

(2010) 12 CAL CK 0014

Calcutta High Court

Case No: Writ Petition No. 349 of 2010

Md. Tarique Jamal

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Dec. 2, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Hon'ble Judges: Aniruddha Bose, J

Bench: Single Bench

Advocate: K. Bhattacharya, for the Appellant; S. Panja, for the Respondent

Final Decision: Dismissed

Judgement

Aniruddha Bose, J.

The writ Petitioner in this proceeding seeks appropriate direction upon the West Bengal Madrasah Service Commission (Commission) for recommending his name as Assistant Teacher of English (H/PG) category in an Urdu Medium Madrasah. The specific claim of the Petitioner is that there is a vacancy for such a post in Moulana Mohammed Ali High Madrasah in Kidderpore, Kolkata -700023.

2. Appointment to the vacant post of teaching staff in different Madrasahs is regulated through a State Level Selection Test conducted by the Commission. The Petitioner had appeared in such test in the year 2008 and was ranked fifth in the category of Assistant Teacher in the panel prepared for the said post. From the said panel prepared subsequent to the Selection Test of 2008, four candidates had been appointed in different Madrasahs. All these four candidates were ranked above the Petitioner. The Petitioner was kept in the waiting list as there was no further vacancy. The case of the Petitioner is that the authority of the Maulana Mohammed Ali High Madrasah (the said Madrasah) had sent vacancy statement while the selection process for the year 2008 was going on but that vacancy was not declared.

Contention of the Petitioner is that in the event the said vacancy was advertised for selection through the selection process conducted in that year, the Petitioner would have been appointed in such vacancy as he was the fifth candidate and the four persons having already been appointed in different Madrasahs.

3. In course of hearing two supplementary affidavits were filed by the Petitioner. In these supplementary affidavits, the cases of two candidates, being one Alim-ul-Haque and Abdul Waheb have been referred to. It has been pleaded that these two candidates also participated in the Selection Test of 2008 but could not be appointed in any of the vacancies for which advertisements were published inviting applications for the posts of Assistant Teachers. These two candidates, it has been stated by the Petitioner, were accommodated in vacancies which were reported to the Commission subsequent to publication of the advertisement, and such vacancies were not advertised for being filled up through the selection process of 2008.

4. This writ petition has been contested by the Commission by filing affidavit. The case of the Commission is that if a vacancy is not advertised, then there is no provision under the relevant rules for appointment of a candidate from a particular panel to fill up such undeclared vacancy. In this respect, learned Counsel for the Commission has relied on an unreported decision of an Hon'ble Single Judge of this Court in the case in W.P. No. 112(W) of 2010 delivered on 11 January 2010. In this decision, it has been held:

It is settled law that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted under Articles 14 and 16 of the Constitution of India (see [State of U.P. and Others Vs. Rajkumar Sharma and Others](#),).

5. As regards, appointment of the two candidates, it has been argued on behalf of the Commission that both these appointments in undeclared vacancies had been made under exceptional circumstances. The names of these two candidates had been recommended for filling up two advertised vacancies, but such appointment could not be given because of certain unusual circumstances. In one case, the Madrasah was a girls' Madrasah and they did not want a male teacher. In the other case, the vacancy was advertised by mistake, and such mistake was detected at a later stage.

6. In the present writ petition, so far as the case of the Petitioner is concerned, I do not think he can claim to be appointed in an undeclared vacancy. It is immaterial as to when the Commission is sent vacancy reports from the concerned institutions. Unless a vacancy is advertised, right to be considered for such vacancy does not accrue. So far as the cases of Abdul Waheb and Alim-ul-Haque are concerned, I do not think the Petitioner can claim right of appointment to a vacancy which is not advertised on the basis of steps taken by the Commission in these two exceptional

cases. No one can claim any vested right to be considered for appointment in a manner not authorized by law on the strength of appointments made under exceptional circumstances through a process not contemplated in law. Under these circumstances, the writ petition shall stand dismissed.

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