

(2011) 06 CAL CK 0060

Calcutta High Court

Case No: Writ Petition No. 15 (W) of 2009

Sri Tapan Ghosh

APPELLANT

Vs

The State of West Bengal and
OthersRESPONDENT

Date of Decision: June 15, 2011**Hon'ble Judges:** Jyotirmay Bhattacharya, J**Bench:** Single Bench**Advocate:** Gouri Sankar De and Indranil De, for the Appellant; Ejar Hossain, for the Respondent**Final Decision:** Allowed

Judgement

Jyotirmay Bhattacharya, J.

Pursuant to the prior permission granted by the Additional District Inspector of School (S.E.) Serampore, a selection process was initiated by Serampore Mission Girls High School for filling up the vacancy in the post of Group "D" staff from General (E.C.) category. Such process was not only initiated prior to the introduction of the new Recruitment Rules of 2009 but such selection process also commenced prior to the introduction of the Rules of 2009. Name of twenty suitable candidates were sponsored by the Employment Exchange for the said post. Since the name of the Petitioner was not sponsored by the Employment Exchange, he approached this Hon'ble Court with a writ petition being W.P. No. 27460(W) of 2006, inter alia praying for issuance of direction upon the selection authority for allowing him to participate in the selection process for the said post. An interim order was passed by a learned Single Judge of this Court on 20th December, 2006, in the said writ petition, whereby the Respondent authorities were directed to allow the Petitioner to participate in the interview which was scheduled to be held on December 23, 2006 with a rider that in the event of inclusion of name of the Petitioner in the panel of selected candidates, the same shall not be given effect to without the leave of the Court. It was further clarified therein that in the event of inclusion of the name of

the Petitioner in the panel of selected candidates, he will not be entitled to claim any equity for that post.

2. On the strength of the said interim order the Petitioner participated in the selection process along with other twenty sponsored candidates. Ultimately the panel was prepared by the selection committee wherein the Petitioner was placed at the top in the panel. Since the said panel could not be finalized because of the interim order passed in the said writ petition as aforesaid, the Petitioner again approached this Hon"ble Court seeking issuance of direction upon the concerned authority to finalize the selection process. Another learned Single Judge of this Court ultimately disposed of the said writ petition on 1st August, 2007 by granting leave to the Additional District Inspector of School (S.E.), Hooghly, being Respondent No. 3 therein, to give effect to the panel of the selected candidates in accordance with the law.

3. Despite the said order was accepted by all the parties, the concerned authority did not implement the said order. As such the Petitioner had to file another writ petition being W.P. No. 21114(W) of 2008 for implementation of the said order passed by this Hon"ble Court in the earlier writ petition as aforesaid. The said writ petition was disposed of by another learned Single Judge of this Court on 5th September, 2008, whereby the District Inspector of School (S.E.), Hooghly, was directed to take a decision in respect of the panel in question within four weeks from the date of the communication of the said order to him. He was further directed to inform his decision to the Secretary of the managing committee of the said school within one week thereafter. The Secretary of the managing committee of the said school was also directed to publish the said decision in the Notice Board of the school so that all concerned persons can see the result.

4. Pursuant to the direction passed by this Hon"ble Court on 5th September, 2008 in W.P. No. 21114(W) of 2008, the District Inspector of School ultimately held that the said panel could not be approved as the first empanelled candidate did not belong to the General (E.C.) category which was an essential condition for the said post. The said District Inspector of School subsequently recalled his own decision suo moto and ultimately approved the said panel after cancelling his earlier order whereby he refused to approve the said panel as aforesaid.

5. In view of the said order which was passed by the said District Inspector of School subsequently on 19th February, 2008, the said panel stood approved and, thus, with the approval of the said panel, a right was accrued in favour of the Petitioner for being appointed as Group "D" staff in the said school.

6. Unfortunately, the said order could not been carried out as the Director of School Education, on a reference made by the concerned Additional District Inspector of School (S.E.), upset the order of approval of the panel which was passed by the concerned District Inspector of School on 19th February, 2009. The Director of

School Education, West Bengal held that once an order was passed by the District Inspector of School in compliance of the order of the Hon"ble High Court, the said order became final and as such the District Inspector of School had no authority to review his own order without any further direction from this Hon"ble High Court in this regard.

7. Thus, in view of the aforesaid decision of the Director of School Education, the original order which was passed by the District Inspector of School on 23rd October, 2008 by disapproving the said panel, stood revived. Thus the right which was accrued in favour of the Petitioner to be appointed in the said Group "D" post was upset by the order of the Director of School Education, West Bengal. The said order of Director of School Education has been brought on record by the Petitioner herein by way of a supplementary affidavit. Though in the supplementary affidavit he has challenged the legality of the said order but no substantive prayer was made for quashing and/or setting aside the said order of the Director of School Education.

8. Mr. Dey, learned Advocate, appearing for the Petitioner, submitted before this Court that when the said fact has been brought to the notice of this Court, this Court is not powerless to give relief to the Petitioner by moulding the relief's claimed by him in the writ petition in such changed and altered scenario.

