

(2002) 07 CAL CK 0060

Calcutta High Court

Case No: Company No. 7004 (W) of 1996

Sikha Sarkar (Smt.)

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: July 8, 2002

Citation: (2003) 1 ILR (Cal) 61

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: Milon Bhattacharya and Balaram Dutta, for the Appellant; Ajoy Roy, for State; M.K. Basu and U.S. Menon for Respondent Nos. 5 and 6; Arabinda Sen, for the Respondent

Final Decision: Dismissed

Judgement

Pratap Kumar Ray, J.

Heard the learned Advocates for the parties. As per earlier direction the School Authority has produced the records. The Petitioner has paid the costs.

2. It is the grievance of the Petitioner that the relationship of the Respondent No. 1 and the Headmaster who was a member of the Selection Committee was more proximate than the relationship with the Petitioner and the Headmaster and for that reason the Headmaster was not eligible to be a member of the Selection Committee. It has been further urged that the Selection Committee members allotted marks for academic qualification on graduation level without following the procedures as laid down for allotment of such marks, in the concerned recruitment rules which in the instant case the recruitment rule as issued by the Director of School Education, West Bengal under memo No. 2066-G.A. dated October 27, 1995, hereinafter referred to as the Recruitment Rules of 1995. It is contended that the Petitioner being qualified with M.A. in Political Science after passing regular honours course in Political Science in graduation level, was required to be allotted with higher marks for her academic qualification of regular honours course qua the marks for academic qualification of Respondent No. 7 for his special honours

qualification in graduation level. It is alleged that the Selection Committee very illegally allotted higher marks to Respondent No. 7. It has been further asserted by the Petitioner that the members of the Selection Committee allotted marks in the oral interview but there is a great difference in between allotment in the marks in the interview with reference to the individual marks allotted by Panchayat nominee qua the marks allotted by the Headmaster and other teachers representative. On that grievance the writ application has been moved assailing the selection of Respondent No. 7 as the first empanelled candidate. This application has been resisted by Respondent No. 7 and the School Authorities by filing respective affidavits in opposition. The School Authorities have produced the records of this case. So far as the grievance about eligibility of the Headmaster of the school in question to remain as one of the members of the Selection Committee in view of the relationship with Respondent No. 7 as alleged is not based on any foundation in the pleadings. It has been admitted by the Petitioner in the writ application that the Petitioner and the Respondent No. 7 both are related to the Headmaster. The nature of relationship of the Petitioner and the Headmaster qua the Respondent No. 7 have not been mentioned in details. The Headmaster by name has also not been made a party by the Petitioner. In absence of any pleadings so far as the nature of relationship and in absence of making the Headmaster a party by name in this proceeding and without the materials this Court can not make any enquiry on the issue in question as urged. It is settled law that when any mala fide action is alleged, the person against whom such mala fide action is alleged, must be made as a party. Reliance may be placed to the judgment in the case of [Rajendra Roy Vs. Union of India \(UOI\) and Another](#), It has been settled by the Apex Court that against whom any mala fide is alleged he must be impleaded as a party. Reliance may be placed to the judgment passed in the case J.N. Banwalika v. M.C. Pal 1995 Supp. (4) S.C.C. 89 and the case [I.K. Mishra Vs. Union of India and Others](#), . In the writ application though the Petitioner has alleged that the members of the Selection Committee, particularly, three members, namely, the Headmaster, Secretary and the Teacher's representative allotted higher marks in the interview to the Respondent No. 7 in comparison to the marks allotted by the Panchayat nominee and the expert on mala fide way to show the Respondent No. 7 as the first candidate in the panel but these members have not been made parties in the writ application by names. In absence of these parties by name, this Court can not deal with the matter in view of the settled judgment of the Apex Court. Furthermore, in the writ application there is no such pleading giving the details of such mala fide action. So far as the oral interview is concerned and the marks as allotted to the candidates, more particularly, to the Petitioner qua the Respondent No. 7, this Court also cannot make any enquiry about the illegality and validity of such marking since it was within the domain of the Selection Committee to decide the merit of a candidate. The marks in the interview are always based on substantive satisfaction of the members concerned who are holding interview and this Court is incapable to interfere with such decision. It is settled by the judgment of the Apex Court that the, marks allotted in the interview

by the Selection Committee cannot be the subject matter of interference until and unless there is a positive case of mala fide with appropriate pleadings on its proper foundation and upon making the person concerned against whom mala fide is alleged as a party in the proceeding. Having regard to such legal position the contention of the Petitioner fails.

3. So far as the contention raised by the Petitioner about the allotment of marks for her honours course in graduation level qua the special honours course as completed by the Respondent No. 7 in the graduation level, this has absolutely no merit. On perusal of records as placed by the School Authorities it appears that in terms of CI. 6 of the Recruitment Rules, 1995 the marks for academic qualification was allotted. Under CI. 6 of the Recruitment Rules, it provides that with reference to the allotment of marks to a candidate having regular honours degree the percentage of marks as obtained by that candidate in honours course to be multiplied with 20 and thereafter the figure to be considered as marks on academic qualification of regular honours degree. Similarly, with reference to a candidate who is qualified with special honours, the percentage of marks as obtained by the candidate in such special honours course is required to be multiplied by 15 and thereafter the marks as would be worked out would be the marks for such special honours course. In the instant case from the records it appears that the Petitioner for her regular honours course was allotted 8.17 marks. The Petitioner got total 327 marks in regular honours course out of 800 total marks and by this process the percentage of her marks in regular honours course became 48.87 %. On multiplication of the same by 20 the figure would be 817.40 and the School Authority reduced the same by dividing 100 and thereby made the figure 8.17 whereas in respect of Respondent no. 7 it appears that he got 177 marks in the special honours course and on percentage with reference to the total marks it came to the figure 44.25 %. This marks was multiplied by 15 and thereby the resultant figure was 663.75 and by dividing 100 to make it an workable figure for the purpose of calculation it became 6.64. Hence it appears that there was no mistake committed in allotment of the marks by the Selection Committee while considering the respective qualifications and allotment of marks to that effect. In view of such state of affairs it is clear that the Petitioner had no case to agitate this matter before this Court and this application is nothing but an abuse of the process of law.

4. In view of such state of affairs, this writ application stands dismissed with a costs of 100 Gms. which is to be paid by the Petitioner to the respective contesting parties, that is, to Respondent No. 7 and the School Authority on equal amount within a fortnight from this date.