

(2011) 08 CAL CK 0061

Calcutta High Court

Case No: Writ Petition No. 22335 (W) of 2009

Tapasi Pati (Panda)

APPELLANT

Vs

The State of West
Bengal and Others

RESPONDENT

Date of Decision: Aug. 5, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Jyotirmay Bhattacharya, J

Bench: Single Bench

Advocate: Ranjit Jaiswal, Soumendra Kr. Ghosh and Nandalal Pradhan, for the Appellant;
Mintu Goswami, for State, Biswaroop Bhattacharya and Debabrata Karan, for School
Authority, for the Respondent

Final Decision: Allowed

Judgement

Jyotirmay Bhattacharya, J.

This litigation has a long chequered history. Selection process was initiated by the school authority of Ramtarak High School in the District of Purba Medinipur for filling up a vacancy in the post of Assistant Teacher in English in 1997, on the basis of the prior permission granted by the concerned District Inspector of Schools on 30th April, 1997 vide Memo No. 893-S. The said selection process has not yet been concluded because of several litigations filed by various candidates who participated in the selection process for the said post from time to time. Ultimately, the panel, which was prepared by the school authority for the said post, was set aside by an order passed by a learned Single Judge of this Court on 25th August, 2008 in W.P. No. 24782(W) of 2007 which was affirmed by the Hon'ble Appeal Court in M.A.T. No. 49 of 2009 and fresh selection test was directed to be held by taking into consideration the candidature of all the candidates who participated in the selection process earlier. Thus, the right of those candidates to participate in the fresh selection process, was set at rest by the Hon'ble Appeal Court while disposing of the

said appeal being No. M.A.T. No. 49 of 2009 on 26th February, 2009.

2. Since the right of those candidates to participate in the fresh selection process is not an issue in the present writ petition, this Court does not feel it necessary to deal with their right to participate in the fresh selection process presently. It is, thus, made clear that their right to be considered in fresh selection process will be governed by the order passed in the said writ petition which was affirmed in appeal, as aforesaid.

3. Let me now concentrate to the issue raised in the present writ petition.

4. This writ petition has been filed by an aspirant for the said post who was not allowed to participate in the earlier selection process, though she applied for the said post before holding the first selection test.

5. It is alleged by her that she submitted her application by offering her candidature for the said post in 1997, but she was not called upon to participate in the selection process when the selection test was held by the Selection Committee in 1997. It is further alleged by her that even in 2009 she again submitted an application by offering her candidature for the said post when the Division Bench of this Hon"ble Court while disposing of an appeal being M.A.T. No. 49 of 2009 directed the school authority to hold fresh selection test for the said post. Even then she was not called upon to participate in the subsequent selection test. It is asserted by her that since she possesses the requisite qualification for the said post, she cannot be denied of an opportunity to participate in the said selection process as she applied for the said post by offering her candidature before holding the selection test in 1997 and thereafter again in 2009.

6. Mr. Bhattacharya, learned Advocate, appearing for the added Respondent No. 8, opposed the Petitioner's prayer for allowing her to participate in the fresh selection process by contending that since the Hon"ble Appeal Court, while disposing of the said appeal being M.A.T. No. 49 of 2009, fixed the modalities for holding such selection test by directing the selection authority to consider the candidature of those candidates who participated in the selection process earlier, the Petitioner, who admittedly did not participate in the selection process earlier, cannot be permitted to participate in the fresh selection process. It is further contended by him that the Petitioner being a fence sitter having full knowledge of earlier proceeding, did not approach this Court earlier at the appropriate time to ventilate her grievances; as such this writ petition should be rejected on the ground of delay alone by following the well-settled principle of law that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution of India is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. In support of his submission he relied upon the following decisions:

i) In the case of [State of M.P. and Others Vs. Nandlal Jaiswal and Others,](#)

ii) In the case of [Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others,](#)

iii) In the case of Mahua Nag v. The Vice-Chancellor of Calcutta University and Ors., reported in 2005 I CLJ (Cal) 21.

