

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 74 of 2023

With

IA No. CAN 1 of 2023

Md. Reja Ahammad

-vs

The State of West Bengal & Ors.

For the Appellant	: Mrs. Usha Maity Ms. Anita Khatri Mr. Sakya Maity
For the Respondent/ University	: Mr. Swapan Banerjee Mr. Subhrangsu Panda Mr. Saugata Mitra Ms. Ina Bhattacharyya
For the State	: Mr. Bhaskar Prasad Vaisya Mr. Sagnik Chatterjee
Heard On	: 10.04.2023
Judgement Delivered On	: 30.06.2023

Supratim Bhattacharya, J.:- The instant appeal has been preferred against the Judgement and Order dated 21.11.2022 passed by an Hon'ble Single Bench in WPA 24657 of 2015.

Through the impugned Judgement the Hon'ble Single Bench has rejected the prayer of the writ petitioner praying for a mandate upon the Sidho Kanho Birsha University, Purulia (hereinafter referred to as the University) to award marks to the writ petitioner and to recommend his name for the post of Assistant Professor in political science in the category of OBC-A.

The appellant in the instant appeal was the writ petitioner and having his prayer rejected has preferred the instant appeal.

The fact of the instant lis is that initially an advertisement was published by the said University on 26.11.2011 inviting application from eligible candidates for the post of Assistant Professor along with other posts. Among the said posts which were advertised to be filled up there was one post of Assistant Professor in Political Science reserved for the OBC-A category. Thereafter once again another advertisement was published on the 26.06.2014 for filling up the post of Assistant Professor in Political Science reserved for the OBC-A category. On both the occasions the writ petitioner applied for the post of Assistant Professor in political science reserved for the OBC-A category but ultimately the writ petitioner has not been selected for the said post and no reason has been assigned for that.

The writ petitioner preferred an application under Right to Information Act, 2005. In reply to the said application initially it was informed that the writ petitioner was eligible for the post of Assistant Professor even if he appeared alone in the selection test but ultimately the writ petitioner was not recommended by the selection Committee for appointment.

A writ petition being WP No. 33368 (W) of 2014 was filed by the writ petitioner for non-supply of information regarding the previous selection. An order dated 08.05.2015 was passed by the Hon'ble Court directing the Registrar of the University to consider and dispose of the prayer of the petitioner. The writ petitioner was granted liberty to pursue his remedy, in respect of his non-selection, in accordance with law.

In compliance of the order of the Hon'ble Court the writ petitioner was informed by the Registrar of the said University through a letter dated 20.05.2015 that the duly constituted selection committee found no suitable candidate for the post of Assistant Professor during the interview held on 29.08.2014. Thereafter on 01.06.2015 the writ petitioner prayed before the Public Information Officer for providing information in respect of his queries which were made through the application under the Right to Information Act. The Registrar of the said University being the SPIO informed the writ petitioner that there was no bar for selection whether the candidate appeared alone or not, but selection in the post of Assistant Professor is the absolute prerogative

of the selection committee and the name of the writ petitioner was not recommended either for the general post or for the reserved post.

From the documents furnished by the SPIO it reveals in the score sheet the writ petitioner was not awarded any mark in respect of his M.Phil degree and zero mark has been awarded in respect of his teaching experience though the said writ petitioner is said to have three years of teaching experience as part time lecturer. In addition only 5 marks have been awarded in respect of overall knowledge and skill out of 15 marks while the writ petitioner has qualified both the National Eligibility Test (NET) and State Eligibility Test (SET).

The Ld. Counsel appearing on behalf of the appellant/writ petitioner during his exhaustive submission has submitted that the Hon'ble Single Bench has failed to recognize the applicability of the amended Sections 29(1) & 29(2) as well as Section 30(1) & 30 (2) of the West Bengal University Laws Amendment Act, 2011. She has further submitted that in spite of having the required qualifications the appellant writ petitioner has not been awarded marks in respect of the said qualifications. She has further submitted that the appellant writ petitioner has passed the NET and SET but has been awarded very less marks which is not at all correct. She has further submitted that the appellant writ petitioner in spite of being the sole candidate who had appeared in interview as because the other candidates had not turned up for interview, the appellant writ petitioner has not been recommended for appointment. She has further submitted that for the purpose of recommendation on appointment

strict rules are to be followed and but in this instant case the guidelines have not been followed instead the rejection has been made as per the whims of the University. Banking upon the aforementioned submission the Ld Counsel has prayed for allowing the instant appeal and thus directing the University to appoint the appellant writ petitioner. The Ld. Counsel appearing on behalf of the appellant writ petitioner has cited two authorities which are as follows:

