

(2014) 11 CAL CK 0062

Calcutta High Court

Case No: W.P. 2210 (W) of 2013

Biswajit Maity

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Nov. 21, 2014**Hon'ble Judges:** Sahidullah Munshi, J**Bench:** Single Bench**Advocate:** Debabrata Saha Roy and Lakshminath Bhattacharyya, Advocate for the Appellant; Ekramul Bari and Syed Mansur Ali, Advocate for the Respondent

Judgement

Sahidullah Munshi, J.

In this writ petition the writ petitioner has agitated that, although, he was selected for the post of Assistant Teacher (Primary) but his appointment has been kept withheld by the respondent Council. The short case of the writ petitioner is as follows:

2. The writ petitioner, after coming to learn that respondent Council (South 24-Parganas District Primary School Council) requisitioned candidates of the post of Primary Teachers in the district of South 24-Parganas in the year 2006 and the petitioner contacted the office of the District Employment Exchange, Diamond Harbour to sponsor his name to participate in the examination for the post of Primary Teacher in the district of South 24-Parganas. The name of the petitioner was sponsored by the district Employment Exchange Officer, Diamond Harbour. On the basis of such sponsorship, the District Primary School Council, South 24-Parganas, issued a Bio-Data form to the petitioner under Council No. 17422 and it is mentioned in the said Bio-Data form that the name of the petitioner was sponsored by the employment exchange as a "Non-Trained" candidate for the post of Assistant Teacher in the primary school under the District Primary School Council, South 24-Parganas. The petitioner submitted duly filled up Bio-Data form along with other documents as per direction mentioned in the Bio-Data form. The petitioner was called for a written test which was held on 20th December, 2009 and he duly

participated in the said test. It was found that the writ petitioner's name was featured as a successful empanelled candidate. He was one of those who were to be issued with appointment letters by the Council. After publication of the result of the result of the said examination held on 20th December, 2009, the petitioner obtained information from the website that even though he was selected for the post of Assistant Teacher (Primary), his appointment was kept withheld on the ground that his name was sponsored by the District Employment Exchange beyond the cut-off year and as such, it was alleged that his sponsorship was wrong.

3. The petitioner submits that a similarly situated candidate whose name was also sponsored by the employment exchange concerned beyond the cut-off year, filed the writ petition before this Hon"ble Court being W.P. 5425 (W) of 2010 (Dilip Pradhan - Vs.- the State of West Bengal & Ors.). in the said writ petition His Lordship, the Hon"ble Justice Biswanath Somadder held that -

"Undoubtedly, the writ petitioner participated in the recruitment process as a sponsored candidate. His sponsorship shall be deemed to be valid and the letter dated 22nd December, 2005, issued by the Deputy Director of Employment, South 24-Parganas, shall have no manner of application in the facts of the instant case. In the event he has come within the zone of consideration in the category he applied for, the Chairman, District Primary School Council, South 24-Parganas, shall forward his name to the office of the Director of School Education, West Bengal, within a period of six weeks from date. Immediately on receipt of the name of the writ petitioner, the Director of School Education, West Bengal, shall take appropriate steps in the matter and grant approval in favour of the writ petitioner, in the event he conforms to and fulfils all statutory requirements necessary for the purpose of securing his appointment. It is expected that the Director of School Education, West Bengal, shall complete the process as expeditiously as possible, preferably within a period of four weeks, but not later than six weeks from the date of receipt of the communication from the office of the Chairman, District Primary School Council, South 24-Parganas.

In the event the Director of School Education, West Bengal, grants approval in favour of the writ petitioner, the Chairman of the concerned Council shall issue appointment letter in favour of the writ petitioner within a week therefrom.

The writ petition stands disposed of accordingly."

4. It has been submitted that the said order dated 24th March, 2011, passed in W.P. 5425 (W) of 2010 was challenged by the respondent Council in M.A.T. No. 710 of 2011 (D.P.S.C. South 24-Parganas & Anr. v. Dilip Pradhan & Ors.). The Hon"ble Division Bench, after a contested hearing held -

"We have perused the impugned order and we do not find that there are any errors which need to be corrected in appeal. The learned Single Judge has considered all the aspects of the matter and it was only because the respondents raised a specter

of a cutoff date for sponsorship that the learned Single Judge was required to consider whether there was in fact a cut-off date. The observations of the learned Single Judge about the so-called mistake are correct. We see no reason, therefore, to set aside the impugned order.

