

(2011) 08 CAL CK 0040

Calcutta High Court

Case No: Writ Petition No. 28349 (W) of 2008

Kalu Chandra Ghosh

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Aug. 18, 2011

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Advocate: Ashim Kumar Halder, for the Appellant; Asit Baran Mukherjee, for the State, M. Alam Sk, for the Respondent No. 8, Ashok Jha, for School Secretary and Kanai Lal Samanta, for the DPO, for the Respondent

Final Decision: Dismissed

Judgement

Harish Tandon, J.

The Petitioner has complained of the inaction on the part of the Respondent authorities in granting approval to the panel dated 26th October 2007 which was prepared for the post of para teacher in Dakshin Mukundapur Primary School, District Malda. Pursuant to the advertisement published on 23rd August 2007 the Petitioner applied for the post of para teacher of Dakshin Mukundapur Primary School, District Malda. The last date of filing application was fixed on 9.10.2007. The Petitioner claimed to have filed an application on 11th September 2007. The eligible qualification for such post was indicated in the said advertisement to be a Madhyamik/Madrasha pass from the West Bengal Board of Secondary Education or West Bengal Board of Madrasa Education. Apart from the Petitioner, the Respondent No. 7 and 8 also participated in the said selection process. The Respondent No. 8 has been found successful. According to the Petitioner the Respondent No. 8 should not have been brought within the zone of consideration as she acquired the qualification from Rabindra Mukto Vidyalaya and not from the West Bengal Board of Secondary Education or West Bengal Board of Madrasa Education. The Petitioner claimed to have obtained the highest marks amongst the eligible candidates but the candidature of the Respondent No. 8 is kept out of the

zone of consideration for not having the requisite qualification.

2. In affidavit-in-opposition it is stated by the Respondent No. 8 that the candidate who passed Madhyamik examination from the Rabindra Mukto Vidyalaya is approved by the West Bengal Board of Secondary Education as equivalent to Madhyamik pass examination and are admitted to the higher secondary course under the West Bengal Council of Higher Secondary Education.

3. In supplementary affidavit affirmed on 4th August 2011 the Respondent No. 8 relied upon a government order bearing No. 742-SE (apptt) dated 31st July 2002 issued by the Special Secretary, Government of West Bengal by which the government has recognized the Madhyamik (secondary) and Uccha Madhyamik (higher secondary) certificates awarded by the Rabindra Mukto Vidyalaya, West Bengal to the successful candidates to be similar to the Madhyamik examination under the West Bengal Board of Secondary Education as well as Uccha Madhyamik examination under the West Bengal Board of Higher Secondary Education. By a subsequent government order No. 531-SE (apptt)/10M-51/99 dated 3rd August 2005 issued by the Joint Secretary, government of West Bengal in partial modification to the earlier government order dated 31.7.2002, the government have reiterated that the Madhyamik certificate awarded by the Rabindra Mukto Vidyalaya, West Bengal to the successful candidates who have cleared the compulsory subjects in the examination to those of the madhyamik examination under the West Bengal Board of Secondary Education.

4. In reply, the Petitioner relies upon the circular dated 571/ssm dated 27.12.2007 issued by the District Project Officer clarifying that the eligibility criteria as indicated in the said publication inviting application for the post of the additional para teacher shall be the madhyamik pass from the West Bengal Board of Secondary Education/ West Bengal Board of Madrasa Education/ Rabindra Mukto Vidyalaya, West Bengal.

5. The learned Advocate appearing for the Petitioner submits that the original advertisement inviting applications for the post of the additional para teacher did not incorporate that the candidates who have passed a madhyamik from Rabindra Mukto Vidyalaya, West Bengal shall be eligible to be considered for such post. Any subsequent circular has No. manner of applicability in the selection process. In other words it is tried to be contended that the circular dated 27.12.2007 issued by the District project Officer is not applicable.

