

Kousik Purkait Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: July 31, 2014

Hon'ble Judges: J. Bhattacharya, J; Ishan Chandra Das, J

Bench: Division Bench

Advocate: Debabrata Roy and Arun Kumar Haldar, Advocate for the Appellant; Ekramul Bari, Adv., Syed Mansur Ali, Adv., S. Chatterjee, Adv., Animesh Kanti Ghosal, Sr. Advocate and Moloy Roy, Advocate for the Respondent

Final Decision: Allowed

Judgement

Ishan Chandra Das, J.

The petitioner is an unemployed graduate. His name was sponsored by the Employment Exchange as a non-trained

candidate for the post of Assistant Teacher in primary school under D.P.S.C., South 24 Parganas. He is scheduled caste by birth. The caste

certificate was issued by the Sub-Divisional Officer, Kakdwip, South 24-Parganas on 28th January, 1997 certifying that the petitioner belongs to

scheduled caste community. The caste certificate issued in favour of the petitioner by the Sub-Divisional Officer, Kakdwip, South 24 Parganas is

annexed to the stay petition being annexure A-2. The computer generated Employment Exchange Card issued by the District Employment

Exchange, Kakdwip, shows that he was registered as a scheduled caste candidate with the said State Employment Exchange. The said

Employment Exchange Card is annexed to the stay petition being annexure A-3. The bio-data which was submitted by the petitioner for offering

his candidature for the said post on 21st September, 2007 clearly demonstrates that he belongs to scheduled caste category. The said bio-data

which was annexed to the stay petition was marked as annexure A-5. All necessary testimonials about the educational qualification of the petitioner

and the caste certificate issued by the concerned authority were submitted by the petitioner to the Council. The Employment Exchange Officer, by

his letter dated 4th October, 2007 requested the Chairman, South 24-Parganas, District Primary School Council to consider him as a scheduled

caste candidate in lieu of unreserved category. The said letter is appearing at page 22 of the stay petition being annexure A-4.

2. After due consideration of the papers and/or documents submitted by the petitioner, admit card was issued by South 24-Parganas, District

Primary School Council, permitting the petitioner to appear in the selection test which was held on 20th September, 2009. Admittedly, the

petitioner appeared in the said selection test. The Council ultimately considered the petitioner as a general candidate and after considering his

performance in the selection test as a general candidate he was not selected for appointment for any of the vacant posts in the unreserved category

as the marks which he obtained in the selection test was below the marks obtained by the last selected candidate from the unreserved category.

3. However, it is admitted position that had he been considered as a scheduled caste candidate, then he would have been selected, as the marks

which was obtained by him was more than the marks which was obtained by the last selected candidate from the scheduled caste category. Thus,

a dispute arose as to whether the Council was justified in not selecting him for appointment in any of the vacant posts of Assistant Teacher in the

primary school reserved for scheduled caste candidates under the said Council.

4. To resolve the said dispute, a writ petition was filed challenging the illegal action on the part of the Council for not considering his candidature as

a scheduled caste candidate. The said writ petition which was registered as W.P. 4941(W) of 2010, was dismissed by a Learned Single Judge of

this court with an observation that the concerned authority of the State was at liberty to take appropriate steps against the person who issued the

hand-written communication letter dated 4th October, 2007 affixing an official rubber stamp thereon whereby the Chairman, South 24 Parganas,

District Primary School Council was requested to treat the petitioner as scheduled caste candidate. Such observation was made by the Learned

Single Judge, as the Learned Single Judge after considering the manually prepared original record of the Employment Exchange, was of the view,

that the petitioner was not registered as scheduled caste candidate in the manually prepared register, maintained by the Employment Exchange. His

Lordship held that electronic data base maintained by the concerned department which was produced by the petitioner cannot over ride/supersede

the original manual record maintained and kept in the register by the department as there was every possibility of wrong/erroneous data being

entered by the Data Entry Operator while converting such manual record into electronic format. Holding as such, the writ petition filed by the

petitioner was dismissed by the Learned Single Judge as it was found that the marks obtained by him was lower than the minimum cut off marks in

the said general/unreserved category candidates. The legality and/or validity of the said order is under challenge before this court in this application.

5. Let us now test the legality and/or correctness of the impugned order in the facts of the present case. We have already mentioned above that the

appellant/writ petitioner is scheduled caste by birth. The caste certificate which was issued by the sub-Divisional Officer, Kakdwip is appearing at

page 18 of the stay petition. It clearly demonstrates that he belongs to scheduled caste community. The said certificate was issued long before the

initiation of the selection process. The bio-data which was submitted by the petitioner before the Council clearly shows that the petitioner

mentioned in column No. 6 that he belonged to scheduled caste community. He submitted all the relevant papers including his caste certificate

issued by the concerned authority before the Chairman of the Council. After considering all those documents, admit card was issued by the

Council by permitting the petitioner to appear in the selection test. However, some confusions subsequently arose as to whether he was sponsored

by the Employment Exchange for unreserved vacancies or he was sponsored for the vacancies reserved for scheduled caste candidates. The

Employment Exchange, by its letter dated 4th October, 2007 requested the Chairman, South 24-Parganas, District Primary School Council to

treat the petitioner as a scheduled caste candidate in lieu of unreserved category candidate. Though some suspicion was expressed by the Learned

