

Constitutional Writ
PRESENT: The Hon'ble JUSTICE I.P. MUKERJI
Judgment on: 28.04.2010
W.P. No. 14999(W) of 2009
SANKAR DAS
Versus
THE STATE OF WEST BENGAL & ORS.

Points:

Panel: Initiation of second selection process-Whether can be challenged by a person not in the panel- Constitution of India .Art 226

Facts:

The fight is for one post of a clerk reserved for schedule caste candidates in a government aided school called Maheshpur High School, P.O. Parulbari, Dist – Purba Medinipur. On 28th July 2008

the District Inspector of Schools granted permission to this school to fill up this post. A panel was prepared of selected candidates and sent to the District

Inspector for approval. The writ petitioner was not one of the empanelled candidates. The said District Inspector of Schools refused to approve the panel. letter of the District Inspector of Schools, the School re-advertised selection once again in the newspaper 'Bartaman on 24th February 2009 fixing a date for interview and inviting candidates for it.

The writ petitioner was not an empanelled candidate in the selection made further to the first advertisement. But when the selection process was started further to the advertisement published on 24th February 2009, he felt very aggrieved by the selection process. His grounds are that the District Inspector did not cancel the first panel. Therefore, he could not anticipate the second advertisement. Hence, that advertisement escaped his attention and he could not participate in the second interview. Further, under the West Bengal School Service Commission Act 1997 as amended which had come into force on 14th January 2009, schools no longer had the power to initiate a selection process. Since the second selection process was initiated without permission of the School Service Commission, it was bad.

Held-

The first criteria that any writ petitioner has to satisfy in a writ application complaining of an alleged wrong by a public authority, is that he is aggrieved by such action. This is called the rule of locus standi. In ordinary circumstances, the court will not permit a person to complain of a wrong, unless he has been affected by it. Even if the second selection process was unlawful and is declared as such, the writ petitioner would in no way be affected because he was not in the panel which was sent up by the school after the first interview process.

Para-7

The writ petitioner cannot have any cause of action because the effects of such re-advertisement upon him are very remote and insignificant. When the writ petitioner was not a candidate in the first panel, he is to be treated like a member of the public. Now, if a member of the public finds a writ application on an alleged cause of action that because of some alleged wrongful action of the public authorities he was unable to read a newspaper advertisement and consequently could not participate in the interview and, therefore, lost the right to be appointed in the post advertised for, this alleged cause of action, is extremely remote and insignificant and cannot be taken note of by this court.

Para-10

Cases Cited:

2001(3)CHN 313

B.L. Gupta and another – vs – M.C.D. reported in (1998) 9 Supreme Court Cases 223

State of Bihar and others – vs – Md. Kalimuddin and others, reported in (1996)2 Supreme Court Cases 7

W.P. 1001(W) of 2010, Nabin Kumar Agarwala – vs. – State of West Bengal

(unreported)

W.P. No. 17726(W)of 2009, Sri Asit Kumar Bisal and another –vs – The State of West Bengal (unreported)

Arjun Singh Rathore and others – vs – B.N. Chaturvedi and others, reported in (2007) 11 Supreme Court Cases 605.

For the petitioner : Mr. Soumya Majumdar

Mr. Arjun Ray Mukherjee

Mr. Biswarup Bhattacharjee
For the State/School Service : Mr. Tapabrata Chakraborty
Commission
For the School Authority : Mr. Kamalesh Bhattacharyya
Mr. Bebekananda Tripathi
For the respondents : Mr. Biswajit Banerjee

The fight is for one post of a clerk reserved for schedule caste candidates in a government aided school called Maheshpur High School, P.O. Parulbari, Dist – Purba Medinipur. On 28th July 2008 the District Inspector of Schools granted permission to this school to fill up this post. On 16th September 2008 an advertisement was published by this school in the Bengali newspaper Bartaman' inviting candidates to meet its selection committee on 2nd October 2008 for recruitment in that post. A panel was prepared of selected candidates and sent to the District Inspector for approval. The writ petitioner was not one of the empanelled candidates. The said District Inspector of Schools refused to approve the panel. His reasons as recorded in his letter dated 9th February 2009, are as follows:

“ To: The Secretary,
Maheshpur High School,
P.O. Purulbari, Dist. Purba Medinipur
Subject :

Approval of panel for the post of Clerk
Ref. His Memo No. – NIL Date: 20.10.09.

Since the School Authority did not follow the G.O. No. & date mentioned in the previous permission issued in favour of the school vide this office memo no. 1018-S dt. 28-07-08, the undersigned is regretted to accord the approval to panel in question.

He is permitted again to take steps strictly in accordance with the previous permission issued by this office under memo No. & date noted above.

