

(2013) 09 CAL CK 0044

Calcutta High Court

Case No: Writ Petition No. 29568 (W) of 2013

The Managing Committee of
Duba Khoksan Bairdangi K.R.
High School

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Sept. 27, 2013

Citation: (2014) 1 CALLT 27 : (2014) 2 CHN 93 : (2014) 141 FLR 340

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Ekramul Bari and Mrs. Tanuja Basak, for the Appellant; Anami Sikdar and Mr. Mirza Kamaruddin, for the Respondent

Judgement

Debasish Kar Gupta, J.

Let affidavit of service filed by the petitioner be kept on record. This writ application is directed against an order passed by the respondent No. 3 under his Memo No. 626(3) dated June 4, 2013. By virtue of the impugned order, the respondent No. 3 rejected the proposal for approving a panel for appointment of a non teaching staff (Clerk) of Duba Khoksan Bairdangi K.R. High School, District Malda on the following grounds:

(i) The school authority published an advertisement in a daily newspaper while they had received the list of candidates from the concerned employment exchange and even they did not intimate the District Inspector of Schools (SE), Malda regarding the publication of the above advertisement.

(ii) In terms of the Clauses (a) and (b) of sub rule 7 of Rule 9 of the Recruitment Rules, 2005, the selection committee shall within 15 days from the date of interview prepare a panel and submit the same to the appointing authority. The appointing authority shall within 15 days from the date of submission of panel examine the panel and submit the same to the District Inspector of Schools. But in this case, the

panel under reference was not submitted to the respondent No. 3 within the above time limit.

2. So far as the first ground is concerned, it is the settled principles of law that wide circulation of a vacancy in newspaper and other electronics media is a condition precedent for filling up of a post relating to public employment. Reference may be made to the decision of [Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others](#), and the relevant portions of the above decision are set out below:

6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment new bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

3. In view of the above, the first ground for rejection of the proposal for approval of the panel cannot be sustained in law.

4. So far as the second ground of rejection is concerned, this issue has already been decided by a judgment dated July 12, 2013 delivered in the matter of Shyamal Sen v. The State of West Bengal & Ors. (In Re: W.P. No. 10501 (W) of 2012) and the relevant portions of the above decision are set out below:

After perusing the aforesaid provision, I find that in the event this provision is interpreted as mandatory under the provisions of the Recruitment Rules under reference, the intention of the framers of the above Rules may be frustrated at the instance of the Managing Committee by sending the panel prepared for recruitment of non teaching staff to the State authority after expiry of the period mentioned in the aforesaid Rules. On the other hand if it is interpreted as directory, the ulterior motive of the school authority may be served in an appropriate case by not

forwarding the panel to the State authority for uncertain period.

In such a situation SIR WILLIAM WADE observed in his "ADMINISTRATIVE LAW", 8th EDITION (at page 227) as follows:

Acts of Parliament conferring power on public authorities very commonly impose conditions about procedure, for example by requiring that a notice shall be served or that action shall be taken within a specified time or that the decision shall state reasons. If the authority fails to observe such a condition, is held to be mandatory or directory. Non observance of a mandatory condition is fatal to the validity of the action. But if the condition is held to be merely directory, its non observance will not matter for this purpose. In other words, it is not every omission or defect which entails the drastic penalty of invalidity. The distinction is not quite so clear cut as this suggests, since the same condition may be both mandatory and directory: mandatory as to substantial compliance, but directory as to precise compliance.....

In view of the above, I find that the correct interpretation shall be that the above provision is mandatory for his substantial compliance and directory for its strict compliance. On the basis of the above interpretation of the provision under reference, I find that the submission of the panel beyond the period of one month was permissible.

5. Therefore, the second ground for rejection of the proposal for approval of the panel assigned by the respondent No. 3 cannot be sustained in law.

6. Since no other ground was detected by the respondent No. 3 for rejecting the proposal for approval of the panel under reference which are not sustainable in law.

7. In view of the above discussions and observations made hereinabove, the impugned order cannot be sustained in law and the same is quashed and set aside.

8. I direct the respondent No. 3 to approve the above panel within two months from the date of communication of this order.

9. This writ application is, thus, disposed of. There will be, however, no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, subject to compliance with all necessary formalities.