6. The learned Advocate appearing for the Respondent No. 8 submits that the madhyamik pass certificate issued by the Rabindra Mukto Vidyalaya, West Bengal has been recognized by the government to be similar to the madhyamik examination conducted under the West Bengal Board of Secondary Education and/or West Bengal Board of Madrasa Education. According to him the circulars by which those were recognized were issued prior to the initiation of the selection process. It is lastly contended that the Petitioner himself has admitted in the writ

petition that the Respondent No. 8 has obtained 65.3% marks whereas the Petitioner has obtained 64% marks and as such the Respondent No. 8 should be appointed as the additional para teacher.

7. The learned Advocate appearing for the District Project Officer submits that his client has issued the clarificatory circular reiterating the decision of the government which has been taken prior to the publication of the advertisement for filling up the post of additional para teacher. In view of the said decision of the government the Respondent No. 8 have been found successful to be appointed to the said post.

8. The learned Advocate appearing for the state have adopted the submission made by the learned Advocate appearing for the District Project Officer. However the school authorities tried to contend that because of this litigation the school is suffering and whoever found eligible should be appointed.

9. Having considered the respective submissions the point that emerges for consideration is whether the appointment of the Respondent No. 8 to the post of additional para teacher on the basis of madhyamik pass certificate issued by the Rabindra Mukto Vidyalaya, West Bengal is valid or not.

10. At the time of making publication inviting the application for filling up the post of additional para teacher, the District Project Officer fixed the eligible qualification for the post of the additional para teacher and one of the eligible qualification as enshrined in the said publication is that the candidate must be madhyamik/madrasha pass (West Bengal Board of Secondary Education / West Bengal Board of Madrasa Education) it is not in dispute that the Respondent No. 8 have passed madhyamik from Rabindra Mukto Vidyalaya, West Bengal having obtained the better marks than the Petitioner, the Selection Committee on the basis of the madhyamik qualification have found the Respondent No. 8 as eligible to be appointed to the post of additional para teacher.

11. What is sought to be contended by the Petitioner in this writ petition is that the educational qualification acquired by the Respondent No. 8 does not come within the educational qualification enshrined in the said publication. The Petitioner says that the candidate who have passed madhyamik/madrasha from the West Bengal Board of Secondary Education / West Bengal Board of Madrasa Education are only entitled to be considered for appointment to the said post.

12. There is No. dispute that by a government order dated 31st July 2002 the government of West Bengal have recognized the madhyamik pass certificate awarded by the Rabindra Mukto Vidyalaya, West Bengal to be similar to those madhyamik examination under the West Bengal Board of Secondary Education. By another subsequent government order dated 3.8.2005 the said recognition was further reiterated with partial modification to include the certificates awarded by the Indira Gandhi National Open University, Vidyasagar University, Burdwan University and Netaji Subhash Open University to be similar to the West Bengal Board of

Secondary Education.

13. It is manifest from the said publication that the educational qualification of madhyamik pass/madrasha pass was from a school or university which is recognized under the West Bengal Board of Secondary Education/ West Bengal Board of Madrasa Education. The intention of the authority was never to restrict the eligibility of the candidates who have passed the madhyamik/madrasha from the West Bengal Board of Secondary Education/ West Bengal Board of Madrasa Education only. The intendment is manifest from the said publication that the candidates who have passed madhyamik from a Board or an institution which are similar to the madhyamik examination conducted by the West Bengal Board of Secondary Education are eligible to apply for such post.

14. It is No. doubt true that any circular issued by a statutory authority/government restricting the zone of consideration after the last date of submission of an application cannot be made applicable.

15. As indicated above, the said circular dated 27.12.2007 was a mere recognition and/or reiteration of the above government orders without restricting the eligibility criteria so that some of the candidates who were eligible to be considered at the time of initial publication are brought outside the zone of consideration. Such is not the position in the instant case.

16. Thus it cannot be said that the educational qualification acquired by the Respondent No. 8 is not recognized and the candidature of the said Respondent is liable to be rejected on the ground of having acquired qualification from an institute and/or Board not specifically mentioned in the publication.

17. Thus I do not find any merit in this writ petition. The same is accordingly dismissed.

18. However, there shall be No. order as to costs.

19. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.