

31.08.2023

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W.P.A. 10102 of 2019

Goutam Mal

Vs.

The State of West Bengal & ors.

Ms. Sima Ghosh ... for the petitioner
Mr. Sanjib Das ... for the State
Mr. Animesh Mukherjee
... for the respondent no.4

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is seeking approval of the panel for the post of clerk prepared by the Selection Committee and recommended by the Managing Committee.

It is the case of the petitioner that the petitioner took part in the process for appointment of clerk and stood first in the said appointment process.

However, it is to be noted that this panel that was formed was cancelled by an order dated May 28, 2018 by the District Inspector of Schools (S.E.), Birbhum. The relevant portion of the order is delineated below:

“ However, as per Commissioner of School Education, West Bengal’s instruction, after further verification of the panels it is seen that the advertisement was not done as per rules as set out in the sub rule 6 of the rule 9 in case of teaching and the sub rule 7 of the rule 11 in case of Non teaching of the G.O. No.175-SE(B) dt. 28.8.2013 and the prior permission issued by this office was not properly followed in the aforesaid advertisement in which the application was invited only from male candidate creating wilful discrimination with the female candidates.
Hence, the panel for the post of assistant teacher and clerk are not considered for approval and the School Authority is

hereby requested to initiate recruitment process afresh strictly following the G.O. No.175-SE(B) dt.28.8.2013 and the prior permission issued by this officer. He is also requested to call for all the candidates who applied earlier against both the posts”.

In light of the order passed by the District Inspector of Schools, subsequent recruitment process was carried out wherein the writ petitioner was also taken part but this time he was not successful. The petitioner has now approached the Court for seeking direction for his appointment as per the first recruitment process.

Affidavits have been exchanged in this matter and the respondents have submitted that the second selection process that had taken place in pursuance to the advertisement dated 15th of September, 2018 has come to a conclusion and after constitution of the panel the relevant person has already been appointed. They, accordingly, submit that there is no scope for any interference by this Writ Court. They also rely on the judgement of the Supreme Court in ***Madan Lal & ors. Vs. The State of Jammu & Kashmir and ors.,*** reported in **1995 SCC (3) 486** wherein the Supreme Court has remarked as follows:

“9. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Section Committee was not properly constituted. In the case of Om

Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

The principles of estoppel of conduct have been laid down in the above Supreme Court judgement and the present case is *pari materia* to the principles enunciated above. The petitioner herein took a chance and sat for the second interview and was unsuccessful. Subsequently, this writ petition was filed seeking enforcement of first selection process.

The Supreme Court in a catena of judgements has held that no right accrues to a person just because the person is selected as per the selection panel, if the said selection panel is subsequently annulled. In the present case the case of the petitioner is even worse as the petitioner took part in the recruitment process that took place subsequently and was unfortunately unsuccessful. The petitioner cannot at this stage raise question with regard to his non-appointment as per the first recruitment process.

With the above observations, this writ petition is dismissed.

No order as to costs.

All parties are to act on website copy of this order.

(Shekhar B. Saraf, J.)