

1_2
02.7.2024
Ct. No. 11
SB

WP.ST 480 of 2013
CAN 3 of 2023

Golam Mehboob
Vs.
The State of West Bengal & Ors.
With

WP.ST 491 of 2013
CAN 2 of 2023

Syed Nurul Hasan
Vs.
The State of West Bengal & Ors.

Mr. Srijib Chakraborty
Mr. Ramji Munsii
Mr. Rittick Chowdhury
Ms. Champa Pal ... for the petitioners

Mr. Tapan Kumar Mukherjee
Mr. Somnath Naskar ... for the State

Records reveal that one Syed Nurul Hasan (hereinafter referred to as Nurul) and one Golam Mehboob (hereinafter referred to as Golam) jointly preferred an original application (in short, OA), being OA 233 of 2012. The learned Tribunal dismissed the said OA by an order dated 7th May, 2013. Challenging the said order, Golam preferred a writ petition being WP.ST 480 of 2013 and Nurul preferred a writ petition being WP.ST 491 of 2013. By an order dated 14th August, 2023, WP.ST 480 of 2013 was dismissed for default and by an order dated 14th September, 2013 the restoration application filed in connection with the said writ petition was also dismissed. Similarly, on the same dates, as stated above, WP.ST 491 of 2013 and the restoration application filed in connection with the said writ petition were also dismissed.

As we have invited the learned advocates appearing for the respective parties to advance their arguments on the merits of the matter, the orders dated 14th August, 2023 and 14th September, 2023 are recalled and the writ petitions are restored to their respective original file and number. The applications being CAN 3 of 2023 in WP.ST 480 of 2013 and CAN 2 of 2023 in WP.ST 491 of 2013 are, accordingly, disposed of and the writ petitions, with consent of the parties, are taken up for analogous hearing.

Mr. Chakraborty, learned advocate appearing for the petitioners submits that on 14th August, 2009 the respondent no. 2 published an advertisement/notification inviting applications from eligible candidates for recruitment to the post of Lower Division Clerk (in short, LDC) in respect of 40 vacancies. Both Golam and Nurul appeared in the written examination held on 5th September, 2010. Golam emerged to be successful in the said test and was thereafter called for a type test on 21st October, 2010 and again on 4th August, 2011.

He argues that though in the advertisement there was no provision for conducting any type test, the respondents illegally conducted type tests thrice, in phases, with an intent to illegally exclude the candidates including Golam, who emerged to be successful in the written examination.

He contends that after publishing the advertisement on 14th August, 2009, the Selection-cum-Examination Committee (in short, the Examination Committee) illegally incorporated a provision in the selection process for conducting a type test. By a further resolution dated 21st September, 2010 i.e., after the written examination was held on 5th September, 2010, the Examination

Committee adopted a resolution on 21st September, 2010 to hold type test on phases. Again on 25th October, 2010, 6th January, 2011 and 15th July, 2011, the Examination Committee adopted repeated resolutions for preparation of second panel merit list and for inviting candidates, who did not feature in the select list of 152 candidates. From such facts it would thus be explicit that the respondents have altered the rules of the recruitment process after the same was commenced through the advertisement issued on 14th August, 2009.

He argues that at the time of participation in the recruitment process, the petitioners were not aware that even after emerging to be successful in the written examination, they would be called for type test. There was no indication in the advertisement about such type test and that too in phased manner. Clause (o) of the advertisement/notification would clearly reveal that the selection would be only through written examination of 100 marks. In view thereof, it cannot be argued that the petitioners were not entitled to challenge the recruitment process having participated in the same.

Mr. Chakraborty further argues that the respondents have not conducted the selection process maintaining the 100 point roster and following the provisions towards reservation, as incorporated in the memo dated 24th September, 2010. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court. In support of his arguments, Mr. Chakraborty has placed reliance upon the judgements delivered in the cases of *Maharashtra Public Service Commission through*

its Secretary vs. Sandeep Shriram Warade and Others, reported in (2019) 6 SCC 362, *K. Manjusree vs. State of Andhra Pradesh and Another*, reported in (2008) 3 SCC 512, *Bishnu Biswas and Others vs. Union of India & Others*, reported in (2014) 5 SCC 774 and *Raj Kumar & Others vs. Shakti Raj & Others*, reported in (1997) 9 SCC 527.

