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23.08.2024
Ct. No. 11
rrc

WPST 169 of 2024
(Dr. Partha Pratim Das Vs. the State of
West Bengal & Ors.)

Mr. Biswaroop Bhattacharya
Mr. Sombuddha Dutta
Mr. Arkaprava Sen
Mr. Sayantan Kar

.... For the petitioner

Mr. Tapan Kumar Mukherjee, Ld. AGP
Ms. Sangeeta Roy

..... For the State respondents

Legality of the order dated 31st July, 2024 passed in an Original Application (in short, OA), being OA 307 of 2024 has been questioned in the instant writ petition.

Before going to delve into the controversy involved in the writ petition, it is essential to outline the key facts that led to its institution.

A selection process was initiated by the West Bengal Health Recruitment Board (hereinafter referred to as 'the Board') to fill 66 (sixty-six) posts of Dental Surgeon-cum-Clinical Tutors/Demonstrators in Dental and Medical Colleges within the West Bengal Dental Education cadre. An advertisement dated March 14, 2023, was issued, inviting online applications from eligible candidates for these posts. According to the advertisement, candidates were required to upload their testimonials, including certificates of registration issued by the Dental Council of India (DCI), on or before the final submission date of March 31, 2023.

The petitioner, being an eligible candidate for the post, decided to apply and uploaded all relevant documents. After successfully submitting the application, a receipt was generated on March 31, 2023. However, in February 2024, while checking the status of the recruitment process, he learnt that his application had been rejected due to his failure to upload the experience certificate and certificate of registration.

The petitioner informed the competent authority of the incident via email. In response, he was asked to upload the two certificates by February 29, 2024. The petitioner attempted to upload the certificates again, but due to a technical glitch, his attempt was unsuccessful. On March 19, 2024, he submitted an application detailing the entire situation to the competent authority, but no action was taken. On June 8, 2024, he discovered that the list of candidates shortlisted for the interview had been published on the Board's official website on June 3, 2024.

The petitioner challenged the rejection of his candidature before the learned Tribunal in OA 291 of 2024, which was disposed of by an order dated June 20, 2024. In this order, the Tribunal concluded that the petitioner should be given an opportunity to present his documents in person to the respondent authority. Consequently, the respondent no. 5 was directed to allow the petitioner to submit his documents, with the condition that, upon examination of the documents, if the petitioner was found eligible, he should be allowed to appear in the interview.

Pursuant to the order dated 20.06.2024, the petitioner submitted a representation to the respondent no. 5, along with

the order dated June 20, 2024, and his documents, including the certificates. However, his representation was left unattended, which prompted the petitioner to approach the learned Tribunal again with OA 307 of 2024.

During pendency of the OA 307 of 2024, the petitioner received an email on 4th July, 2024, asking him to attend a hearing on 12th July, 2024. At the hearing, the petitioner presented his testimonials including the certificates.

On July 31, 2024, during the hearing of OA 307 of 2024, a reasoned order dated June 20, 2024, issued by the respondent no. 5, was handed over to the petitioner's learned advocate. In this order, although the respondent no. 5 acknowledged that the petitioner possessed a valid DCI registration certificate, he concluded that merely having a valid certificate did not automatically entitle the petitioner to appear in the interview unless it was uploaded within the stipulated time on the online portal.

However, the learned Tribunal took cognizance of the reasoned order and disposed of the OA without passing any further order, but made following observation:

“Having examined this reasoned order, the Tribunal has come to understand that the Secretary and Controller of Examinations had examined the original DCI Registration Certificate of the applicant as evident from 7 paragraph of page 2 of the reasoned order. It is another matter that after such examination of the document, the respondent authority was not satisfied and did not allow the applicant to appear for the interview.”

Hence, seeking judicial review of the the order of the learned Tribunal passed in OA 307 of 2024 on 31st July, 2024, this instant writ petition has been presented.

Mr. Bhattacharya, learned advocate representing the petitioner, argues that although the petitioner possessed a valid certificate, he could not upload it due to technical issues. The petitioner made representation, and even sent email to the respondent authority, but his efforts were in vain. He subsequently preferred OA 291 of 2024 before the learned Tribunal, which was disposed of with the observation that the petitioner should be given an opportunity to present his documents in person before the respondent authority. Following this direction, the petitioner presented his documents at a hearing held on July 12, 2024. Although respondent no. 5 was satisfied that the petitioner possessed a valid DCI registration certificate, a reasoned order was issued denying the petitioner's request to appear in the interview on the grounds that he failed to submit the certificate online before the last submission date.

He further argues that the reasoned order issued by the the respondent no. 5 would clearly indicate that sitting in appeal over the decision of the learned Tribunal rendered in OA 291 of 2024, the respondent no. 5 rejected the petitioner's request to allow him to appear in the interview. He contends that though these issues were raised before the learned Tribunal but without addressing these issues, the OA 307 of 2024 was disposed of. According to him, this infirmity warrants interference with the order challenged in this writ petition.

