

WPA 15471 of 2008

Nikhil Chandra Sarkar
Vs.
State of West Bengal & Ors.

Mr. B.N.Roy
Ms. Shetparna Ray

.... For the petitioner
Mr. Shamim ul Bari
.... For the State

Questioning the justifiability of the order issued by the District Inspector of School communicated to the petitioner under a memo dated 4th June, 2008, which was passed in obedience to the order dated 12th December, 2007 passed by a Coordinate Bench in WPA No. 21610 (w) 2007, the present writ petition has been instituted.

Before going to delve down the controversy, the facts crucial to the resolution of such controversy need to be noticed.

A post of Group- D staff in Jaytara Kabiguru Vidyamandir (the School) fall vacant. The school authority took an initiative to fill up the said post. In furtherance of that objective, a selection process came to be commenced in terms of the prior permission granted under a memo. *vide*. no. 1075/G, dated 18th July, 1994. Upon receipt of a requisition from the School authority, the concerned employment exchange sponsored the names of certain eligible candidates for the post.

The petitioner, who had been working as a casual worker in the school, preferred a writ petition being WPA No. 5378

(w) 1998 with a prayer for a direction upon the school authority to allow him to participate in the selection process. While disposing of the writ petition by an order dated 24th March, 1998, the petitioner's prayer was accepted.

The petitioner along with others exchange- sponsored candidates participated in the selection process. After completion of selection process, a 3 (three) men's panel was prepared placing the petitioner as the top of the panel. On 10th January, 2010, the panel was forwarded to the concerned D. I. seeking his approval thereon but despite receipt of such panel the same was kept in suspended animation which prompted the petitioner to approach this Hon'ble Court with a writ petition being WPA No. 21610 (w) 2007, which was disposed of by an order dated 12th December, 2007 directing the D. I. concerned to take decision on the panel submitted by school authority.

In compliance with the said order dated 12th December, 2007, the D. I. of Schools by passing the order impugned in the writ petition have refused to approve the panel on the grounds that in the prior permission the school authority was asked to follow the recruitment rules prescribed in G. O. No. 1049/1 (19)/GA, dated 20th May, 1993 but the School authority misdirected itself to follow the recruitment rules which was introduced in a notification vide G. O. No. 1796 (21)/GA, dated 1st November, 1999.

Aggrieved by the order of the District Inspector of School, the petitioner has preferred this present writ petition. Despite direction, no affidavits have been used by the parties.

Mr. Ray, learned advocate appearing for the petitioner inviting my attention to a letter of D.I. of Schools addressed to the school authority and the recruitment rules of 1999 seeks to urge that the school authority was directed to follow the recruitment rules of 1999 and as such, such rules were followed. He argues that the recruitment rules of 1999 was issued in supersession of all earlier recruitment rules. According to him, such supersession has the effect of repealing of all earlier rules and as such, the recruitment rules of 1999 was the only rules in vague. He asserts that the school authority had not misdirected itself in following the recruitment rule of 1999. Mr. Roy submits that except the test of cycling, there is no difference between two modes of selections.

He submits that there are only 5 (five) years left for the petitioner, who still has been rendering service in the Group-D post of the School as a casual employee, to attain the age of superannuation. He invites the Court to take a pragmatic view and decide the issue involved in the writ petition sympathetically.

Mr. Bari, learned advocate appearing for the State seeks to riposte the claim of Mr. Ray and argues that the school authority had misguided itself in following the recruitment rules of 1999. According to Mr. Bari, the school authority was bound to follow the instruction contained in the prior permission but without following the same, it has given retrospective effect to the recruitment rules, 1999. He asserts

that the recruitment rules of 1999 could not be applied to the pending selection process. In aid of such contention he cited a decision rendered in case of *State of Bihar and others-versus- Mithilesh Kumar*, reported in (2010) 13 SCC 467.

He submits that no information has been furnished to demonstrate whether the vacancy still exists or whether the vacancy has been referred to the Commission to recommend the name of suitable candidate for the post.

In reply, Mr. Ray vociferously contends that the petitioner should not be penalized for the wrong committed by the selection committee.

Heard the learned advocates appearing for the respective parties and perused the materials on records.

