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Court : Kolkata Appellate

Decided On : Mar-18-2011

Judge : Prabhat Kumar Dey, J.

Appeal No. : W. P. No. 6253 (W) of 2010

Appellant : Basudeb Paul

Respondent : State of West Bengal and Others

Advocate for Def. : Mr. K. J. Yusuf; Mr. Debasish Kar, Advs

Advocate for Pet/Ap. : Mr. Ekramul Bari, Adv

Judgement :

1. The case of the petitioner, in the instant writ application, may be briefly stated as follows :
2. The petitioner applied for the post of Class-IV staff before Bhului S.S.R. Vidyapith (High School). To fill up the post of Class-IV staff, the District Inspector of Schools accorded prior permission and pursuant thereto date of interview was fixed on 6.7.2008.
3. The Secretary of the school issued an interview letter dated 17.06.2008 requesting the petitioner to appear on 6.7.2008 for the post of Group-D staff before the Selection Committee. The said interview could not be held on the date fixed. However, the District Inspector of Schools accorded permission to take fresh re-

interview through wide publication in daily newspaper along with the candidates sponsored by the Employment Exchange. The Secretary of the Managing Committee by his letter dated 1.12.2008 requested the petitioner to appear in the interview on 20.12.2008, but the said interview could not take place on the said date. Again, the Secretary wrote a letter to the District Inspector of Schools requesting him to accord permission for filling up the post of Group-D staff as the date of interview was fixed on 20.12.2008, but the interview could not take place due to public agitation, but the District Inspector of Schools did not give any reply. Hence, the petitioner came up before this court.

4. It is the contention of the learned Advocate of the petitioner that the District Inspector of Schools accorded prior permission and the date of interview was fixed earlier, but the same was cancelled and again the school authority sought for permission before the District Inspector of Schools and the date of interview was fixed lastly on 20.12.2008 and again it could not be taken place on the same date.

5. He further submitted that the school authority wrote a letter seeking permission to fill up the post, but the District Inspector of Schools granted permission to take fresh re-interview through wide publication in daily newspaper along with other candidates sponsored by the Employment Exchange. He also submitted that the process of holding interview has already been completed, as such the contention of the District Inspector of Schools cannot be taken for consideration.

6. He further submitted that the School Service Commission Act came into force since January 2009 and as such, the effect of such Amended Act shall have no application in the present case. In this context, he referred to the decisions of the Honble Single Judge of this Court (W.P. No. 16813 (W) of 2010) (Managing Committee of Mahisegeria A.M.A. High Madrasah Vs State of West Bengal), (2011) 1 WBLR (Cal) 644 (State of West Bengal Vs Sasti Kumar Chowdhury), 2001(3) CHN 313 (Snehansu Jas Vs State of West Bengal), (2010) 5 SCC 798 (Jenany J.R. Vs S. Rajeevan) and (2010) 7 SCC 560 (Mohd. Raisul Islam Vs Gokul Mohan Hazarika) in support of his contention. The learned Advocate for the respondent no. 4 adopted the contention of the learned Advocate of the petitioner.

7. On the contrary, the learned Advocate for the State Respondents submitted that since after the amendment of the School Service Commission Act, no appointment shall be given effect to without publication in the daily newspaper along with the candidates sponsored by the Employment Exchange. He further contended that the post of teaching and non-teaching staff shall be given effect to in view of the amended School Service Commission Act. He has drawn my attention to a decision reported in (2010) 4 CAL LT 380(HC) (Asoke Sawoo Vs State of West Bengal) in paragraph 42 in this regard.

8. There is no dispute to the fact that for filling up the post of Group-D staff, the District Inspector of Schools accorded prior permission and an interview letter was issued for selection to the said post, but the interview could not be held by the school authority. Again the date of holding interview was fixed and letters in this regard have been issued to the candidates and the matter was intimated to the District Inspector of Schools. It may be pointed out here that the date of interview was fixed on 20th December, 2008, however, the District Inspector of Schools instead of granting permission asked the school authority to take fresh re-interview through wide publication in daily leading newspaper along with the candidates sponsored by the Employment Exchange vide their memo no. 4238/S dated 19.11.2008. In the said memo, the District Inspector of Schools has categorically stated that he is not in a position to approve the panel. The question of approving the panel does not arise as the process of interview has not been completed. Rather, the date has been fixed for holding interview of the candidates and for that permission was sought for by the school authority. The candidates including the petitioner appeared to be sponsored by the Employment Exchange for the post of Group-D staff in the concerned school and accordingly, interview letter was issued to the candidates for selection. I am reiterate to state that the process of interview has not been completed by the school authority and there was postponement of the date of interview and the matter was intimated to the District Inspector of Schools seeking necessary permission. The concerned District Inspector of Schools without granting permission asked the school authority to comply with the above memo.

9. There is no dispute that the West Bengal School Service Commission (Amendment) Act, 1997 came into effect from 1st January, 2009. By virtue of the said amendment, recruitment of teaching and non-teaching staff is now required to be made through the West Bengal Madrasa School Service Commission with effect from 1st January, 2009. On a plain reading of the provision of the said Act, it appears that the said Act has no retrospective effect and as such, the said Act cannot stand in the way of filling up the vacancies, which were created prior to the commencement of the said Amendment Act. The selection process appeared to have been initiated prior to the commencement of the Amendment Act. In the instant case, the date of interview for selection of candidates for filling up the concerned post was fixed on 20th December, 2008.

