

Asit Kumar Das and ors. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Mar-31-1999

Reported in : (1999)2CALLT177(HC)

Judge : Amitava Lala, J.

Acts : [Constitution of India](#) - Articles 14, 16, 19 and 226;

Appeal No. : Constitutional Writ Jurisdiction, C.O. No. 10276(W) of 1996

Appellant : Asit Kumar Das and ors.

Respondent : State of West Bengal and ors.

Advocate for Def. : Mr. Pulak Chandra Mondal and ;Miss Bandana Das, Advs.

Advocate for Pet/Ap. : Mr. Arunava Ghosh and ;Mr. Soumya Chakraborty, Advs.

Judgement :

A. Lala, J.

1. This writ petition is basically made for a writ of Mandamus commanding the respondents to forbear from taking any decision with regard to publication of the panel for Lecturers in the Non-Government Degree Colleges in West Bengal pursuant to the first SLET and/or the interview held in pursuance thereof without considering the petitioners' application on merits.

2. The writ petitioners contended that as per the publication of advertisement dated 29th April, 1994 issued by the West Bengal College Service Commission in the vernacular newspaper of the State the eligibility criteria for the purpose of selection of the Lecturers was as follows:

'Eligibility

Candidates who have obtained Master's Degree in a subject with at least 55% marks or an equivalent grade preceded by a Hons. degree in the relevant subject from an Indian University or an equivalent degree from a Foreign University are eligible for SLET.

Candidates who have already been admitted to Ph.D. or have already been qualified in the JRF/Lecturership test conducted by UGC-CSIR or have obtained M. Phil. Degree upto 31st December, 1992 may not appear at the SLET. Serving Teachers in Colleges or Universities in substantive posts also may not appear at the SLET.'

3. The case of the petitioners is that they have obtained M.Phil Degree in 1991 or 1992, therefore, they are exempted from appearing in the first level eligibility test and entitled for personal interview as such respondents Nos. 2 and 3 have issued call letters to them, The defence of the college service commission is that they are follower of the guiding principles laid down by University Grants Commission and State. They have no authority to relax the conditions laid down in the advertisement as per the directives given either by the University grants Commission or by the State. In the instant case no document was produced by the candidates which will make them eligible for the purpose of personal interview as exempted candidates. In the interview they were told to produce letters from the university authorities showing date of publication of their M.Phil results within a reasonable time.

4. In reply thereto the petitioners contended that a certificate was issued by the controller of Examinations of the University of Burdwan, West Bengal being annexure 'E' to the petition which appears as follows :

'The M.Phil Course of the University of Burdwan is a one-year Course and upto 1994 the course was conducted from January to December of every year. In the Marksheets and the certificate of M.Phil students, following the procedure approved by the Highest decision making body of this University of Burdwan, this University does not mention any date of publication of results. This practice has been in vogue since the inception of M.Phil Course in the University.

Naturally, when a candidate is declared to have passed the M.Phil Examination of any year, he should be considered to have obtained the M.Phil Degree in that year.'

5. Mr. Arunava Ghosh, learned Counsel appearing with Mr. Soumya Chakraborty on behalf of the petitioners, serially cited various Judgments to establish their case. The basic points, as I found, from the descriptive analysis of arguments i.e. about applicability of the law of estoppel or acquiescence in the subject context,

6. Balancing factors of the case is as follows :

a) Can it be said that there is no fault on the part of the concerned University in not declaring the results and issuing the certificates within the appropriate time?

b) can it be said that there is no fault on the ground of West Bengal College Service Commission in refusing to recognise their candidature in the interview for the purpose of selection for Lecturership without routed through SLET?

c) Are the candidates responsible for the fault caused by the West Bengal College Service Commission or other statutory bodies or the University on that score?

7. I find that these are the basic parameters for the purpose of consideration as to whether the petitioners will be exempted from appearing before the state level eligibility test or not. Now, let me come back to analyse the decisions cited by the parties-herein.

8. Firstly. Mr. Ghosh cited a decision reported in : AIR 1976 SC376 (Shri Krishan v. The Kurukshetra University, Kurukshetra) from which I found that once the candidate is allowed to take the examination rightly or wrongly then the statute

which empowers the authority to withdraw the candidature of the applicant on the basis of an infirmity which should be looked into before giving the candidate permission to appear.

9. He also cited a decision reported in 1993 supp (2) SCC 611 (Ashok Kumar Sharma & Anr. v. Chander Shekher & Anr. and State of Jammu & Kashmir v. Chander Shekher & Ore.) to establish that eligibility conditions are to be taken into account not on the date of submission of the application form but on the date of interview.

10. Thirdly, he cited a decision reported in : (1984)11LLJ186SC (A.L. Kalra v. The Project and Equipment Corporation of India Ltd.) to show that where the misconduct when proved entails panel consequences it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. Although the said case is projected factually in between employer and employee but according to the petitioner the same principle can be applicable in the instant case with regard to necessary import of the advertisement.

