error warranting interference. The appeals are devoid of merit and the same stand

dismissed.”

It appears that Mr. Lal Mohan Mondal, learned Counsel represented Pranab before the Hon’ble Division Bench but he was not called upon to answer the issue as to whether Dhruba was eligible to participate.

Mr. Mondal has submitted that in spite of the order passed by the coordinate Bench, the School Authorities have not initiated the recruitment process.

The School Authorities are not represented. In the event the process is not initiated and it is a sanctioned post and the school is in requirement of the said post, it is needless to mention that the School Authorities shall comply with the order dated 27th February, 2009 read with the order dated 2nd July, 2018.

Mr. Mondal shall communicate this order to the Secretary, Education Department and the Director of School Education (S.F.), West Bengal for information and doing the needful.

With the above directions, the appeal and the connected application stand disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)