- 1) 1995 (2) CLJ 308
- 2) 2001 (1) CHN 117

The Ld. Counsel appearing on behalf of the respondent University has submitted that it is in the domain of the selection committee to reject or allow the applicant for the post of Assistant Professor. He has further submitted that there was no *mala fide* intention on the part of the University authority in not appointing the appellant writ petitioner to the post of Assistant Professor. He has further submitted that the University authority has abided by the guidelines laid down and has further submitted that it is the prerogative of the concerned university to the fact of appointing a person as an Assistant Professor. The Ld. Counsel banking upon this submission has prayed for dismissing the instant appeal.

From the facts and circumstances of the case the moot point for consideration is as to whether the said University has abided by the laws laid down at that relevant point of time for appointment of an Assistant Professor or not.

This Court first takes into account the Sections 29 and 30 of the Sidho Kanho Birsha University Act, 2010 which is laid down as follows:

“29 (1) A University Professor shall be appointed by the Executive Council on the recommendation of a Selection Committee consisting of:

(i) the Vice-Chancellor as the Chairman:

(ii) the Dean of the Faculty Council concerned;

(iii) a person, not holding any office of profit under the University and having special knowledge of the subject which the professor will teach, nominated by the Chancellor;

(iv) two persons, not holding any office of profit under the University ' and having special knowledge of the subject which the professor will teach, nominated by the Executive Council.

(2) Appointment to the post of Distinguished or Chair professors shall be made on the basis of recommendation of a search committee comprising three eminent educationists in the relevant discipline, constituted for this purpose by the Executive Council.

(3) University Lecturer shall be appointed by the Executive Council on the recommendation of a Selection Committee consisting of_

(i) the Vice Chancellor, the Chairman;

(ii) the Dean of the Faculty Council concerned or, in his absence, the Head of the Department concerned:

(iii) a person, not holding any office of profit under the University and having special knowledge of the subject which the Reader or the Lecturer will teach, nominated by the Chancellor;

(iv) two persons. not holding any office of profit under the university and having special knowledge of the subject which the Reader or the Lecturer will teach, nominated by the Executive council.

30. (1) Three members, of whom at least two shall be persons having special knowledge of the subject concerned, shall be quorum for a meeting of a Selection Committee.

(2) If any member of a selection committee is unable to attend, he may send his opinion in writing to the Vice-

Chancellor and such opinion shall be taken into consideration by the Committee.

(3) If the Executive Council does not accept the recommendation of a Selection Committee, it shall refer the recommendation back to the Selection Committee with reasons for reconsideration and if the Executive Council does not accept the reconsidered views of the Selection Committee, the matter shall be referred to the Chancellor with reasons and the decision of the Chancellor shall be final”

From the facts it reveals that the appellant writ petitioner was not recommended by the selection committee for appointment. The Selection Committee has the power to formulate its own criteria to assess the suitability of a candidate. Through judicial review this criteria cannot be subjected to.

The Hon’ble Single Bench has also not taken up the issue of *mala fide* or violation of any statute. This Court is of the same view as that of the Hon’ble Single Bench that until and unless mala fide or violation of any statutory rule is demonstrated in the selection process no interference is called for.

In this regard it would not be inappropriate to take into consideration Section 30(3) where it has been mentioned that if the Executive Council does not accept the recommendation of a Selection Committee it shall refer the recommendation back to the Selection Committee with reasons for

reconsideration and if the Executive Council does not accept the reconsidered views of the Selection Committee, the matter shall be referred to the Chancellor with reasons and the decision of the Chancellor shall be final. In this instant case such complication has not arisen the Selection Committee has not recommended the name of the candidate for appointment to the Executive Council.

On going through the authorities being 1995 (2) CLJ 308 and 2001 1 CHN 117 it reveals that in both the cases the Hon'ble Single Bench of this Court has dealt with the fact of the validity of one man panel. In the said Judgements it has been directed to accord approval of the one man panel in accordance with law if the other requirements of law are satisfied. In this instant case, from the report of the SPIO, it is not the case that as because of there being only one candidate the said candidate has not been recommended for appointment but it is a fact that the said Selection Committee did not find the appellant writ petitioner to be eligible for the post.

Accordingly, the Judgement and Order of the Hon'ble Single Bench deserves no intervention.

MAT 74 of 2023 with IA No. CAN 1 of 2023
stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)