11. Next judgment being : [1990]2SCR273 (Sanatan Ganda v. Berhampur University & Ors.) as cited by the petitioners is almost on the similar line of the first placed Judgment i.e. : AIR 1976 SC376. As and when permission is already given to appear in an appropriate examination and when proceeded with the course and after that refusal to continue with the course on the ground of ineligibility for initial admission will be hit by principle of estoppel.

12. The next cited Judgment is Cal. L.T. 1995[2] HC 27 (University of Calcutta v. Soumit Chakraborty & Ors.) wherein the principle of : AIR 1976 SC376 was followed by the Division Bench of this Hon'ble Court by holding that if candidates allowed to sit in examination, the University should not withhold the results and deprive the candidate concerned the fruits of his labours irrespective of the considerations whether the entry for the examination was legal or contrary to the regularisations after allowing the same. Regulations are directory and not mandatory.

13. Next Judgment as cited by the petitioner is reported in 1996 (II) 497 (Prabir Stnha Roy & Ors. v. The Hon'ble The Chief Justice, High Court, Calcutta & Ors.) to establish that if the claim of the petitioner exists by way of pendency of the litigation the remedy cannot be said to be exhausted to consider the right of the petitioners in respect of the vacancies for the appropriate purpose.

14. In considering the analysis of the judgments I find that most of the judgments are, on the grounds, as before, to establish the principles of law of estoppel and/or acquiescence. It is an admitted position that the regulations as made by the governing authorities were laid down by the West Bengal Service Commission and they have not implemented their own regulation but upon going through the Judgments of the Supreme Court as well as Division Bench of this Court I hold that the regulations are really directory in nature and not mandatory, therefore, flexibility of the regulations are dependable upon the existing circumstances. Hence, the circumstances are to be analysed with its proper prospective of each case as to the applicability of the regulations.

15. It is also significant part that whether the candidates possessed their eligibility on the date of interview or not to that extent this court has no other alternative, but upon perusing the annexures has come to a conclusion that they were eligible on the given date.

16. Therefore, following the principles laid down by the Supreme Court again I say that ex post facto interpretation cannot be given a retrospective effect to destroy the candidature of the candidates who availed the opportunity of interview.

17. Under these circumstances, prima facie, I do not find that it would be Justifiable to accept the stand of the respondents. Even then for the purpose of coming to an appropriate final determination, court has to analyse the distinguishing factors.

18. In support of the contentions Mr. Pulak Mondal, learned Advocate appearing with Miss Bandana Das on behalf of the respondents cited a decision being reported in : (1994)ILLJ364SC (The Chancellor & Anr. v. Dr. Bijayananda. Kar & Ors. with Dr. Prafulla Kumar Mohapatra v. Dr. Bijayananda Kar & Ors.) to establish

the position that whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection Committee which invariably consist of experts on the subject relevant to the selection. I have no conflict of opinion with the principle but principle has to be fit in with the facts. In the cited case the prevailing factor was that the candidate did not invoke the Jurisdiction of the writ court with clean hands. Such feature is, prima facie, distinguishable with the present one. Moreover, it is also not the criteria herein as to whether the candidate fulfilled the requisite qualifications or not and on the question of interference with the Selection Committee. Admittedly the petitioners have their requisite qualifications but only remaining question left i.e. whether such requisite qualifications were available on the given date or not.

19. Moreover for non-issuance of certificates within the normal period by the University or any authority due to laches, inaction or negligence on their part, candidates should not be made to suffer. It is not an acceptable excuse that in spite of obtaining a decree in a year, candidates should have to wait for their certificates for another one, two, three or more years. The reverse inertia of the pace of modernisation is not encourageable at all but compensatory. Therefore, the ratio of the Judgment, in all, is inapplicable in the present case specially on the maxim 'Nemo ex alterius facto praegravari debet' meaning thereby no one must be inconvenienced because of another's act.

20. Now, so far the other Judgment being : [1998]3SCR327 (C.B.S.E. & Anr. v. P. Sunil Kumar & Ors. etc.) is concerned that is in respect of admission to examination and issuance of certificates in respect of unaffiliated institution/s which is also not the subject matter herein. In the instant case, the West Bengal College Service Commission is proceeding to take interview for the purpose of filling up the posts of Lecturers in the Non-sponsored Governmental institutions i.e. affiliated institution/s. Therefore, basic factual distinguishing feature creating distinction with the citation.

21. In the above circumstances, in all, it is very difficult to accept the logic of the argument advanced by Mr. Mondal in support of the contentions of the contesting

respondents. Therefore, I affirm my prima facie view as final in support of the petitioners.

22. As a result whereof the writ petition succeeds. As a consequential effect thereto the petitioner will be allowed to appear in the personal interview before the authority as exempted candidates as per the notice within a period of 8 weeks from the date of communication of the order. No order is passed as to costs.

It is expected that the University Grants Commission Respondent No. 4 herein should issue notices upon the Universities expressing desire of the court to complete the backing of non-issued certificates ready for delivery within the prescribed period to make it upto date for all practical purposes.

Xerox certified copy will be issued to the parties within seven days from the date of putting requisition.

23. Petition succeeds

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