

Constitutional Writ  
PRESENT: The Hon'ble JUSTICE I.P. MUKERJI  
Judgment on: 30.04.2010  
W.P. NO. 23754 (W) OF 2007  
With  
C.A. N. NO. 2135 of 2010  
GOLAM MURTAZA LASKAR & ORS.  
Versus  
THE STATE OF WEST BENGAL AND ORS.

Points:

**Employment Exchange:** Government makes a rule that employment is to be given to the candidates sponsored by the employment exchange- Names are requisitioned- Whether it is the duty to see that the names of suitable persons who have been registered are forwarded -Primary Teachers Recruitment Rules 2001-R8

Facts:

The petitioners were registered with the Employment Exchange and were otherwise eligible but were not allowed to participate in the written examination by the District Primary School Council, on the ground that their names were not sponsored by the Employment Exchange. On the basis of an interim order passed in the instant writ application preferred by them, the writ petitioners were allowed to appear in the examination. The petitioners appeared the written examination. The results were declared, declaring them as successful. But a remark was added "but your appointment is withheld."

Held:

When the government makes a rule that employment is to be given to the candidates sponsored by the employment exchange, it has also a duty to see that the names of suitable persons who have been registered in the employment exchange are forwarded when such names are requisitioned. The writ petitioner's name ought to have been forwarded by the employment exchange. Since the name of the writ petitioner ought to have been forwarded by the employment exchange as she has been registered there for

a long time her name can be deemed to have been forwarded by such employment exchange. Therefore, consideration of her candidature by the school authorities was not at all contrary to law. Para-8

Cases cited:

Tanmoy Ramaya Lahiri &

ors – State of West Bengal & Ors. reported in (2008)3WBLR (Cal) 108

Union of India & ors. – v –N. Hargopal & ors., reported in (1987) 3 SCC 308.

Manick Chandra Das – v – State of West Bengal & ors. reported in (2007)2 CHN 761

Excise Superintendent, Malkapatnam, Krishna District, A.P. – v. – K.B.N. Visweshwara Rao & Ors. reported in (1996)6 SCC 216

Sanjit Kumar Sheet – v – The State of West Bengal & Ors. reported in (2008)2 Cal LT 461

Kishore K. Pati – v – Distt. Inspector of Schools, Midnapore and others, reported in (2000)9 Supreme Court Cases 405

For the petitioner : Mr. Dipak Shome, Sr. Adv.

Mr. S. Mukherjee, Adv.

For the State : Mr. Subrata Mukherjee, Adv.

For the D.P.S.C : Mr. Kallol Bose, Adv.

Mr. Subhadip Bhattacharjee, Adv.

The Court:

Rule 8 of the West Bengal Primary Schools Teachers Recruitment Rules

2001 is once more under

consideration. Rule 8 provides that the Employment Exchange would send names of candidates

on 1:10 basis, who satisfy the qualifications required, for preparation of a panel of primary school

teachers by the concerned Council. In this case, the writ petitioner was registered with the

Employment Exchange. But his name was not sponsored. He filed this writ application wanting

to participate in the selection process. By an interim order dated 1st November 2007, Sanjib Banerjee, J. permitted him to sit for the examination.

2) All the petitioners, further to that interim order sat for the examination. The results have since been published. All three writ petitioners have been selected for the post of Assistant Teachers (Primary). Their appointments are withheld due to pendency of this writ application.

3) The respondents have not filed any affidavit-in-opposition. But at the time of hearing of this writ application the Primary School Council was represented by Mr. Kallol Bose, Advocate who advanced very compelling arguments. Since Mr. Bose could not be present on the last day of hearing, I directed his junior to file a note of arguments which has been duly done. I have considered his oral submissions as well as those in the notes of arguments along with the arguments advanced by Mr. D.K. Shome, Senior Advocate, appearing for the petitioners.