He further submits that this is the petitioner's last opportunity to offer his candidature for the post due to the age bar. By presenting an interview notice dated July 18, 2024, he points out that the respondents conducted a second phase of interview on 25th July, 2024 and allowed candidates who had failed to produce the necessary documents on the date of interview. He submits that a direction be given to the respondents to set a date for interview and permit the petitioner to participate.

Mr. Mukherjee, learned Additional Government Pleader representing the State respondents, argues that despite being given two opportunities to upload the documents, the petitioner failed to do so. He submits that the selection process has been completed and a panel has already been prepared. He also mentions that a coordinate Bench of this Court has declared the reservation for OBC candidates in the State unconstitutional, and the issue is currently pending before the Hon'ble Supreme Court of India. He informs the Court that an application seeking clarification on the issue has been preferred before the Hon'ble Apex Court and is also pending consideration. Due to these reasons, the respondents have stayed their hands and have not yet finalized the selection process.

Heard the learned advocates. Perused the materials on record.

There can be no dispute regarding the fact that the respondent no. 5, in his reasoned order, acknowledged that the petitioner possesses a valid Certificate of Registration issued by the DCI. Therefore, the petitioner is eligible for the post. Due to a technical glitch, the petitioner was unable to upload the

second page of the certificate. Considering these facts, the learned Tribunal, in its order dated June 20, 2024, passed in OA 291 of 2024, determined that the petitioner should be given an opportunity to present his documents in person before the respondent authorities. The Tribunal directed that, after examining the documents, if the respondent was satisfied and the petitioner was found eligible for the post, he might be allowed to appear in the interview. But, as noted previously, by issuing a reasoned order, the respondent no. 5 ultimately denied the petitioner's request to allow him to participate in the interview citing the reason that he could not upload the certificate online.

The respondents are not in a position to deny that neither of the parties has assailed the order dated 20.06.2024 passed in OA 291 of 2024 and therefore, this order has attained its finality and is binding on the parties *inter se*. The respondents do not have any authority to disregard the order.

Therefore, it is quite vivid and luminescent that, in effect, the respondent no. 5 acted as an appellate authority over the learned Tribunal's decision by issuing a reasoned order that rejected the petitioner's request to appear in the interview.

The respondent No. 5 has misinterpreted the word 'may' used in the concluding part of the Tribunal's order dated June 20, 2024. When a court, tribunal, or superior authority determines the core issue and refers the matter to a subordinate authority for further action using the word 'may,' it should be interpreted as 'shall' by the subordinate authority. By using 'may' in its order, the Tribunal did not grant the respondent No. 5 the discretion to overturn its decision that the petitioner

should be given an opportunity to present his documents in person.

Our common experience shows that when an issue is referred to an authority or when courts or tribunals leave discretion for an authority to exercise, it often uses that opportunity to adhere to its previous stance, effectively overreaching the decision of the courts or tribunals. In the case reported in AIR 2005 SC 115 (E.T. Sunup v. C.A.N.S.S. Employees' Association), the Hon'ble Supreme Court lamented that lately, it has become a tendency with the Government officer to somehow or the other circumvent the orders of court and try to take recourse to one justification or other which indicates a complete lack of grace in accepting the orders of the court. This tendency of undermining the court's order cannot be countenanced.

Since we find no justification for the respondent's action in denying the petitioner the opportunity to appear in the interview, we hereby set aside the reasoned order dated July 23, 2024, issued by respondent no. 5. Additionally, we agree with Mr. Bhattacharya's submission that the learned Tribunal erred in not addressing the issues, as discussed hereinabove, in its order under scrutiny in this writ petition. Therefore, that order cannot be sustained and is also set aside.

The advertisement notice dated July 18, 2024, as produced by Mr. Bhattacharya, indicates that with the Board's approval, the respondents held second phrase of interviews for the candidates who either were absent on the date of interview and requested for its re-scheduling or failed to produce necessary documents at the time of interview.

It is well-established that if an authority acts contrary to established legal principles, fails to properly exercise its discretion, or exercises it in bad faith, based on irrelevant factors, or by ignoring relevant materials, leading to significant injustice, the High Courts in exercise of their extraordinary jurisdiction, can issue a writ of mandamus or other suitable orders to ensure the discretion is exercised in proper and lawful manner. Additionally, in cases where injustice needs to be prevented, the High Court may also issue an order that the Government or a public authority should have issued. (See, the judgment delivered in case of *The Comptroller and Auditor General of India, Gian Prakash, New Delhi & another v. K.S. Jaganathan & Anr.*, reported at AIR 1987 SC 537). In the case at hand, by overreaching the decision of the learned Tribunal passed in OA 291 of 2024, the authority has not exercised its discretion in proper manner and caused injustice to the petitioner.

Accordingly, the writ petition is disposed of by directing the respondent no. 5 to set a date for an interview for the post and to allow the petitioner to participate in that interview within four weeks from the date of receipt of a copy of this order. If the petitioner is found to be a successful candidate, his name shall be included in the panel and/or selection list prepared for the post.

With these observations and order, this writ petitioner is, thus, disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)