(2012) 07 CAL CK 0246

Calcutta High Court

Case No: Writ Petition No. 15032 (W) of 2001

Smt. Bharati Sarkar		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: July 24, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2012) 07 CAL CK 0246

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Amal Baran Chatterjee, for the Appellant;Pantu Deb Roy, Siddhartha Roy, advocates, for the State, Mr. Arijit Dey, advocate, for the fourth respondent and Mr. R. Chatterjee, advocate, for the sixth respondent, for the Respondent

Judgement

Hon"ble Mr Justice Jayanta Kumar Biswas

1. The Court: The petitioner in this WP under art.226 dated October 1, 2001 is questioning the selection of the sixth respondent for the post of headmistress in Subhasnagar Gouri Sundari Balika Vidyabithi in Bongaon of the district North 24-Parganas. The Director of School Education, West Bengal issued a Memo No.2066-GA dated October 27, 1995 prescribing the procedure for recruitment of teaching and non-teaching staff of secondary schools including madrasah. The memo was issued in exercise of power conferred on the Director by sub-r.(4) of r.28 of the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969. It was made effective from December 1, 1995.

2. The school authority requested the District Inspector of Schools (SE), North 24-Parganas to give permission for taking steps for appointment of the headmistress. This was done in compliance with the procedure. By an order dated April 25, 1997 the

permission was granted. Following the procedure the school authority advertised the vacancy on November 3, 1999.

3. The advertisement dated November 3, 1999 was cancelled, and a fresh advertisement was made on January 31,2000. The advertisement dated January 31, 2000 is quoted below :-

Cancelling advertisement dt.3.11.99 further wanted a Head Mistress having Master Degree with BT/B.ED/P.G.B.T. with 10 years continious teaching experience in any recognised High/H.S. School in W.B. as on 25.4.97. Apply to the Secretary Subhasnagar Gouri Sundari Balika Vidyabithi P.O.Bongaon, North 24 Parganas by 2.3.2000.

4. The petitioner applying for the post in response to the advertisement dated November 3, 1999 chose not to apply in response to the advertisement dated January 31, 2000. Admittedly, the sixth respondent who was selected for the post and appointed thereto applied in response to the advertisement dated January 31, 2000.

5. Contending that though she applied for the post, she was not considered; and that the sixth respondent was selected in violation of the provisions of the memo dated October 27, 1995, the petitioner brought this WP. The State, the school authority and the sixth respondent all are contesting the WP and they have filed their respective Affidavits-in-Opposition. The first question is whether the petitioner was entitled to question the selection of the sixth respondent.

6. Mr. Chatterjee appearing for the petitioner has argued as follows. Since the petitioner had applied in response to the advertisement dated November 3, 1999, she was entitled to be considered for the post; for some candidates not applying in response to the fresh advertisement dated January 31, 2000, but applying in response to the advertisement dated November 3, 1999, were considered for the post. Hence it is wrong to say that the petitioner was not a candidate for the post.

7. The admitted position is that the advertisement dated November 3, 1999 was cancelled by the school authority that published it qua the employer. It was not mentioned in the fresh advertisement dated January 31, 2000 that persons applying in response to the advertisement dated November 3, 1999 were not required to apply afresh.

8. This means that on the cancellation of the advertisement dated November 3, 1999 applications submitted for the post in response thereto automatically lost utility and significance.

9. Hence the petitioner choosing not to apply in response to the fresh advertisement dated January 31, 2000 was not entitled to be considered for the post. She was not to be considered a candidate for the post. Since she was not entitled to be considered a candidate for the post, in my opinion, she was not entitled to question the sixth respondent''s selection for the post and appointment thereto; for one''s selection for a

post and appointment thereto can be questioned only by a candidate for the post, not by any other person.

10. Even if it is accepted that some persons not applying in response to the advertisement dated January 31, 2000, but applying in response to the cancelled advertisement dated November 3, 1999 were considered for the post, such aberration could not give the petitioner the status of a candidate for the post and a consequent right to question the sixth respondent''s selection for the post and appointment thereto; for the illegality committed by the school authority (there is nothing to suggest that it was committed) could not create a legal right for the petitioner. Since the petitioner was not entitled to question the sixth respondent''s selection for the post and appointment thereto, in my opinion, it is not necessary to examine whether the selection was made in contravention of the provisions of the procedure prescribed by the memo dated October 27, 1995.

For these reasons, the WP is dismissed. No costs. Certified xerox.