4) The facts of this case are identical to those in W.P. No. 21284(W) of 2009, Sagarika (Roy) Ghosh –v– State of West Bengal & Ors. decided by me on 11th March 2010. In this case also the petitioners were registered with the Employment Exchange and were otherwise eligible but were not allowed to participate in the written examination by the District Primary School Council, South 24 Parganas on the ground that their names were not sponsored by the Employment Exchange. On the basis of an interim order passed in the instant writ application preferred by them, the writ petitioners were allowed to appear in the examination. On 20th December 2009, the petitioners wrote the written examination. On 15th March 2010 the results were declared,

declaring them as successful. But a remark was added “but your appointment is withheld.”

5) As in the said case decided by me the writ petitioners claim orders for their formal appointment as teachers. In the case of Sagarika (Roy) Ghosh (Supra) I had said that although the validity of Rule 8 had not been questioned by the Division Bench judgment in Tanmoy Ramaya Lahiri & Ors – State of West Bengal & Ors. reported in (2008)3WBLR (Cal) 108, that particular rule could not restrict consideration to only candidates sponsored by the Employment Exchange, following judgments of the Supreme Court and the Division Bench of our High Court holding that wide publicity has to be given to a selection process.

I had said the following in that judgment:

“One hurdle is created by the school authorities in the way of the writ petitioner.

Reliance is placed on Rule 8 of the Primary Teachers Recruitment Rules 2001 which

runs as flows: (Sic follows)

“8. Calling for the names for the Employment Exchange. – (1) The number of

vacancies as determined under rule 4, except in case the vacancies mentioned in rule 14 and the vacancies to be filled by inter-council transfer under the provisions of sub-section (k) of section 19 of the Act, shall be intimated by the Council to the concerned Employment Exchange. For the purpose of preparation of panel for eligible candidates, the Employment Exchange shall be requested to send names of candidates “1:10 basis” who have requisite qualifications prescribed under sub-rule (2) of rule 6:

Provided that in case of non-availability of sufficient number of candidates belonging to the scheduled castes, the scheduled tribes, other backward classes, exempted category, ex-servicemen and physically handicapped persons in the Employment Exchange of the concerned revenue district, a reference shall be made by the Council to the Special Employment Exchange,

exempted category cell or the like at the State level for sending further names of candidates or respective categories.

(2) The letter to the employment exchange mentioned in sub-rule (1) shall

contain, among other matters. –

(a) the required minimum qualifications of candidates; and  
(b) the reservation quota for candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes, Exempted Category, Ex-servicemen and for physically handicapped candidates, maintaining the existing reservation rules as framed by the competent authority, after deducting 10% from the total vacancies for appointment on compassionate ground, with relaxation of upper age limit as admissible under Government orders; and

(c) the number of vacancies to be filled up.

(3) vacancies existing on date plus vacancies anticipated to arise against sanctioned strength, in course of next twelve months may be taken up as total vacancies while sending requisition to the Employment up as total vacancies while sending requisition to the Employment Exchange.”

Admittedly, the writ petitioner was not sponsored by the Employment Exchange.

School authorities argue that only names sponsored by the Employment Exchange

can be considered. They rely on a decision of a Division Bench of this court in

Tanmoy Ramaya Lahiri & ors. – v – State of West Bengal & ors. reported in (2008)3

WBLR (Cal) 108 which had approved of the above rule and said that consideration of

candidates sponsored by the Employment Exchange only was not violative of any

constitutional or other right. The Division Bench of this high court has in turn relied

on a decision of a two judges bench the Supreme Court in Union of India & ors. – v –

N. Hargopal & ors., reported in (1987) 3 SCC 308. But that is not quite the settled

and uniform law in my opinion. In the case of Manick Chandra Das – v – State of

West Bengal & ors. reported in (2007)2 CHN 761 this court held the following:

“ Following the decisions of the Supreme Court as mentioned hereinabove and in

view of the law laid down by the Supreme Court in the case of K.B.N. Visweshwara

Rao (supra), we also hold that the appropriate authority of the department or undertaking or establishment shall consider the cases of all the candidates who have applied for filing up any vacant post or posts along with the Employment Exchange sponsored candidates strictly in accordance with law in order to ensure equal opportunity in the matter of employment to all the eligible candidates and any executive order or circular issued by any authority in this regard has to be read and/or followed subject to the aforesaid law laid down by the Hon'ble Supreme Court."

