

WPA 15594 of 2021

18.11.2024

ct.25, sl. 81
sk

Manaj Esai
vs
The State of West Bengal & Ors.

Mr. Kumar Jyoti Tewari
Mr. Amrit Sinha
...for the petitioner.

Mr. Jaharlal De,
Ms. S. Das De
...for the State.

Mr. Kaushik De
Mr. Abhijit Sarkar
Mr. Abhik Chitta Kundu
...for the respondent nos. 5,6 & 7/School Authority.

Affidavit-in-opposition and affidavit-in-reply filed
by the respective parties are taken on record.

Admittedly, in this case there has been violation of
Government Order No. 79/ES/S/10R-14/2013 dated
3.2.2016 and G.O. No. 258 SE(S) dated 6.4.2015 in
publishing the advertisement for appointment in
Group 'D' post at the respondent/School.

The School is a Government Aided Minority
Institution which is governed by the provisions of
Special Rules for Management of Secondary School
established and run by a Christian Church ,
Missionary Society (Board)/Religious
Society/Subsidiary Trust or their successors in law, in
the State of West Bengal(vide, G.O. Notification No.
641-Edn(S)/8B-3/69).

Hence being protected and empowered under Rule
7 of the said Special Rules, the respondent/Schools
advertised for the post of group 'D'.

Petitioner's application followed thereto. The petitioner thereafter took part in the recruitment process and emerged as the first empanelled and enlisted candidate.

By dint of the impugned order dated September 16, 2021, the District Inspector of Schools, Secondary Education, Kolkata, the respondent no.3, has however, declined to approve the panel, on the ground, inter alia, that in the advertisement published in "Aajkal and the Economic Times" dated December 6, 2019, the age limit for group 'D' post have erroneously declared, in violation of the Government Order No. 79/ES/S/10R-14/2013 dated 3.2.2016 and G.O. No. 258 SE(S) dated 6.4.2015.

The respective Government orders have been annexed by the respondent in its affidavit-in-opposition, from which it transpires that for appointment to the post of group 'D' in a Government-Aided School, the minimum and maximum age limits of a candidate, should be 20 years and 40 years respectively.

Evidently in the advertisement dated December 6, 2019 in the vernacular as well as English Newspaper, as published by the respondent School, the age limit has wrongly been mentioned. That is in the dereliction of the provisions of the Government Order 79/ES/S/10R-14/2013 dated 3.2.2016 and G.O. No. 258 SE(S) dated 6.4.2015.

Mr. De, learned advocate appearing for the State respondents would submit that the advertisement having been published in violation of the process of the Government order as mentioned above, the entire process which was initiated by the said vacancy notification, stands vitiated being not in compliance with the rules applicable in case of such a recruitment process. As such the process cannot be a credited by any way. Mr. De further says that the petitioner since claims that he participated in the said process, and emerged as the first enlisted candidate, his prayer for approval of the said panel would thus be unsustainable being de hors the laws and the rules as submitted by him.

Mr. De would say further that approving a panel, which is a result of an erroneous and illegal recruitment process, would not amount to mere illegality but also would be in violation of the constitutional provisions and principles of equality and reasonableness. He says that the general people at large should suffer prejudice in that case.

On the contrary, Mr. Tewari, learned advocate appearing for the petitioner would submit about the petitioner's bona fide in replying to the advertisement of recruitment as well as taking part in the recruitment process.

He would say that in terms of the advertisement of the school authority as published in the Newspaper on

December 6, 2019, the petitioner applied for and took part in the process. He ultimately has emerged as the first empanelled candidate. Thereafter, the petitioner was appointed vide letter of the institution dated May 4, 2021.

The petitioner is stated to have been working in the said school since thereafter continuously and without any brake.

The learned advocate for the petitioner has also submitted that the point of prejudice having been suffered by candidates at large, cannot be substantiated in this case, insofar as no other person has come up with any allegation of being prejudiced due to the advertisement being wrongly published.

The submission as above of the petitioner is echoed by the learned advocate appearing for the respondent/school authority (through video conference). Therefore, it is their unanimous submission that in the absence of any prejudice being urged by any of the other candidates/persons regarding appointment of the writ petitioner on the basis of the said advertisement, the ground taken by the respondent authority/District Inspector of Schools (SE), Kolkata, regarding the process of recruitment being vitiable, due to the wrong declaration as to the age limit, in violation of Government Order 79/ES/S/10R-14/2013 dated 3.2.2016 and G.O. No. 258

SE(S) dated 6.4.2015, would be misplaced, misconceived and misleading.

In reply to the same, Mr. De has stated that the advertisement dated December 6, 2019 would be in violation of Article 14 and 21 being de-hors the relevant rules as prescribed under the Government Order 79/ES/S/10R-14/2013 dated 3.2.2016 and G.O. No. 258 SE(S) dated 6.4.2015.

Heard submissions and perused the records. Considered.

It appears that so far as the process of recruitment and selection of the writ petitioner is concerned, the respondent/State and/or the school, have no objection or dispute in accepting, that the process itself is based on the wrong advertisement, which was published in violation of the Government Orders 79/ES/S/10R-14/2013 dated 3.2.2016 and G.O. No. 258 SE(S) dated 6.4.2015.

Obviously to the same, the writ petitioner had no role to subscribe his bona fide is beyond any doubt. The fact remains that the petitioner applied for the said post in response to the vacancy advertisement as above and took part in the recruitment process and emerged as successful. He was appointed pursuant to the letter issued by the Secretary of the Managing Committee of the School dated May 4, 2021.

Since then, he has been continuously working in the said school and the said fact is not in dispute in this case.

During pending of this case, the writ petitioner has crossed the upper age limit for taking part in recruitment process any further.

The issue is whether the process of recruitment, pursuant to the vacancy advertisement dated December 6, 2019, can be directed to be maintainable, in spite of it being published in contravention of order No. 79/ES/S/10R-14/2013 dated 3.2.2016 and G.O. No. 258 SE(S) dated 6.4.2015.

The Court is convinced about the negligent state of affairs so far as the School Managing Committee is concerned. Evidently, the advertisement dated December 6, 2019 has been published in violation of the Government Order 79/ES/S/10R-14/2013 dated 3.2.2016 and G.O. No. 258 SE(S) dated 6.4.2015. To that effect the Court is absolutely in concurrence with the submission of Mr. De, as put forward in the Court. The Court is not hesitate to even suggest before the respondent authority to keep close vigil upon the concerned institution so that the negligence of this kind may not happen in future, by the said Institution.

However, so far as this case is concerned after careful consideration of the fact as above, this Court is inclined to dispose of this writ petition by directing the respondent no. 3, the District Inspector of Schools,

Secondary Education, Kolkata to consider for approval of panel as forwarded to it by the said Institution, incorporating the name of the present petitioner for the post of group 'D', as a Special Case.

The impugned order dated 6.12.2019 is kept in abeyance till the date of further decision of the respondent no. 3 passed in this regard.

It is made clear that the consideration as above by the respondent no. 3 shall not create any precedence with respect to any other future similar kind of matter.

The respondent may take into consideration the present writ petition to decide upon the question of approval of the panel, treating the same to be the representation of the writ petitioner. The said respondent shall grant an opportunity of hearing to the petitioner, if it finds to be necessary.

The respondent no. 3 shall finally decide upon the issue within a period of four weeks from the date of communication of copy of this order.

The writ petition is disposed of.

Since no affidavit has been called for, the allegations made in the writ petition are deemed to be denied.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)

