
(2002) 05 CAL CK 0051

Calcutta High Court

Case No: Writ Petition No. 18093 (W) of 1998

Tapan Kumar Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 15, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 1 ILR (Cal) 55

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: P. Mondal, for the Appellant; Fazle Rabi and Sk. Mustak Ali for Respondent No. 9; Suprakash Banerjee and H.A. Begum for State, for the Respondent

Final Decision: Dismissed

Judgement

Pratap Kumar Ray, J.

Heard the learned Advocates for the parties.

2. In this writ application the Petitioner has challenged the decision dated August 11, 1998 passed by the Director of School Education, West Bengal whereby and whereunder the Petitioner's prayer for awarding two marks more with reference to the certificate of extracurricular activities was rejected upon holding, inter alia, that the Petitioner never submitted any certificate relating to the extra-curricular activities before the Selection Committee. The said decision was reached by the Director of School Education, West Bengal in pursuance of the direction passed by R. Bhattacharyya J. (as His Lordship then was) in the writ application being W.P. No. 17619 (W) of 1997. The said writ application was disposed of by directing that the Director of School Education, West Bengal would consider the matter in the light of the direction of the Division Bench as passed in F.M.A.T. No. 228 of 1996 filed by the private Respondent No. 9 challenging the order dated January 9, 1996 passed by G.R. Bhatta-charjee J. (as His Lordship then was) in Company No. 13010 (W) of 1991.

Hence the impugned decision in this writ application to be considered in the angle of the judgment as passed by the Division Bench in the aforesaid appeal. In the writ application the judgment of the Division Bench has been annexed wherein at page 5 of the said judgment (corresponding to 121 of the writ application) the direction of the Division Bench was reflected which reads thus:

Accordingly, it is to be considered as to whether "the Respondent No. 1 in view of his extra-curricular activities and in the facts and circumstances of the case was to be at serial No. I of the panel. To our considered mind, the Director of School Education should scrutinize and examine the matter in details and see whether the certificates had been actually produced by the Respondent. He will come to an independent decision by his own in this regard and if he finds that the Respondent No. 1 produced the certificates before the Interview Board he will change the panel. If he so chooses he may examine the parties as well as the outside expert who was in the interview board. After such investigation he may also scrap the panel if he thinks fit and" take interview afresh and pass necessary orders in accordance with rules.

3. Hence, it is clear that the Division Bench of this Court directed the Director of School Education, West Bengal to reach in an independent decision as to whether the Respondent No. 1 therein that is the present Petitioner herein produced the certificates before the Interview Board and further it was directed that in the event of a positive answer and/or findings that those documents were produced, then marks to be allotted with reference to such and accordingly the panel also would be changed.

4. In the impugned decision the Director of School Education after hearing all the parties held as follows:

It appears that the bone of contention is whether the Petitioner showed all the certificates on co-curricular activities so that he gets to his credit of five marks during interview. The members of the Selection Committee submitted that the Petitioner did not actually shown any such certificate at the time of interview and accordingly he was not awarded marks for such certificate. In the circumstances the Petitioner's claim that he had shown all the certificates cannot be taken as true and the Petitioner cannot be provided any further relief.

5. Considering the reasoning as made by the Director of School Education, it appears that on the basis of the submissions as made by the different parties including three members of the Selection Committee, one expert, another one is Secretary and 6th one the Headmaster of the school. The Director of School Education came to a subjective satisfaction on the available material on records that no documents with reference to the extracurricular activities were placed by the Petitioner before the Interview Board. Such factual determination of the matter by the Director of School Education, West Bengal surely cannot be the subject matter

within the domain of judicial review under Article 226 of the Constitution of India. this Court cannot travel into the facts and thereby reappraise all the statements as filed by the different parties by controverting this Court as an Appeal Court over the decision of the Director of School Education, West Bengal. This point has already been settled by several judgments of the Apex Court. Hence considering the matter, this Court is not finding any illegality and/or irregularity in the decision making process of the decision impugned herein. Besides, from the documents as annexed in the writ application by the Petitioner contending, inter alia, that he was eligible to get marks for extra-curricular activities with reference to the certificates, this Court has considered those on the reflection of the recruitment procedures issued by the Director of School Education, West Bengal on December 4, 1989. None of the certificates as annexed in the writ application got the eligibility to fetch marks on extra-curricular activities in terms of CI. 6(vii) of the said recruitment procedures, which provides that the certificates must be relating to the competition and/or performance of the State level/National level/University level and those certificates must be issued either by Government/Semi Government/Government Sponsored Organization/University. None of the certificates have passed the tests of eligibility as laid down under the said rule.

6. In that view of the matter also the Petitioner was not eligible to be awarded with the two marks for his two certificates as allegedly produced before the Interview Committee, which has been strongly rejected by the Director of School Education on factual basis. Very surprisingly it appears that in the writ application the Petitioner has submitted as many as six certificates whereas it is the case of the Petitioner that he was entitled to get two marks for extra-curricular activities, which means that the Petitioner produced only two such certificates claiming marks on extra-curricular activities. Having regard to the legal position and the settled judgment of the Apex Court on issue of limitation of exercise of power of judicial review, this Court is not finding any illegality and/or irregularity in the decision making process of the impugned order.

7. Hence, this writ application stands dismissed.

8. There will be no order as to costs.

9. Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties expeditiously.