District Inspector of Schools
(SE), Purba Medinipur

2. According to me, there is no intelligible ground mentioned in that letter not to approve that panel. In deference to the directions contained in that letter of the District Inspector of Schools, the School re-advertised selection once again in the newspaper 'Bartaman on 24th February 2009 fixing a date for interview and inviting candidates for it.

3. Meanwhile, on 14th January 2009, an amendment to the West Bengal School Service Commission Act 1997 had come into force. Under it this appointment would be regulated, controlled and supervised by the Commission.

4. The school, after the second interview held on 26th July 2009 forwarded the panel to the District Inspector of Schools. An interim order has been passed in this writ application, which is subsisting, that the District Inspector of Schools will not give any effect to the panel. The net effect of this interim order is that one solitary post of a clerk reserved for a Schedule Caste candidate in the concerned school has not been filled up because of the alleged grievance of the writ petitioner.

5. The writ petitioner was not an empanelled candidate in the selection made further to the first advertisement. But when the selection process was started further to the advertisement published on 24th February 2009, he felt very aggrieved by the selection process. His grounds are that the District Inspector did not cancel the first panel. Therefore, he could not anticipate the second advertisement. Hence, that advertisement escaped his attention and he could not participate in the second interview. Further, under the West Bengal School Service Commission Act 1997 as amended which had come into force on 14th January 2009, schools no longer had the power to initiate a selection process. Since the second selection process was initiated without permission of the School Service Commission, it was bad.

6. The arguments have been made in this way. A selection process can only commence if the posts have been advertised and candidates called for interview. If this process is undertaken and thereafter the rules for recruitment are amended, then the rules governing the selection process before amendment will apply. So, what is sought to be submitted is that the application of particular rules will not depend on the date of occurrence of vacancy but on the date of commencement of the selection process. A

Division Bench judgment of our court in the case of Snehansu Jas – vs – State of West Bengal & Ors. together with two connected writ applications reported in 2001(3)CHN 313 has been cited by Mr. Majumder for the Writ petitioner to support this proposition. According to the petitioner when the second selection process was undertaken, the West Bengal School Service Commission Act had come into force.

The school could not have invited the second selection process. Therefore, the second panel was unlawful. The Supreme Court decision in the case of B.L. Gupta and another – vs – M.C.D. reported in (1998) 9 Supreme Court Cases 223 was cited by Mr. Bhattacharya, for the school that vacancies which arose prior to amendment of Rules had to be filled up in accordance with

those rules. State of Bihar and others – vs – Md. Kalimuddin and others, reported in (1996)2 Supreme Court Cases 7 was cited by Mr. Chakraborty, for the State to show that the District Inspector of Schools had the power to disapprove a panel and order a fresh selection in

appropriate circumstances. An unreported decision of learned Single Judge of our court in W.P. 1001(W) of 2010, Nabin Kumar Agarwala – vs. – State of West Bengal and others has also been cited to show that if a selection process was undertaken in circumstances above, the rules prior to amendment would apply. I have also been referred to an unreported decision made by me in W.P. No. 17726(W) of 2009, Sri Asit Kumar Bisal and another –vs – The State of West Bengal and others where I have held that the rules governing appointment would be the rules existing on the date of the vacancy relying on a Supreme Court judgment in the case of Arjun Singh Rathore and others – vs – B.N. Chaturvedi and others, reported in (2007) 11 Supreme Court Cases 605.

7. The first criteria that any writ petitioner has to satisfy in a writ application complaining of an alleged wrong by a public authority, is that he is aggrieved by such action. This is called the rule of locus standi. In ordinary circumstances, the court will not permit a person to complain of a wrong, unless he has been affected by it. Even if the second selection process was unlawful and is declared as such, the writ petitioner would in no way be affected because he was not in the panel which was sent up by the school after the first interview process. In order to overcome this serious difficulty that the writ petitioner faces, an alternative prayer has been inserted in the writ petition that there should be a fresh selection. Even, for the alternative cause of action the writ petitioner, in my opinion, has got no locus standi.

Suppose the first selection process has lapsed by now, the question is who is the writ petitioner to ask for a fresh selection when he cannot be said to be affected by the selection process?

8.If the writ petitioner was empanelled in the first panel prepared and the panel disapproved by the District Inspector of Schools, then the writ petitioner could have some rights to challenge such disapproval by the District Inspector of Schools and initiation of the second selection process. Here, the writ petitioner was not even in the first panel which was disapproved by the letter of the District Inspector of Schools dated 9th February 2009. I do not find any cogent reasons in this letter of the District Inspector of Schools directing re-advertisement, as I have already said. But I am afraid, the writ petitioner, not being a candidate in the panel cannot found a right on such disapproval and initiation of the second selection process.