There cannot be any quarrel in accepting this factual aspect that in 1994, the selection process came to be initiated in terms of the prior permission accorded to the school authority under a memo dated 18th July, 1994. In the prior permission, it was specified that the School authority was required to follow the recruitment rules as contained in the memo vide No. 1049/1 (19) GA., dated 20th May, 1993.

The mode of selection and/or the assessment of eligible criteria of a candidate, as prescribed in the memo. dated 20th May, 1993 was as follows:

‘Reading-5 (five) marks, writing- 5 (five) marks, cycling -5 (five) marks and viva voce 10 (ten) marks, i. e., total 25 (twenty-five) marks’ (para-13 of the order of D.I. of Schools)

During pendency of the selection process, a recruitment rules was introduced in 1999 prescribing the following mode of selection:

“Reading-5 (five) marks, writing-5 (five) marks and viva voce 5 (five) marks, i. e., total 15 (fifteen) marks.

Needless to state that a different mode of selection for the post was prescribed in the recruitment rules, 1999. There is a presumption of prospective operation attached to every statute, notification or order. Normally, a new law ought to regulate what is to follow, not the past. The Court should always lean very strongly against the application of a new rule to a pending action unless the language in the statute compels to do so.

Law appears to be settled that a new rule cannot be applied retrospectively in absence of express provision or necessary intendment. Indisputably, no such express provision or necessary intendment to apply the rules retrospectively was manifested in the recruitment rules, 1999.

It is well-settled norms that normally, once the game is started, none can be permitted to change the rules of the game. A selection process which starts its journey comes to an end with the joining of the selected candidate. As per the law laid down in the decision rendered in judgment of State of Bihar & Ors. vs. Mithilesh (*supra*), the norms or rules as existing on date when the selection process begins will control such selection and any alteration to such norms or any recruitment rules would not affect the continuing

process, unless such alteration or the new rules were given retrospective effect.

While introducing any act or rule which has effect of termination or repeal or supersession of earlier rule or act, the rule maker or the decision maker takes notice of the pending proceeding which was initiated in terms of repealed act or repeal rule. Unless an intendment is manifested in the subsequent act or rule to affect the pending action, it must be presumed that pending action shall not be affected by the new act or rule. The legislative fiat as incorporated in Section 8 of the Bengal General Clauses Act, 1899 speaks that when Act repeals any act hitherto made then, unless a different intention appears, the repeal shall not affect the act done in terms of the repealed act.

There may be a feeling in some quarters that the difference between two modes of selection, as referred above is test of cycling and such difference is negligible but the law cannot overlook the same.

Suffice it to observe that the employment exchange sponsored the names of those candidates only who were found eligible as per the recruitment rules of 1993 and the candidates who could have been eligible as per rules of 1999 but could not find themselves to be eligible as per the rules of 1993 did not approach this Court to secure their participation in the selection process. The application of rules of 1999 has resulted in deprivation of such candidates.

Therefore, in view of the forgoing analysis, the only conclusion which can be drawn is that the School authority

has misguided itself in following the recruitment rules introduced in 1999 in respect of a selection process which was initiated in 1994 as per the recruitment rules of 1999 though there was a complete absence of any express provision or necessary intendment in the rules of 1999 to apply it retrospectively.

Hence, I did not find any error, least to say any patent error in the order of the D.I. of Schools communicated to the petitioner under a memo. dated 4.6.2008.

The question which next comes is whether long after 30 (thirty) years, would it be justified to direct the school authority to initiate the selection process afresh.

As on date, a new recruitment rule has come to govern the field. If the school authority is asked to re-open the issue and initiate the selection process afresh, all the candidates who were sponsored by the employment exchange are to be called to participate in the process along with the petitioner.

As noticed earlier, no information has been furnished by the petitioner to show whether or not the post is still vacant. Since 2008 to 2022, the petitioner was in deep slumber. Record does not suggest that he diligently pursued the case and even no application had been preferred praying for early disposal of the writ petition. Suddenly, in 2022, with a fresh enthusiasm, the petitioner has started agitating his grievances in this writ petition. The writ remedy is equitable remedy one and due to long delay, the court can refuse to grant equitable relief. In this changed circumstances, it would not be justified to ask the school authority to re-open

the issue and conduct the selection process afresh. In such conspectus, I am not inclined to direct the school authority to initiate the selection process afresh. As a result, the writ petition is dismissed, however, without any order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.)