10. It also appears that the candidates, called for interview, acquired for being considered for selection in accordance with Rules and such right cannot be taken away and/or curtailed by amendment of the Recruitment Rules, which came into force after selection process was initiated under the old Rules.

In the case of Mohd. Raisul Islam Vs Gokul Mohan Hazarika reported in (2010) 7 SCC 560, it was held by the Honble Supreme Court in Paragraph 37 as follows :

37. There can be no dispute that as a matter of policy the Government may take a conscious decision not to fill up vacancies for justifiable reasons, but at the same time, having started a process of selection under the unamended Rules, it cannot take the stand that it still was entitled not to make appointments of persons from amongst the candidates selected in terms of the process initiated under the old Rules. In fact, in the instant case, the recommendation made by APSC was submitted to the Government on 22-6-1986, before the amended Rules came into operation on 21-7-1986 whereby the quota system was discarded. In such a situation, in our view, the decision in K. Ramulu case 5 cannot be applied to the facts of this case.

11. In another case of Jenany J.R. Vs S. Rajeevan reported in (2010) 5 SCC 798, the Honble Supreme Court held that the relevant date would be the date when the vacancy had arisen and not the date when the appellant actually joined the service. Relying upon the said decision of the Honble Supreme Court, A Division

Bench of this Court in *Snehansu Jas Vs State of West Bengal* reported in 2001(3) CHN 313 opined that the selection process will commence only when the candidates are invited to appear on the basis of names sent by the Employment Exchange on requisition by the Managing Committee for recruitment of the teachers and if that stage has not reached, then it will not amount to commencement of the selection process.

12. On the contrary, the learned Advocate appearing on behalf of the State / Respondent, referred to a case of *State of West Bengal Vs Sasti Kumar Chowdhury* reported in (2011) 1 WBLR (Cal) 644 in Paragraph 53 it was held as follows :

53. Between Law and life, the Court, even in its obligation for being creature of the former cannot lose its sense of Justice in respect of the latter. It is borne out from the Records that two sanctioned posts exist. Obviously, the same would be put up for regularisation by the Committee through the District Inspector of Schools for approval in terms of the existing Recruitment Rules, as known to Law. Necessarily, there will be an invitation for such appointment from prospective candidates.

In the said decision, the Honble Division Bench of this Court relied upon the decision of *Asoke Sawoo Vs State of West Bengal* reported in (2010) 4 CAL LT 380 (HC), which has been approved by two different Benches of this Court in the cases of *The Managing Committee of Polerhat High School Vs State & Others* reported in (2011) 1 WBLR (Cal) 214 and *Sankar Das Vs The State of West Bengal & Others* reported in (2011) 1 WBLR (Cal) 326. In the said decision, the Honble Division Bench of this Court held that it would be Just Justice in the event we pass the following directions :-

A) Till such time the vacancy is filled up by way of following the Recruitment Rules, the service of the Respondent No.1 would continue uninterrupted and he will enjoy all his perquisites and salaries, which he hitherto had received.

B) In the selection process, he will obviously have an edge over and above the others of his peer level considering the years of service he has put in with the

experience behind him.

C) He should also be treated more equal than other coequals in his age and other bar. The learned Advocate, appearing on behalf of the respondents, cited another decision in the case of Asoke Sawoo Vs State of West Bengal reported in (2010) 4 CAL LT 380(HC), which has been referred to and discussed by the Honble Division Bench of this Court in the above referred decision.

13. The decisions, referred to above by the learned Advocate appearing on behalf of the respondents, are not applicable in the facts and circumstances of the present case in view of the fact that in the present case the selection process has already been commenced and the candidates were called for interview by issuing interview letters. In view of the law laid down by the Honble Apex Court and the Division Bench of this Court, I am of the opinion that when the selection process has already been commenced on the basis of the advertisement and the names of the candidates were sponsored by the Employment Exchange before the amendment of the West Bengal Madrasah School Service Commission Act came into force with effect from 1st January, 2009, which appears to have no retrospective effect, and since the commencement of the selection process has already been initiated prior to the commencement of the Amended Act. This court thus, holds that the Amended Act cannot affect the existing right of the candidates, who were considered for selection as per Rules, which were in force as on the date of interview.

14. Accordingly, the impugned communication made by the District Inspector of Schools concerned to the Secretary of the concerned school vide memo no. 4238/S dated 19.11.2008 being Annexure P- 2 to this writ petition stands set aside.

15. It may be mentioned here that in the event the selection process is complete in the meantime, then the District Inspector of Schools concerned is directed to accord approval of the panel, duly sent by the school authority, within a period of four weeks from the date of communication of this order. The concerned District Inspector of Schools is also directed to convey its decision to the school authority immediately thereafter.

16. Accordingly, the writ petition is disposed of.

17. Urgent Xerox certified copy of this order may be supplied to the learned Advocates of the respective parties, if the same is applied for.

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