

(2013) 05 CAL CK 0041

Calcutta High Court

Case No: W.P. No. 21317 (W) of 2011

Akshay Biswas

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 14, 2013

Citation: (2014) 2 CHN 431

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Prasenjit Mandal, J.

Affidavit-in-opposition and affidavit-in reply filed in Court today by the respective parties be kept with the record. Heard the learned advocates of both the sides.

2. This writ petition is at the instance of a candidate and is filed for issuance of a writ in the nature of Mandamus commanding the respondent authorities, particularly, the respondent Nos. 5 and 6 to issue a letter of appointment in favour of the petitioner as he stood first in the panel in the post of Guard in Krishnagar Womens' College, Post Office-Krishnagar, District-Nadia on the basis of the panel prepared on 26.02.2011 and other consequential reliefs.

3. The short fact is that the petitioner along with others went through a selection process pursuant to the advertisement for the post of Guard (Reserved for Scheduled Caste). A selection committee was formed and an interview was held and on the basis of the marks awarded by the members of the Selection Committee, the petitioner stood first according to the panel but unfortunately, no letter of appointment was issued in favour of the petitioner. So, he has come to this Court.

4. Having heard the learned advocates of both the parties and on perusal of the materials on record, I find that the petitioner has been able to show all the

necessary papers that he attended before the Selection Committee and that a panel was prepared by the Selection Committee, which disclosed that the petitioner stood first in the panel. Such fact has already been admitted by the college authority in their affidavit-in-opposition appearing at page 11. After such selection, no appointment letter was issued in favour of the petitioner and accordingly, the petitioner took several steps to get appointment letter but in vain. Being aggrieved, this writ petition has been preferred.

5. Having due regard to the submissions of the learned advocates of both the sides, I find that the college authority has filed the said panel appearing at page 11 of the affidavit-in-opposition showing that the petitioner stood first in the panel. The said panel was prepared on 26.02.2011. There is no dispute that the life of the panel was for one year. In spite of several attempts when the petitioner failed to get the letter of appointment, he has filed this writ petition within the lifetime of the panel.

6. This being the position, according to the decision in the case of The Secretary of the Managing Committee, Kalinagar Girls" High School Vs. Archana Ghosh (Saha) and Others, particularly the paragraph 35 and the unreported decision of F.M.A. No. 102 of 2003 (Susama Roy Pramanik & Ors. vs. The State of West Bengal & Ors.) of this Hon"ble Court, the petitioner is entitled to get an appointment.

7. During argument, Mr. Malay Krishna De, learned advocate for the respondent Nos. 5 and 6 has submitted that one of the members of the Selection Committee, i.e. the expert was not present but marks had been allotted in his name and as such, the panel was illegal, This submission, I hold, cannot be accepted in view of the fact that this submission is totally contrary to the record. What I find that the expert appointed in the selection committee did not sign on the said panel but I find the marks had been allotted by the expert as appearing from the annexures filed by the college authority.

8. Any way as per decisions of the case of Ishwar Chandra Vs. Satyanarain Sinha and Others, and the District Inspector of Schools, Murshidabad & Ors. vs. Samsul Iluda & Ors., Reported in 1987(2) CLJ 144 particularly the paragraph No. 7, if 50% of the members approve of the panel, the panel shall be treated as valid. So, this being the position, I am of the view that the college authority has no scope of eliminating the panel prepared on 26.02.2011 appearing at page 11 of the affidavit-in-opposition.

9. In view of the above, I am of the view that since the petitioner has come up before this Court during the life of the panel though one year has already expired from the date of publication of the panel, there is no bar to grant that reliefs as sought for in the writ petition.

10. Accordingly, the writ petition succeeds and the same is allowed.

11. The respondent Nos. 5 and 6 are directed to issue the letter of appointment in favour of the petitioner within four weeks from the date of communication of this

order on the basis of the panel prepared on 26.02.2011 and thereafter, the college authority shall send the name of the petitioner to the Director of Public Instruction, Government of West Bengal for approval within 30 days from the date of giving the appointment without fail.

12. There shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties at an early date. After passing of the order, Mr. Malay Krishan De, learned advocate for the respondent Nos. 5 and 6 prays for stay of operation of the order. In view of the discussions as record above, since the college authority has admitted the preparation of the panel showing the name of the petitioner as on the top of the list, I do not find any justified ground for stay of operation of the order. Accordingly, the prayer for stay is rejected.