Mr. Mukherjee, learned AGP appearing for the State denies and disputes the contention of the petitioners and drawing our attention to the prayers of the writ petitions, he submits that the petitioners have primarily prayed for cancellation of the appointment letters issued in favour of 12 candidates without impleading the said candidates as parties to the proceeding.

He submits that a composite perusal of the recruitment notification would reveal that the educational qualification as prescribed was Madhyamik Pass with typing skill of 30 words per minute in English. The posts sought to be filled up were LDC posts and for the said posts typing skill was mandatory. In view thereof, no illegality was committed by the respondents by calling the candidates, who appeared in the written examination, for the typing test.

He further argues that in respect of the 40 notified vacancies, admit cards were issued to 4769 candidates out of which 3341 candidates participated in the said selection process. The selection was made by conducting a written examination of 100 marks and type tests on a phased manner and ultimately out of 40, 39 vacancies could be filled up. It is not a case that candidates more than the notified vacancies were appointed or that the

candidates securing less marks than the petitioners have been selected.

According to Mr. Mukherjee, the petitioners themselves were not eligible for selection. Nurul did not qualify in the written examination. Golam qualified in the written examination held on 5th September, 2010 and was called for a type test in the first phase on 21st October, 2010. He, however, did not qualify in the same and as such he was again called for a type test in the third phase but he did not appear in the same. In the said conspectus, as the petitioners were admittedly unsuccessful in the selection process, they have no jurisdiction to challenge the appointment of other candidates by alleging illegalities perpetrated by the respondents in the recruitment process, moreso when, the selected candidates were not made parties to the original proceeding. In support of his arguments, Mr. Mukherjee has placed reliance upon the judgment delivered in the case of *State of West Bengal & Another vs. Bandan Bayen & Others*, reported in (1996)1 SCC 627.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The contention of Mr. Chakraborty, that there was no provision for type test in the employment notification is not acceptable to us. Clause- b of the notification clearly specifies the educational qualification to be pass in Madhyamik Pariksha or equivalent examination from a recognized Board with Type-writing skill of 30 w.p.m. in English. Type test was thus a condition for appointment. The posts sought to be filled up were LDC posts in which knowledge of typing is mandatory and to assess such

eligibility, type tests were conducted. The provisions of the notification along with the minutes of the meetings, as annexed to the affidavit-in-opposition need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. The petitioners prior to participation had knowledge of the fact that they would have to face type test.

Indisputably, Nurul did not qualify in the written examination. Golam qualified in the written examination but did not pass the type test in the first phase. Though, he was called for the type test in the third phase, he did not appear. They were thus, admittedly unsuccessful candidates. In the said conspectus, no loss or prejudice was caused to the petitioners and no legal right was infringed warranting interference of the Court.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. In the case of *Bishnu Biswas (supra)*, the interview was not a part of the recruitment process. In the case of *Maharashtra Public Service Commission (supra)* it was held the Court cannot undertake interpretive re-writing of the advertisement. In the case of *Raj Kumar (supra)*, the government committed glaring illegalities by taking out the posts from the purview of the Board after the examinations were conducted and the results were announced. The issue involved in *K. Manjushree (supra)* is under consideration before a larger Bench. The said judgments, upon

which reliance has been placed by Mr. Chakraborty, are thus distinguishable on facts.

It is not a case that candidates securing lesser marks than the petitioners have been accommodated and appointed. The learned Tribunal decided the original application upon perusing the original file pertaining to the recruitment process and correctly arrived at a finding that the petitioners on merit did not come within the zone of consideration. The Writ Court, at the instance of unsuccessful candidates, cannot conduct any roving enquiry in exercise of its authority of judicial review.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned.

In view thereof, the two writ petitions are dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Patha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)