

## Joy Mukhopadhyay Vs State of West Bengal and Others

**Court:** Calcutta High Court

**Date of Decision:** Sept. 10, 2007

**Citation:** (2007) 115 FLR 1160

**Hon'ble Judges:** Jayanta Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** Pijush K. Chaturvedi, for the Appellant;

**Final Decision:** Dismissed

### Judgement

Jayanta Kumar Biswas, J.

The petitioner in this writ petition dated March 6th, 2002 is seeking a mandamus directing the fourth respondent

(the Secretary, West Bengal Regional School Service Commission, Western Region) to recommend him to any secondary school in the state for

appointment as an assistant teacher of bio-science (zoology).

2. He took the Regional Level Selection Test, 1998 conducted by the West Bengal Regional School Service Commission, Western Region for

selecting candidates for appointment as assistant teachers in the secondary schools of the state. The commission conducted the test as the

competent authority under the West Bengal School Service Commission Act, 1997. For bio-science a list of one hundred and forty-seven men-

candidates was drawn up. The notified vacancies were seventy-eight (fifty-four for men and twenty-four for women) Fifty-six men-candidates

were recommended for appointment. The list was to remain alive for one year from the date it was drawn up. However, in exercise of power

conferred by the relevant regulations the competent authority extended the life of the list till September 14th, 2001. Till that date in all eighty

candidates were recommended for appointment. For want of available vacancies none of the other listed candidates could be recommended.

3. As stated by the petitioner in para. 17, on August 4th, 2001 the commission published a fresh employment notice declaring vacancies including

vacancies for bio-science for the Regional Level Selection Test, 2001. In the circumstances, on August 6th, 2001 he submitted a representation to

the commission asking it to recommend him for appointment against the available vacancy for bio-science. His case is that he continued to make

representations, but the commission did not give any attention, and hence he was compelled to take out the writ petition. The writ petition was

admitted on April 5th, 2002 when no interim order was made. The admitted position is that the life of the list having expired, at the date the writ

petition was moved, the selection process was not alive. The case of the petitioner is that as will appear from the advertisement dated August 4th,

"2001 vacancy for bio-science was available during currency of the list; and hence, in view the provisions in Regulation 8(2), the commission was

under an obligation to consider the question of recommending him.

4. The relevant regulation of the West Bengal School Service Commission (Procedure for Selection of Persons for Appointment to the Posts of

Teachers including Head Masters/Head Mistresses/Superintendents of Senior Madrasah in recognized non-Government Aided Schools and

Procedure for Conduct of Business of the Commission) Regulations, 1998, Regulation 8(2), provides as follows:

(2) Each panel prepared shall remain valid for one year from the date of approval of the panel by the Regional Commission for the posts which

have already been reported and which will within the period of validity of such panel arise and shall be reported. If the Central Commission thinks

it expedient to extend the validity of the panel beyond its normal period for any reasonable cause, the validity of any such panel shall be extended

for a further period of one year for the posts which exists or will arise and shall be reported within such extended period of one year but such

panel, in any event, shall not remain valid for more than two years.

5. By referring me to two Single Bench decisions of this Court in *Md. Hyder Ali v. The State of West Bengal and Ors.* 2004 (1) CLJ (Cal.) 148,

and *Muktipada Bag and Ors. v. State of West Bengal and Ors.* (2005) 2 CLT 178 (HC) : 2005 (3) CLR 78 (Cal.), and to the provisions in

Regulation 8(2) of the Regulations, Counsel for the petitioner has submitted that when admittedly during currency of the list concerned vacancy for

bio-science was available, by not considering the petitioner's case for recommendation the commission failed and neglected to discharge its

statutory duty cast on it by the provisions in Regulation 8(2); and hence a mandamus should be issued directing it to recommend the petitioner now

for appointment against any vacancy for bio-science available at the present moment in any secondary school in the State.

6. In my view, there is no scope to grant any relief to the petitioner. No interim order was made in the case restraining the commission from filling

the vacancy for bio-science, if any, arising during currency of the list, or giving it liberty to recommend candidates for bio-science selected in

Regional Level Selection Test, 2001 subject to the result of this writ petition. As a result, today no vacancy that had arisen before September 14th,

2001, at which date the statutory life of the list expired, is available; and hence today no order can be made directing the commission to set the

wrong, if any, right by recommending the petitioner for that vacancy. What the petitioner wants is a mandamus directing the commission to

recommend him for a vacancy that is either available now or may be available in future.

7. If at all, in the case an order could be made directing the commission to consider the question of recommending the petitioner for any vacancy

that occurred during currency of the list, provided his name was on the list and his was the next turn for consideration. It seems to me that there is

some force in the submission that in view of the provisions in Regulation 8(2), the listed candidates, were to be considered for recommendation not

only against the notified vacancies, but also against the vacancies reported to the commission by the institutes during the life of the list. Here the list

was alive till September 14th, 2001, and it is apparent on the face of the employment notice dated August 4th, 2001 that vacancy for bio-science

had been reported by the institutes to the commission before that date. But then, for ascertaining whether the petitioner was entitled to be

considered it was to be seen whether he was the next person entitled to be considered, and whether his name was at all put on the list - this fact

has not been admitted by the commission; and even if his contention is sustained, no order can be made granting him relief, because it is not his

case that any vacancy arising before September 14th, 2001 is still available,

8. On these facts, I am unable to see how the two authorities given to me are of any assistance. In Hyder Ali order was made directing the

commission to recommend the candidate concerned for vacancy that was available during currency of the list. In Muktipada relief was granted

relying on the proposition that wherever there is injustice mandamus should reach. The question is whether mandamus can be issued even when it is

apparent that; if the injustice concerned is to be remedied, then the order of the Court will be an illegal one. If an order as prayed for by the

petitioner is made in this case, I have no hesitation in saying that it will be an illegal order. The petitioner can be recommended for any present or

future vacancy only if he takes the test concerned as an eligible candidate and is selected. For any present or future vacancy it is quite possible that

he may, not be eligible, though he was eligible for taking the 1998 Test. Hence, an order cannot be made directing the commission to consider his

case for a vacancy arising after September 14th, 2001. The decision in Muktipada cannot therefore improve the situation.

9. For these reasons I dismiss the writ petition. There shall be no order for costs in it. Since the opposition affirmed by the commission has not

been filed, though copy thereof was served on the petitioner, I order that a copy prepared from the copy submitted by Counsel for the petitioner

shall be kept with the records.

Urgent certified xerox copy of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the

section concerned.