

15 12.6.2023
Sc Ct. no.22

WPA 21748 OF 2017
with
I. A. No.CAN 1 OF 2021

Srabanti Mondal (Sarkar)
Vs.
State of West Bengal & Ors.

Mr. Chittapriya Ghosh
Mr. Goutam Acharya
Ms. Priyanka Saha
Ms. Tamashi Banerjee.

....For the Petitioner

Mr. Supriyo Chattopadhyay
Ms. Iti dutta.

....For the State

Affidavit-of-service filed in Court today, is taken on
record.

Re : I. A. No. CAN 1 OF 2021

Mr. Chittapriya Ghosh, learned counsel for the
petitioner in his usual fairness submitted that, this
application was filed under a mistaken impression that,
the writ petition was dismissed on the ground of default
hence, restoration was sought for.

From record it appeared that, there was no
dismissal of the writ petition for default or otherwise
previously.

In view of the above, ***I.A. No. CAN 1 of 2021***
stands dismissed without any order as to costs.

WPA 21748 OF 2017

The petitioner was an aspirant for the selection process in respect of the Group-D staff at Minakha Jatindranath Balika Vidyalaya, Minakha, District-North 24-Parganas. The petitioner got herself enrolled with the relevant jurisdictional employment exchange in 1990.

The petitioner contended that, the name of the candidates junior to the petitioner by enrolment with the employment exchange, i.e. the candidates who were enrolled subsequent to the petitioner, their names were sponsored by the jurisdictional employment exchange for employment.

Being aggrieved thereby the petitioner moved before this Court by way of a writ petition being **W.P. No.10041 (W) of 2001**. A coordinate Bench by its **order dated July 19, 2001** granted liberty to the petitioner to participate in the selection process subject to the verification of record and certain conditions as mentioned in the said **order dated July 19, 2001**.

Pursuant to the said direction of the coordinate Bench, the selection process was held and the candidature of the petitioner was rejected by the impugned decision dated **July 10, 2002** taken by the respondent no.3 at **page 39** to the writ petition. The relevant observation from the said impugned decision of the respondent no.3 is quoted below :

“ The Secretary submits that the School Authority was permitted to appoint a Class IV staff having qualification Class VIII passed from unreserved Category following, 2nd stage of recruitment rules Vide District Inspector of Schools (SE), North 24-Parganas, Barasat No.485/G dt. 17.04.2000. In reply to notification of vacancy, Basirhat Employment Exchange sent a list of 20 (Twenty) candidates. The Selection Committee was formed in terms of Managing Committee Resolution dt.02.07.2001. All the 20 (Twenty) candidates sponsored by the Employment Exchange and 2 (Two) candidates namely 1) Shrabanti Sarkar i.e. the Petitioner and 2) Fatema Khatun (Bibi) were called for interview held on 29.07.2001. after holding interview on the scheduled date, the following Panel was prepared by the Selection Committee.

- 1) Smt. Shrabanti Sarkar
- 2) Rowsanara Khatun
- 3) Chitra Majumder.

The Panel was approved by the Managing Committee in its Meeting held on 08.08.2001. He is in favour of approving of approving the Panel as there is no Class IV Staff in the School at present.

Heard the submissions of the Petitioner and the Secretary and relevant records in this matter are verified. On Scrutinising the Registration No. of the names with the Employment Exchange concerned, it appears that the Employment Exchange did not Sponsor the name of any candidate whose Registration was beyond 1981 whereas the Petitioner Registered her name in 1990. So, she is Junior to other candidates sponsored by the Employment Exchange. So, she should not be allowed to take part in the interview as per Solemn Order dt.19.07.2001 passed by the Hon'ble Justice Asim Kumar Banerjee.

Naturally, the Panel can not be approved. However, the School Authority is at liberty to recast the Panel deleting the name of the Petitioner from the Panel. The recasted panel may be considered for approval in accordance with law.

So, no relief can be given to the Petitioner. The matter is thus disposed of.

All concerned be informed accordingly.”

Through the instant writ petition the petitioner had challenged the said impugned decision of the respondent no.3.

Mr. Chittapriya Ghosh, learned counsel appearing for the petitioner submitted that, the decision for rejection of the candidature of the petitioner on the basis of seniority in the panel was totally wrong and illegal as the petitioner otherwise on merit stood first in the selection process.

Mr. Ghosh submitted that, it is now well settled that, the selection process for public employment cannot be restricted only through the employment exchange but the same has to be and shall be an open one for the eligible candidates. In support, Mr. Ghosh had relied upon a decision of the Hon'ble Division Bench of this Court ***In the matter of : Manik Chandra Das versus State of West Bengal and others, reported at (2007) 2 CHN 761 = 2007 Lab IC 3396.***

Relying upon the said judgment of the Hon'ble Division Bench Mr. Ghosh submitted that, there cannot be any restriction imposed for the selection process of a public employment that, candidature should be accepted from the recommendation of the employment exchange only and the employment authority cannot prevent the intending and eligible participating candidates for the vacant posts on the basis of imposition of such irrational and unreasonable restriction.

Mr. Supriyo Chattopadhyay, learned senior State counsel with Ms. Iti Dutta, learned advocate appeared for the respondent nos. 1, 2 and 3.

After hearing the submissions made on behalf of the appearing parties and on perusal of the materials on record it appeared to this Court that the selection process was held in 2001. The interview was held on July 29, 2001 and the panel was prepared accordingly in which the name of the petitioner was shown to be in the first serial number. ***The panel was approved on August 8, 2001.***

In exercise of power under Article 226 of the Constitution of India in judicial review, this Court has a limited jurisdiction to assess the decision making process of the authority while the impugned decision dated ***July 10, 2002*** was taken. The Writ Court cannot go beyond that.

On a close scrutiny of the said impugned decision dated ***July 10, 2002*** of the respondent no.3 appearing at pages 39 and 40 to the writ petition it appeared that, the candidates whose registration was there even in the year 1981 at least about nine years prior to the enrolment of the petitioner with the jurisdictional employment exchange, they were not recommended to take part in the selection process, which was no doubt a glaring infirmity and illegality on the part of the recommending authority while recommending the name of the petitioner without

recommending the names of the other candidates who were enrolled prior to the petitioner. There was no infirmity in conducting the fact-finding inquiry by the respondent no.3 while taking the said decision.

Inasmuch as the selection process was of 2001 and the same was also closed in 2001. Today we are in 2023. It is trite that, after lapse of such a long period the selection process cannot and should not be reopened. Inasmuch as, since 2009 the **School Service Commission Non-Teaching Staff Rule** had come into effect governing such type of selection process.

The law laid down by the Hon'ble Division Bench was that, along with the employment exchange candidates other eligible candidates shall also have the right to participate in the selection process of the public employment. In the facts of the instant case, it appeared that, the candidature of the petitioner was rejected on the ground that the candidates who were earlier enrolled than the petitioner with the employment exchange were not recommended for the selection process. Hence, the rejection of the candidature of the petitioner by the respondent no.3, was not in conflict with the ratio laid down by the Hon'ble Division Bench.

Thus, the decision of the respondent no.3 dated July 10, 2002, impugned in this writ petition, was in sync with the ratio laid down by the Hon'ble Division Bench, **In the matter of : Manik Chandra Das (supra).**

In view of the foregoing discussions and reasons this Court is of the firm view that, there is ***no infirmity with the said impugned order dated July 10, 2002 and the same stands affirmed.***

In view of the above, this writ petition ***WPA 21748 of 2017*** stands dismissed, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)