

Item-
110. 27-07-2023

sg Ct. 8

MAT 135 of 2023
CAN 1 of 2023

Rajmohan Mukherjee
Versus
The State of West Bengal & Ors.

Mr. Saktipada Jana, Adv.
...for the appellant

Mr. Jyoti Prakash Chatterjee, Adv.

...for the College Authority
Ms. Tapati Samanta, Adv.
...for the State

The appeal is arising out of the order dated 5th December, 2022. The petitioner was a candidate for the post of Accountant in a College, namely, Tehatta Sadananda Mahavidyalaya in Burdwan under Burdwan University. The appellant claimed that he was selected by the College for the said post but the State declared to accord approval to his appointment.

The matter was referred to the Joint Secretary to the Government of West Bengal, Higher Education Department, for a decision with regard to his appointment. The Joint Secretary after hearing the parties, found irregularities in the preparation of the panel and rejected the representation. The grounds for rejection are indicated below:-

“As per the G.O. No. 585 Edn(CS), dated 09/09/2008, the College authority shall, in addition to obtaining the names of the sponsored candidates from the local Employment Exchange, give wide publicity of the vacancy in the at least two Dailies, one in Bengali or local language and other in English having wide circulation. But the College authority did not submit any requisition seeking names of the sponsored candidates for the

post of 'Accountant', to the local Employment Exchange and advertised in the only one Daily instead of two. Therefore, a good no. of candidate could not participate in that selection process.

Moreover, the College authority had conducted written examination and interview in a day on 05/04/2016 and prepared the final merit list and published the same on the very same day also on 05/04/2016. Selected candidates had joined on the very next day on 06/04/2016. Overall, the selection process as conducted by the College authority was unfair.

In such circumstances, considering the above irregularities, the prayer of the petitioner for approval of the panel for appointment to the post of 'Accountant' and approval of service of the Petitioner as an 'Accountant' in Tehatta Sadananda Mahavidyalaya may not be entertained and hence rejected."

Mr. Saktipada Jana, learned Counsel appearing on behalf of the appellant submits that at the relevant time, Employment Exchange was abolished and replaced by Employment Bank through which the applications are invited. It is submitted that by reason of the introduction of the said Employment Bank portal, applications are invited from the job seekers. He has relied upon a document to show that an advertisement was published in the Employment Bank portal.

However, the authenticity of the publication is in doubt as the said advertisement does not indicate the number and nature of the posts as also the time within which the prospective job seekers are required to make their application. Moreover, we find that it was not widely publicized. The advertisement in the notice board is of no consequence. If the posts to be filled up, it has to be widely circulated. The other surprising thing is that the

written examination, interview and the final panel were all prepared on the same day.

The learned Counsel for the College submits that the uncle of the petitioner was in the Committee at the relevant time and there is a possibility of unfair means being adopted and a fact finding enquiry has found irregularities in the preparation of panel. However, we are not concerned with such allegations being made against the appellant. We are presently concerned with the ground on which the representation was rejected. We find that the authority concerned has duly applied its mind and had taken into consideration all relevant facts in arriving at the said decision.

Mr. Jana has relied upon two decisions of this Court, namely, *Riya Das vs. State of West Bengal & Ors.* reported in *(2019) 2 CAL LT 38 (HC)* and an order of this Hon'ble Court dated 13th January, 2014 in *W.P. No. 34020(W) of 2013 (Dipankar Mukahrjee & Ors. vs. State of West Bengal & Ors.)*. to show that non-publication of recruitment notice in newspapers having wide circulars would not be fatal.

In **Dipankar Mukherjee** (supra) it was held that by reason of advancement in Science and Technology, publication of notice in the website of the University can be treated to be a valid publication.

In **Riya Das** (supra), the recruitment notice for online application was accepted as it was made available in public domain.

In the instant case even if we ignore the publication made in newspaper "Pratidin", there has been no wide publicity for the

posts as the portal does not show that the vacancy is required to be filled up for the posts for which advertisement was made in Pratidin or the date within which the prospective applicants are required to file their applications with credentials.

The learned Counsel for the State has submitted that it is clear from the order of the Joint Secretary that the procedure adopted was unfair and illegal.

Mr. Jana, learned further submits that cashier similarly placed was allowed to continue after a similar order was passed by the Joint Secretary to the Government of West Bengal, Higher Education Department is being quashed by the learned Single Judge of this Court in WP 15082 (W) of 2017 and the State has not preferred appeal against the said judgement. It is further submitted that the DPI has approved his service.

However, we are not inclined to make any observation with regard to the order passed on 11th July, 2019 and merely because a cashier was allowed to continue that does not give any right to the appellant to seek similar benefit as we are of the view that entire procedure is vitiated by illegality. Moreover, the order dated 11th July, 2019 appears to have been passed ex parte.

We do not find any reason to interfere with the order passed by the Joint Secretary, Government of West Bengal, Higher Secondary Education Department on 24th March, 2017.

The appeal fails. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)