

10.01.2024
Sl. No. 19.
D/L.
Mithun
Ct.No.25.

WPA 15615 of 2007
With
IA No: CAN/2/2012 (Old No: CAN/6215/2012)

Emajuddin Sheikh
Vs.
State of West Bengal & Ors.

Mr. Latful Haque,
Ms. Ameena Kabir,
Ms. Taharima Khatun

...for the petitioner.

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee

...for the State.

Questioning the sustainability of the order passed by the District Project Officer of SSA, Murshidabad dated 15th May, 2007 in deference to the order passed by a coordinate Bench of this Court on 19.03.2007 in WP No.855(W) of 2007 and seeking a direction upon the concerned respondent to consider the case of engagement of the petitioner in the post of Additional Para Teacher for male in Geography in Bokahara H.J. Ali Vidyapith (in short, the School), this writ petition was instituted.

Briefly stated, the facts leading to the writ petition are that a Selection Process was undertaken by the District Magistrate, Murshidabad and District Project Officer, Sarva Siksha Abhijan for giving engagement in the post of Additional Para Teacher for male in Geography in the school. Suffice it to

observe that such engagement was contractual and for one year only. The vacancy was notified by a notification *vide*. no.3 of 2006 dated 16.12.2006 inviting the applications from the eligible and intended candidates for the post. In the notification, it was specifically mentioned that the candidate who would offer his candidature for the post must have to be a graduate in the particular subject. In response to that notification, the petitioner by making an application offered his candidature for the post. At the time when his candidature was considered, he produced the mark-sheet but he could not produce the original pass certificate showing that he had essential academic qualification for being engaged in the post. Accordingly, his candidature had not been considered and a single man panel was prepared and the private respondent, since deceased was given such engagement. In such conspectus, the petitioner made a representation on 30th December, 2006 but despite receipt of such representation, the respondents maintained deceptive silence. Hence, the petitioner was constrained to approach this Court by preferring the writ petition being W.P. No. 855(W) of 2007, which was disposed of by a coordinate Bench of this Court by directing the respondent No.2 therein to consider and dispose of the petitioner's representation in accordance with law within the time specified in the order. Pursuant thereto, a reasoned order was passed by the District Project Officer, Sarva Siksha Abhijan, Murshidabad on 15th May, 2007 wherein it was specifically stated that since the petitioner could not produce

his original certificate at the time of submission of his application, his candidature for such engagement has not been considered. The order passed by the District Project Officer on 15th May, 2007 is under challenge in this writ petition.

Mr. Haque, learned Advocate appearing for the petitioner submits that the petitioner graduated with Geography as main combination subject from Sido-Kanhu Murmu University, Dumka, Jharkhand. He contends that as per the rules followed by the said University, the pass certificate is issued to all candidates 3/ 4 years after date of last examination. He submits that at the time of submission of his application, he produced original mark-sheet but he could not produce original pass certificate. He contends that the petitioner by making application gave undertaking to produce such certificate as and when the same would be made available to him and even in 2007, he submitted provisional certificate but his candidature has not been considered for such engagement. He argues that the employer is bound by the terms and conditions of the notification and but the respondents did not act in terms of the conditions contained in the notification and as such, the authority concerned has acted illegally in not accepting that undertaking and in not placing reliance upon the original mark-sheet. He submits that an appropriate direction may be given upon the concerned respondent to give such engagement to the writ petitioner.

Mr. Chatterjee, learned Advocate appearing for respondent No.1 to 3 vehemently opposes such prayer of the

writ petitioner. He submits that the selection process was undertaken to give engagement in the post for only one year. That one year has expired and at the present moment, system of giving engagement in the post of additional para teacher has been discontinued. He contends that there is no quarrel in accepting this fact that at the time of submission of his application, the petitioner could not produce the original pass certificate. He submits that by passing a reasoned order, the District Project Officer, Murshidabad has rightly negated the petitioner's claim. He submits that there is no scope of interference in the writ petition.

In reply, Mr. Haque submits that the engagements which were given in the posts of additional Para Teacher in the State have been extended from time to time and, now, as per the extant rule they will not be disengaged till they attain the age of 60 years.

Heard the learned Advocates. Perused the materials placed before me.

In the notification dated 16.12.2006, through the essential academic qualification was prescribed but there is no specific instruction which testimonials had to be submitted for the satisfaction of the members of the selection committee as regards the proof of possession of such qualification by a candidate. Hence, it is quite vivid and luminescent that the matter was left with the discretion of the selection committee. The selection committee even upon perusal of the mark-sheet, had insisted on production of the original pass certificate and

the selection committee refused to accept the undertaking given by the petitioner that the original certificate shall be produced later on as and when the same shall be issued by the concerned University. The selection committee in exercise of their discretion did not agree to give finality to the mark-sheet and insisted on production of pass certificate and the selection committee in exercise of such discretion refused to accept the undertaking of the petitioner.

The Court cannot act as an appellate authority over the selection committee and should not take responsibility to decide how the selection committee was required to exercise the discretion conferred upon it by the employer.

Moreover, it is condign to note that the entire selection process was undertaken in 2006 for giving engagement in the post for one year. Needless to observe that with the passage of time that one year has already expired. Presently, the system of giving engagement in the post of additional para teacher has been discontinued. Therefore, for these reasons, no interference is called for in the writ petition and, accordingly, the instant writ petition is dismissed. However, there shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)