9. Mr. Dey further submitted that it is settled law that though a general candidate cannot be permitted to compete for any reserved post but an O.B.C. candidate cannot be denied permission to compete for a post earmarked for General candidate, if he can satisfy the other eligible criteria for the said post. Mr. Dey further pointed out that though his client was an exempted category candidate and he produced a certificate issued by the Chairman of Town Census Officer, Serampore Municipality, whereby it was certified that the Petitioner worked as Circle Supervisor in the Enumeration Block No. C-15, Circle No. C-21 of Census Charge of XXVI, Serampore in 1991 Census for 40 days, but still then the concerned authority refused to consider him as an exempted category candidate as his engagement in the said Census was not enlisted by the Employment Exchange in his Employment Exchange Card. Mr. Dey has drawn my attention to his Employment Exchange Card which is disclosed by his client in his supplementary affidavit being Annexure "P-14" thereto at page 22 thereof wherein the concerned Employment Exchange Officer, E.C. Cell enlisted the Petitioner as O.B.C. Ex-Census-91 candidate. Accordingly Mr. Dey invited this Court to pass necessary direction upon the concerned authority so that the Petitioner who occupied first position in the panel can get appointment and his appointment is regularized in the post in question.

10. Learned Advocate, appearing for the State Respondent opposed the Petitioner's prayer in this writ petition by submitting that the Petitioner cannot be regarded as Ex-Census employee as he was not engaged for a total of at least 240 days" work during the period between 1979 and 1st June, 2000. He supported his submission by referring to Clause 5 of the notification issued by the Government of West Bengal

Labour Department on 21st August, 2002 which provides that election job workers and Enumerators as were engaged in the job during the revision/preparation of electoral rolls by the Home (C & E) Department between 1979 and 1st June, 2000 and who had put in a total of at least 240 days" work during the said period can be regarded as census employee. Thus, by referring to this said notification he submitted that since the Petitioner worked 40 days only, he cannot be regarded as Ex-Census employee.

11. In reply to such submission of the learned Advocate, appearing for the State Respondent, Mr. Dey, learned Advocate, appearing for the Petitioner pointed out Clause 4(b) of the said notification which provides that Ex-Census Enumerators/Supervisor of 1981 Census Operation and 1991 Census Operation holding authentic experience certificate issued by the Director of Census Operation, West Bengal or any other competent authority duly authorized by the said Directorate can be regarded as Ex-Census candidate. Mr. Dey thus pointed out that since the Petitioner was engaged as Enumerator/Circle Supervisor, he was not required to satisfy the condition laid in Clause 5 of the said notification as the restriction regarding engagement for at least 240 days which is imposed in Clause 5 of the said notification is applicable only to the election job workers/Enumerators and not to the Enumerators/Supervisor. Accordingly, Mr. Dey refuted such submission of the learned Advocate, appearing for the State Respondent and submitted that there was no justifiable reason for discarding the Petitioner's candidature by holding that he was not an Ex-Census candidate.

12. Having heard the learned Advocates for the parties and after considering the materials on record, this Court finds much substance in the submission of Mr. Dey, learned Advocate. It is well-settled that though a General candidate cannot be permitted to participate in the selection process for any post which is reserved for either Schedule Caste or Schedule Tribe or O.B.C candidates but a Schedule Caste and/or Schedule Tribe and/or O.B.C. candidate can be allowed to participate in the selection process for any post which is earmarked for General candidate provided such Schedule Caste and/or Schedule Tribe and/or O.B.C. candidate can satisfy the other eligible criteria for the said post. Since the Petitioner was an O.B.C. candidate, he ought not to have been excluded from the zone of consideration though the said post was earmarked for the General candidate.

13. This Court also finds that the not only the concerned authority has certified the Petitioner as Ex-Census candidate as he was engaged as Enumerator/Circle Supervisor in Enumeration Block No. C-15 Circle C-21 of Census Charge of XXVI, Serampore for 1991 Census for 40 days but also he was recognized by the Employment Exchange (E.C.) Cell as an Ex-Census candidate as his name was enlisted as O.B.C. and Ex Census candidate-1991 in his Employment Exchange Card which is annexed to the supplementary affidavit filed by the Petitioner herein. This Court is of the view that since the Petitioner was engaged as Ex-Census

Enumerator/Supervisor in 1991 Census Operation for 40 days, he can be regarded as Ex-Census candidate and as such he cannot be excluded from the zone of consideration as Ex-Census candidate.

14. This Court, thus, holds that the panel which was prepared by the selection authority cannot be disapproved simply because of the fact that the Petitioner was an O.B.C. candidate. Under such circumstances this Court holds that the order which was passed by the Director of School Education on 10-12-2010 being Annexure "R-1" appearing at page 9 of the affidavit in opposition to the supplementary affidavit filed on behalf of the State Respondent cannot be retained on record. As such the said decision of the Director of School Education, West Bengal, stands quashed and consequently the order which was passed by the concerned District Inspector of School by approving the said panel on 19th February, 2009 being Annexure "H" to this writ petition at page 33 thereof stands revived.

15. The school authority is thus, directed to regularise the appointment of the Petitioner in the post of Group "D" in the said school with effect from the date of his joining in the said post and forward the necessary papers to the concerned authority for approval of his appointment. The concerned Additional District Inspector of School (S.E.), Serampore Sub-Division is also directed to consider the school's proposal to approve the appointment of the Petitioner and take the ultimate decision thereon positively within a period of four weeks from the date of submission of necessary papers in this regard by the school authority to him. The concerned authority should intimate his decision to the Petitioner and the school authority within two weeks thereafter.

16. The writ petition is, thus, allowed.

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