7. By relying upon the aforesaid decisions he has prayed for rejection of this writ petition.

8. Mr. Karan, learned Advocate, appearing for the school authority, does not oppose the Petitioner's prayer for allowing her to participate in the selection process for the said post. Mr. Karan submits on instruction from his client that the writ Petitioner is an eligible candidate as she fulfils the requisite criteria for the said post. He further submits that though she applied by offering her candidature for the said post in 1997 but since her name was not sponsored by the Employment Exchange, she was not allowed to participate in the selection process at the material time.

9. Let me now consider the effect of the submission of the learned Counsel of the respective parties in the facts of the instant case.

10. I have already indicated above that the right of the Petitioner to participate in the selection process was never an issue in the earlier proceeding before this Hon"ble Court or before any other Court of law. As such, her right to participate in the selection process was never dealt with either by the Writ Court or by the Hon"ble Appeal Court or by any other Court at any stage of the selection process. This issue is raised for the first time before this Court.

11. Though, it is true that the long and inordinate delay has not been properly explained by the Petitioner in this writ petition but the fact remains that no third party interest has been created in the selection process and as such nobody will be affected if this Court invokes its jurisdiction under Article 226 of the Constitution of India to give just and equitable relief to a party who deserves such relief as per the settled law of the land.

12. If the decisions cited by Mr. Bhattacharya, learned Advocate, are considered minutely, then this Court finds that in all those decisions, the Hon"ble Supreme Court and this High Court uniformly held that this rule of laches or delay is not a rigid rule which can be cast in a strait-jacket formula, for there may be cases where despite delay and creation of third party rights, the high Court may still in the exercise of its discretion interfere and grant relief to the Petitioner.

13. This is a case where the school authority also admits that the Petitioner is an eligible candidate. If the Petitioner is an eligible candidate then this Court, by relying upon the following decisions of the Hon"ble Supreme Court as well as of this Hon"ble Court holds that the school authority was not justified by excluding the Petitioner from the selection process simply because of the fact her name was not sponsored by the Employment Exchange and/or her right of participation was not

endorsed by a High Court order:

(i) in the cases of [Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others,](#)

(ii) in the case of [Arun Kumar Nayak Vs. Union of India \(UOI\) and Others,](#) and

(iii) in the case of [Rabindra Nath Mahata Vs. State of West Bengal and Others,](#)

14. Thus, when the selection test has not yet commenced, this Court holds that justice will be sub served if an opportunity is given to the Petitioner by allowing her to participate in the selection process inasmuch as the right of the other participating candidates for being considered for the said post will neither be affected by her participation nor any third party interest has been created in the selection process which may be affected by her participation.

15. After all the purpose of selection is to find out the best candidate out of the eligible candidates. As such if the Petitioner is permitted to participate in the selection process along with the other eligible candidates, this Court is of the view that the purpose of the selection will be better achieved as the school authority can select the best candidate by judging their merit in the fresh selection test.

16. It is, however, clarified that this relief is given to the Petitioner as she applied for the said post before holding the first selection test and she also was found to be eligible for the said post by the school authority. It is, thus, made clear that the school authority need not allow any other candidate who did not offer his or her candidature for the said post before holding the first selection test, even if he/she is found to be eligible for the said post.

17. Accordingly, the writ petition stands allowed. The school authority is, thus, directed to allow the Petitioner to participate in the fresh selection process along with the other candidates who were permitted to participate in the selection process in terms of the order passed in the earlier writ petition being W.P. No. 24782(W) of 2007 which was affirmed by the order of the Hon"ble Appeal Court dated 26th February, 2009 passed in M.A.T. No. 49 of 2009.

18. The writ petition is stands allowed.

19. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

Later:

20. After delivery of this judgment, Mr. Bhattacharya, learned Advocate, appearing for the respondent no.8, prays for stay of operation of the order for enabling his client to prefer an appeal against this order before the Hon"ble Appeal Court. Considering such prayer of Mr. Bhattacharya, this Court directs that operation of order passed in this writ petition will remain stayed for a period of two weeks from

date.