

Tirtha Mukherjee Vs The Director of Sarba Siksha Avijan

Court: Calcutta High Court

Date of Decision: July 1, 2014

Acts Referred: Constitution of India, 1950 Article 226

Citation: (2014) 3 CALLT 133 : (2015) 5 CHN 574

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: David Mantosh and S.R. Das, Advocate for the Appellant; Sadananda Ganguly, Ld. Additional Government Pleader and Tapati Samanta, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Debasish Kar Gupta, J.

This writ application is directed against an order passed by the respondent No. 2 rejecting the prayer of the

petitioner to continue with the engagement in the post of Para teacher of Manikpara High School, District Paschim Midnapore in history.

2. This matter has a chequered history which is discussed hereunder in a nutshell:

The petitioner participated in a selection process for engagement in the post mentioned hereinabove in response to an advertisement dated

September 15, 2006. A panel of selected candidates for the above engagement was prepared. The same was forwarded to the respondent No. 2

for his approval. The name of the respondent No. 6 appeared on top of the above panel. After considering the above panel, the respondent No. 3

sent a communication to the respondent No. 2 under memo No. 490/SSM dated March 19, 2007 for recasting of the above panel on the ground

that the respondent No. 6 had crossed the upper age limit for engagement in the above post.

3. The respondent No. 6 filed an application under Article 226 of the Constitution of India in the matter of Mrinal Kanti Bose vs. State of West

Bengal & ors. (in Re. W.P. No. 8052 (W) of 2008). The above writ application was disposed of by an order dated May 5, 2008 directing the

respondent No. 2 to consider the candidature of the respondent No. 6 within a period mentioned therein if the respondent No. 6 had applied or

his name was sponsored before May 1, 2006 provided he was within the upper limit of 45 years of age on May 1, 2006.

4. The respondent No. 6 preferred an appeal against the aforesaid final order bearing M.A.T. No. 579 of 2008 (which is renumbered as FMA

No. 130 of 2010). An interim order was passed in connection with the above appeal restraining the authorities from taking any step for filling up

the post under reference. The above appeal was dismissed for default on March 8, 2011.

5. According to the petitioner, the panel under reference was recast by the authority of the above school without prejudice to the rights and

contentions of the parties in M.A.T. No. 579 of 2008 (renumbered as FMA No. 130 of 2010) as follows: (1) Tirtha Mukherjee

(2) Nilendu Mahata

(3) Prasad Kumar Mahata.

6. After recasting the above panel was forwarded to the respondent No. 2 by the authority of the school under its memo No. 86/Para/08-09

dated April 2, 2009 (P-2 at page 43 of this writ application).

7. After dismissal of the appeal bearing F.M.A. No. 130 of 2010, the petitioner approached the respondent authority through his learned

Advocate for approval of his engagement in the above post. The respondent No. 2 informed the learned Advocate for the petitioner by a

communication issued in memo No. 3960/SSM dated July 13, 2011 that the recast panel had not been prepared in prescribed format. The

respondent school was further directed to submit the panel for the post under reference to the respondent No. 2 after removing the defects with

regard to the above panel. According to the respondent No. 2, no panel was submitted by the respondent school authority in compliance of the

above direction. It was further observed that in view of the above fact there was no scope of approval of any panel or to approve the appointment

of any one in the post under reference.

8. It is submitted on behalf of the petitioner that the recast panel was submitted to the respondent No. 2 by the authority of the school under memo

No. 85/Para/08-09 dated January 28, 2009. According to him, the engagement of the petitioner in the post under reference would be automatic

after dismissal of the appeal preferred by the respondent No. 6.

9. It is submitted on behalf of the State respondents that no recast panel was submitted to the respondent No. 2 in compliance of the direction

contained in his communication issued under memo no. 297/SSM dated March 23, 2009. Therefore, there was no scope of approval of any panel

by the above respondent. It is also submitted by him that during the intervening period Government order No. 376-SE (Pry) dated June 9, 2010

was issued deciding not to engage any additional Para teacher or any other candidate of employees in the non-Government headed educational

institutions in the State. It is also submitted by him that there was no scope of automatic engagement of the petitioner in the post under reference in

accordance with law.

10. Reliance is placed by the learned State Advocate on the decision of Vijoy Kumar Pandey Vs. Arvind Kumar Rai and Others, as also on an

unreported judgment dated January 30, 2013 delivered by a Division Bench of this Court in M.A.T. No. 1249 of 2012.

11. Having heard the learned Counsel for the respective parties as also after considering facts and circumstances of this case, I find it is not in

dispute that the respondent No. 2 directed the respondent school to recast the panel under reference for the second time by a communication

issued under memo no. 297/SSM dated March 23, 2009. No material is brought on record to show that any panel was forwarded to the

respondent No. 2 in compliance of the above direction.

12. It is the settled principles of law that even the candidate who is selected and whose name finds place in the select list, it does not create any

vested right in favour of that candidate to claim appointment on the basis of select list. Reference may be made to the decision of Vijoy Kumar

Pandey (supra) and the relevant portions of the above decision is quoted below:

In the absence of publication of select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the

selection process was complete and assuming that only select list remained to be published, that does not advance the case of the respondents for

the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim

appointment based on the select list...

13. In view of the above I am not inclined to accept the submissions made on behalf of the petitioner that the engagement of the petitioner became

automatic in view of the facts and circumstances of this case.

14. With regard to the embargo imposed by the State Government the engagement of additional Para teacher, amongst others, pending approval

of a panel has already been decided by a Division Bench of this Court by a judgment dated January 30, 2013 in M.A.T. No. 1249 of 2012 and

the relevant portions of the above decisions are quoted below:

In the present case, undisputedly, no appointment was made to the post of Para teacher in the concerned school although selection process was

completed. The competent authority also did not approve the panel of the selected candidates.

In view of the pendency of the litigation, competent authority had no scope to consider and approve the panel for filling up the post of Para teacher

in the concerned school. Since the competent authority did not approve the panel till today and in the meantime, State Government by the order

dated 9th June, 2010 decided not to appoint any Para teacher in the concerned school, question of issuing any direction for appointment of Para

teacher in the concerned school cannot arise.

In the aforesaid circumstances, there is no scope to appoint anybody to the post of Para teacher in the said school at this stage.

15. In view of the above there is no scope to grant any relief in favour of the petitioner. This writ application is, therefore, dismissed.

16. There will be no order as to costs.

17. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the

necessary formalities in this regard.