Single Judge with regard to the genuineness of the said hand-written document of the Employment Exchange Officer, but in course of hearing of

this appeal Mr. Ghosal, Learned Senior Counsel appearing for the State on instruction of his client's representatives present in court, submitted

that the said letter was written by Employment Exchange Officer on 4th October, 2007. Thus he confirms the genuineness of the said letter. Even

the Employment Exchange Officer-In-Charge, by his subsequent letter dated 24th September, 2013 appearing at page 29 of the stay petition,

confirms that as per available records the petitioner was enlisted under scheduled caste category at the District Employment Exchange, Kakdwip,

South 24-Parganas. The genuineness and/or correctness of the said letter issued by the Employment Exchange Officer has not been disputed by

Mr. Ghosal, Learned Senior Counsel appearing for the State who after taking instruction from the representative of his client present in the court

submitted before us that the said letter was also issued by the Employment Exchange Officer of District Employment Exchange, Kakdwip. If these

two letters are taken into consideration in the background of the dispute raised in the writ petition, we have no hesitation, to hold that the petitioner

belongs to scheduled caste community and he was sponsored as scheduled caste candidate by the Employment Exchange.

6. However, we cannot rule out the possibility of an error being crept in a computer generated card which was prepared from the manually

maintained register, as held by the Learned Single Judge but at the same time we cannot disbelieve the petitioner's claim that he was sponsored as

a scheduled caste candidate by the Employment Exchange merely on the basis of surmise that possibly the entries in the computer generated

document were made wrongly and/or erroneously, particularly when the Employment Exchange Authority admits the genuineness and/or

correctness of its letter dated 4th October, 2007 and dated 24th September, 2013 being annexure A-4 and A-9 to the stay petition respectively.

7. Thus, considering the respective claims of the parties in the background of the materials submitted by the petitioner in support of his claim that he

belongs to scheduled caste community and he was sponsored as scheduled caste candidate by the concerned Employment Exchange, we hold that

the impugned order cannot be retained on record.

8. The impugned order thus, stands set aside.

9. Let us now consider the reliefs which can be granted to the petitioner in the present case. Since admittedly, the marks which he obtained was

more than the marks which was obtained by the last appointee from scheduled caste category, we hold that the petitioner should have been

selected for appointment from the reserved category.

10. Mr. Bari, Learned Advocate, appearing for the Council submits that since presently there is no vacancy in any of the declared post for which

such selection test was held and further since the life of the panel has already been expired, appointment to the post of Assistant Teacher in any

primary school under the said Council cannot be offered by his client to the petitioner. However he submits that his client may recommend his

name to the Director of School Education for his appointment in any presently available vacancy. We feel the practical difficulty which Mr. Bari's

client is likely to face, in case we direct Mr. Bari's client to appoint the petitioner as an Assistant Teacher in any school under the Council, but at

the same time we cannot be oblivious about the injustice caused to the petitioner by the illegal action on the part of the Council by not selecting him

for such appointment as a scheduled caste candidate even though he deserved such appointment in the reserved category. Thus, we find that some

workable arrangement must be made by the Council for appointing the petitioner as primary teacher in any school or in the alternative the financial

loss which the petitioner will have to suffer for not selecting him for appointment as a scheduled caste candidate though he deserved such

appointment, should be compensated by the council.

11. We are informed that at the relevant time when appointments were given to the other successful candidates, the writ petitioner/appellant was

23 years old, and the date of superannuation for the primary teacher is 60 years. Thus, had the petitioner been appointed as an Assistant Teacher

in the primary school under the Council then he would have remained in service for a period of 37 years.

12. As such we proposed to dispose of the writ petition by directing the State Respondents including the concerned Council either to provide an

appointment to him as a primary teacher in any school under the said Council within a period of six weeks from the date of communication of this

order, failing which, the Council will have to pay reasonable compensation towards the loss which the petitioner suffered and/or will suffer for not

selecting him and/or offering him appointment as primary teacher in any primary school under the Council.

13. At this stage, Mr. Bari, Learned Advocate, appearing for the Council submits on instruction from his client that his client is agreeable to

recommend the name of the petitioner for his appointment in any reported vacancy which is presently available in any primary school under the said

Council.

14. Mr. Ghosal, Learned Senior Advocate, appearing for the State-respondents submits on instruction from his client that if the name of the

petitioner is recommended for appointment in any reported vacancy in any primary school under the said Council to his client viz. the

Commissioner of School Education then the Commissioner of School Education will approve such recommendation so that the appointment of the

petitioner in any primary school under the said Council can be regularized.

15. Considering such submission of Mr. Bari, Learned Advocate appearing for the Council and Mr. Ghosal, Learned Senior Advocate appearing

for the State-respondents, we find that both the Council and the State-respondents are now willing to offer an appointment to the petitioner in a

post of a primary teacher in any primary school under the Council and regularize his appointment and as such, we dispose of the writ petition by

directing the Council to recommend the name of the petitioner for his appointment in any presently available reported vacancy to the Commissioner

of School Education positively within a period of two weeks from the date of communication of the order and the Commissioner of School

Education is directed to approve such recommendation of the Council within a week thereafter so that the entire process of appointment of the

petitioner as a primary teacher in any primary school under the Council and regularization of his service can be completed within six weeks from

the date of approval of the Council's recommendation by the Commissioner of School Education.

16. The appeal is thus, allowed with the above direction.

17. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

18. I agree