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Ct-08

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13.9.2023

MAT 1357 of 2016
with
I.A No. CAN 1 of 2016 (Old CAN No. 9324 of 2016)
CAN 2 of 2021

Subrata Kumar Das
Vs.
Sk. Nazim Ahmed & Ors.

with

MAT 1356 of 2016
with
I.A No. CAN 1 of 2016 (Old CAN No. 9320 of 2016)

Principal Panskura Banamali College
Vs.
Sk. Nazim Ahmed & Ors.

Mr. Ekramul Bari
Sk. Imtiaz Uddin

... For the Appellant in
MAT 1357 of 2016

Mr. Joydeep Kar, Sr. Adv
Mr. Kumaresh Dalal

... For the Respondent
College in MAT 1357 of 2016
&
For the Appellant in
MAT 1356 of 2016

1. Both the appeals are heard together and
disposed of by this common judgment.

2. The recruitment process for filling up five
vacant non-teaching posts in Panskura Banamali
College (hereinafter referred to the college) was
not challenged before the learned Single Judge.
The five posts were to be filled up by a General
candidate, a candidate belonging to 'Exempted
Category' a 'Scheduled Caste' candidate, a
'Scheduled Tribe' candidate and a candidate

belonging to 'OBC-A' category.

3. Mr. Joydeep Kar, learned counsel representing the College, has submitted that recently the petitioner has informed that he is no more interested in the said posts as he has joined the Army. Be that as it may, as it involves recruitment process in a Government aided college it has to be transparent and follow the guidelines in order to ascertain whether the selection process was proper. Learned Single Judge has called for a report from the D.P.I upon consideration of the documents accompanying for approval the following points which are noted below:-

(i) No Resolution of the Governing Body of the college regarding formation of selection committee mentioning the name and designation of the selectors was made available;

(ii) No evidence of notice hung up on the college notice board and published in other public places in regard to recruitment process was made available;

(iii) Although 2(two) advertisements were required to be issued in terms of the extant Government Order-1(one) in an English daily and the other in a vernacular daily having wide circulation, advertisements were published in vernacular dailies only (although it has been erroneously recorded that 'Sambad Pratidin' and 'Bartaman' are English dailies);

(iv) There was no evidence of call letters having been issued to the candidates to appear at an interview. The relevant Government Order required sending of all letters by post, which was observed in the breach; and

(v) From the papers furnished, it could not be conclusively proved that the college informed the petitioner of the date of interview.”

4. Mr. Kar has submitted that the College has filed an application to disclose few documents that could not be produced before the learned Single Judge at the time of consideration of the said application. However, it has been fairly submitted that three of the documents have been disclosed where part of the record appears to have not been considered by the learned Single Judge.

5. The findings of the learned Single Judge indicates that the Principle of the college initially called for interview. However there was no evidence of issuing call letters to appear in the interview. It further appears that the said selection process suffered from favoritism and nepotism. It is also evident from the fact that a member of the Governing body of the college prior to the date of interview on 30th November, 2013 had expressed an apprehension that the selection committee had already decided to

appoint, *inter alia*, three aspirants, one each from the 'OBC', 'General' and 'Exempted Category' candidates and based on the ultimate results it can be seen that two of them, one from OBC and one from General were selected and appointed as clerks. It is an admitted position that the college is a non-Government aided college and is run on the basis of the funds provided by the Government. The appointment of incumbents to the non-teaching posts and their salary whereof is borne by the Government amounts to public employment. The learned Single Judge has rightly said that the selection process for filling up the post of clerk by a 'General' category candidate shall be transparent.

6. Mr. Kar has submitted that the writ petitioner having joined the Army there may not be any necessity to call for any fresh recruitment and fresh interview may be held for the candidates who had participated in the selection process for the General category. We could have readily agreed with the submission made by Mr. Kar but for the observations made by the learned Single Judge in this regard, which is reproduced below:-

“It has been brought to the notice of this Bench that insofar as the ‘General’ candidates are concerned who were competing for appointment on 1(one) post only, 64 candidates had offered their candidate and 31 had taken the written examination. However, only 35 candidates were called upon to attend interview for recruitment to all 5(five) vacant non-teaching posts and of them only 18 had appeared for the interview meaning thereby that a little less than 50% of the qualified candidates abstained from the interview. According to Mr. Bhattacharya, such huge percentage of candidates abstaining from attending the interview lends credence to the petitioner’s claim that the version of the Principal of the college, as submitted through Ms. Maity, is baseless and concocted.

It is absurd, to say the least, when even the written examination is yet to be complete and the merits of the candidates yet to be assessed, to let all of them know the date of interview.”

7. In view of the above we do not find any reason to interfere with the order passed by the learned Single Judge. However, in the event any fresh recruitment process is initiated for the General category candidate, Mr. Subrata Kumar Das, the appellant in MAT 1357 of 2016, may participate in the said recruitment process by waving his age bar. It is needless to

mention that the recruitment process should be transparent and fair.

8. In view of the aforesaid order both the appeals being MAT 1357 of 2016 and MAT 1356 of 2016 stand disposed of.

9. In view of disposal of the appeals CAN 9324 of 2016 and CAN 2 of 2021 in connection with MAT 1357 of 2016 and CAN 9320 of 2016 in connection with MAT 1356 of 2016 are also disposed of.

6. However, there shall be no order as to costs.

7. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