9. Therefore, I hold that the writ petitioner has got no locus standi at all to maintain this writ application. On this very ground, the writ application should be dismissed without going into any other point.

10.Then the next question is that the writ petitioner was totally ignorant of this letter of the District Inspector of Schools and the subsequent re-advertisement. Having participated in the first interview, according to him, he could not anticipate a re-advertisement of holding the self-same interview at a subsequent date. Therefore, he did not watch the newspapers for such advertisement and consequently, did not notice the advertisement. Therefore, he could not participate in the second interview. In my opinion, the writ petitioner cannot have any cause of action because the effects of such re-advertisement upon him are very remote and insignificant. When the writ petitioner was not a candidate in the first panel, he is to be treated like a member of the public. Now, if a member of the public finds a writ application on an alleged cause of action that because of some alleged wrongful action of the public authorities he was unable to read a newspaper advertisement and consequently could not participate in the interview and, therefore, lost the right to be appointed in the post advertised for, this alleged cause of action in my opinion, is extremely remote and insignificant and cannot be taken note of by this court. *B. Srinivasa Reddy – v – Karnataka Urban Water Supply & Drainage Board Employees' Association & ors*, reported in (2006)11 SCC 731 (para 51).

11. The judgment of the Supreme Court in B.L. Gupta and another – vs – M.C.D. (Supra) was cited before the Division Bench of our Court in Snehanu Jas –vs – State of West Bengal & Ors.(Supra). Although that case was discussed by the Division Bench in paragraph 9 of that judgment, nevertheless, it was held by it in paragraph 21:

“21.....that the selection process will commence only when the candidates are invited to appear on the basis of names sent by the Employment Exchange on requisition by the managing committee for recruitment of the teachers and if that stage has not reached then it will not amount to commencement of the selection process. The selection process is deemed to have commenced if the posts have been advertised and candidates have been called for interview and meanwhile if the rules are amended then that selection process should be allowed to continue without being affected by the amendment of the Rules unless the Acts or Rules have been amended with a retrospective effect. Thus, in this view of the matter, the view taken by the learned Single Judge in the case of Kanaidighi Deshapran Vidyapith vs. State of West Bengal (supra) and Salauddin Miah vs. State of West Bengal (Supra) are no more good law.”

In the case of B.L. Gupta and another (Supra) the Supreme Court was dealing with certain statutory rules of 1978 dealing with promotion in Delhi Electricity Supply Undertaking. The Rules were amended in 1995. Junior Clerks started a litigation contending that the vacancies have arisen prior to 1995 and were to be filled up according to the 1978 Rules. The Supreme Court opined as follows:

“11.but it is made clear that the vacancies which had arisen prior to amendment of the Rules in 1995 can only be filled in accordance with the 1978 Rules, which means that if Mr. Sanghi’s clients want to be regularly appointed as Assistant Accountants, they will have to compete with and take the examination under the 1978 Rules. This is with regard to the vacancies which remain and are required to be filled under the 1978 Rules. Any vacancies which arise after 1995 will have to be filled as per the amended Rules. It is but obvious that the seniority in all these cases will have to be fixed according to the seniority rules which are applicable.”

This judgment was followed by a learned single judge of our court in Nabin Kr. Agarwala – vs – State of West Bengal (Supra).The ratio of B.L. Gupta and another (supra) was followed in Arjun Singh Rathore and others – vs –

B.N. Chaturvedi and others, reported in (2007)11 Supreme Court Cases 605 (supra) where the Supreme Court said the following in paragraphs 5 and 6.

“5. Mr. Calla, the learned Senior Counsel for the appellants had argued that the matter was fully covered by the judgment of this court in State of Rajasthan v. R. Dayal wherein it had been held that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in Y.V. Rangaiah v. J. Sreenivasa Rao it was opined as under: (SCC

p. 422, para 8)

“8.....This court has specifically laid (sic) that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose.”

6. The above legal position has not been seriously disputed by the learned counsel for Respondents 6 and 7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be resorted. We order accordingly.”

12. I have followed that decision in Sri Asit Kumar Bisal and another – vs – The State of West Bengal and others (Supra). Therefore, when Supreme Court judgments speak in the plainest of terms that the selection is to be governed by the rules existing when the vacancy arose, I would very respectfully hold so. Sitting singly and following very well settled principles relating to precedents, I would respectfully follow the above Supreme Court principles which are absolutely clear and unambiguous and directly relating to the case in hand and not any decision which is contradictory to them. Vacancy admittedly arose in this case before commencement of the West Bengal School Service Commission 1997, as

amended, which came into effect on 14th January 2009. Thus the second selection process was duly undertaken.

For the above reasons, this writ application is dismissed. All interim orders are vacated. There will be no order as to costs.

Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

(I.P. MUKERJI, J.)