It was argued by the learned counsel for the appellants that it would be difficult to accommodate the respondent No. 1 considering the fact that there are no vacancies. This submission is again untenable, as this court had directed the respondents in the writ petition, i.e., the appellants herein, to keep one post vacant till the petition was decided. When the appeal was filed, the Division Bench while admitting the appeal, had directed that the vacancies covered by the appeal should not be filled in without leave being obtained from this court. There is no application which has been pointed out to us indicating that such leave was sought or that this court had granted permission to the appellants to fill in the vacancies.

In these circumstances, the appeal is dismissed."

5. The learned advocate for the petitioner submits that in view of the aforesaid orders passed by this Hon'ble Court the writ petitioner should be given the appointment letter as he has already been empanelled following a valid recruitment process. Learned advocate for the petitioner has also submitted on the basis of Annexure P-6 which is an appointment letter issued on 6th December, 2012 in favour of another candidate that the appointments are being made from the selfsame panel in which the petitioner was figured as a successful candidate. Learned advocate for the petitioner has referred to a judgment reported in 1998 CWN 105 in the case of Deb Narayan Chatterjee & Ors. v. The Union of India & Ors. In the said case an Hon'ble Single Judge of this Court in a given facts and circumstances held that if any particular select list expired by efflux of time and if the same has been continued by the authority itself then they cannot make a pick and choose and say conveniently that the list has already expired where they themselves have treated the list as continued even after expiry of the initial life period.

6. Learned advocate appearing for the State submits that the panel in which the petitioner was empanelled, has expired on 31st August, 2012. Therefore, no appointment can be made from the said expired panel and the writ application is liable to be dismissed. He has placed reliance upon an order passed by the Hon'ble Justice Biswanath Somadder on 31st July, 2013 in W.P. 20293(W) of 2013 (Bibekananda Sahoo v. The State of West Bengal & Ors.) and draws the attention of the Court that in similar situation, having regard to the fact that the panel has already expired, the application of the writ petitioner was dismissed. But in the said order His Lordship has held that it was evident from the report filed by the concerned Officer in the Court that the petitioner became unsuccessful in the selection process and in that view of the matter the writ petition was dismissed. The said order has no manner of application in the present writ petition.

7. I have perused the writ petition with Annexures made therein and the materials disclosed. It is true that very recently an appointment letter has been issued in view of the aforesaid writ petition and the appeal being M.A.T. No. 710 of 2011. In the appointment letter it has been mentioned that such appointment will, however, be subject to the result of the appeal. If such appointment letter is taken into consideration it appears that it is not correct that no appointment could be given because of the expiry of the panel as has been submitted by the learned advocate appearing for the State. If some persons are appointed even after expiry of the panel, the petitioner's case may also be considered and should not be kept withheld. Accordingly, I hold that the petitioner has come within the zone of consideration in the category he applied for and I direct the Chairman, District Primary School Council, South 24-Parganas to forward the name of the petitioner to the office of the Director of School Education, West Bengal within a period of six weeks from date and immediately on receipt of the name of the writ petitioner, the Director of School Education, West Bengal shall take proper steps and grant approval in favour of the writ petitioner. In the event he conforms to and fulfils all statutory requirements necessary for the purpose of securing his appointment. It is expected that the Director of School Education, West Bengal shall complete the process, as expeditiously as possible, preferably within a period of six weeks from the date of receipt of communication from the office of the Chairman, District Primary School Council, South 24-Parganas. In the event the Director, School Education, West Bengal, grants approval in favour of the writ petitioner the Chairman of the concerned Council shall issue appointment letter in favour of the writ petitioner within a fortnight therefrom. While communicating this order to the concerned authorities the writ petitioner is also directed to send copies of the orders passed by the Hon"ble Single Judge in W.P. 5425(W) of 2010 (Dilip Pradhan v. The State of West Bengal & Ors.) as also the judgment and order passed by the Division Bench of this Hon"ble Court in M.A.T. No. 710 of 2011 (D.P.S.C. South 24-Parganas & Anr. v. Dilip Pradhan & Ors.).

8. This writ petition is disposed of.

9. Urgent Photostat certified copy of this judgment, if applied for, be delivered to the learned counsel for the parties, upon compliance of all usual formalities.