The Supreme Court judgment relied on in that judgment is of a three judges bench in

Excise Superintendent, Malkapatnam, Krishna District, A.P. – v. – K.B.N. Visweshwara Rao & Ors. reported in (1996)6 SCC 216. In paragraph 6 after considering N. Hargopal's case (supra) the Supreme Court said :

"6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The

equality of opportunity in the matter of employment would be available to all eligible candidates.”

This has been followed by our Division Bench in Sanjit Kumar Sheet – v – The State of West Bengal & Ors. reported in (2008)2 Cal LT 461. Further the Supreme Court in Kishore K. Pati – v – Distt. Inspector of Schools, Midnapore and others, reported in (2000)9 Supreme Court Cases 405 had upheld the selection from names that had not been sponsored by the Employment Exchange.

6) At least the recent body of precedents of the Supreme Court of India, followed in the two Division Bench Judgments of our court (supra) show that wide publicity of any selection process has to be made and that the employment is not restricted to names sponsored by the Employment Exchange. But by the Division Bench judgment of our court in Tanmoy Ramaya Lahiri & ors. – v – State of West Bengal & ors., (2008)3 WBLR (Cal) 108 the validity of Rule 8 has not been questioned, although it was challenged. Sitting in single bench it would not be proper for me at all to make any observation about the validity of Rule 8. But I do observe, on the basis of the above judgments of the Supreme Court after N. Hargopal’s case and our High Court decisions following those Supreme Court judgments that Rule 8 is not to be construed as restricting consideration to candidates sponsored by the employment exchange. Even the language of Rule 8 permits such an interpretation.

7) But there is another route by which the writ petitioner should succeed. She was registered with the employment exchange. Since she was registered with the employment exchange, she does have a right to urge that she had a right of being

sponsored by the employment exchange and in not being so sponsored her right to be considered for appointment has been affected. Nothing has been shown from the affidavit-in-opposition to suggest that the writ petitioner's name ought not to have been sponsored.

8) When the government makes a rule that employment is to be given to the candidates sponsored by the employment exchange, it has also a duty to see that the names of suitable persons who have been registered in the employment exchange are forwarded when such names are requisitioned. The writ petitioner's name ought to have been forwarded by the employment exchange. Since the name of the writ petitioner ought to have been forwarded by the employment exchange as she has been registered there for a long time her name can be deemed to have been forwarded by such employment exchange. Therefore, consideration of her candidature by the school authorities was not at all contrary to law.

9) For those reasons, I approve the selection of the writ petitioner for the post of Assistant Teacher (Primary) and direct the respondent authorities to formalise such selection by an official appointment within a period of 4 weeks from the date of communication of this order. The writ application is accordingly allowed. CAN is also accordingly allowed.”

The Supreme Court and our Division Bench Judgments which were contrary to Tanmoy Ramaya Lahiri & ors. (Supra) were very unfortunately not cited before Dipankar Datta, J., when he delivered the judgment on 28th January, 2010 in W.P. No. 22362(W) of 2009, cited by Mr. Kallol Bose. Therefore, following the above Division Bench judgment of Tanmoy Ramaya Lahiri & ors.



(Supra), Dipankar Datta, J. dismissed the writ application of a similarly situated candidate.

Neither were those judgments cited by any party before the Division Bench hearing the appeal

from that order. The Division Bench on 15.2.2010 upheld that order.

I am afraid that I feel myself bound by the Supreme Court judgments and the our Division Bench

judgments after N. Hargopal's case referred to in my judgment in Sagarika (Roy) Ghosh case

(Supra) and also my judgment in that case following those decisions.

Therefore, I allow the writ

application by directing the respondent authorities to appoint the writ petitioners as Primary

Teachers in terms of their selection within a period of 4 weeks from the date of communication of

this order.

The writ application is accordingly allowed.

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Urgent certified photocopy of this judgment and order, if applied for, to be provided upon

complying with all formalities.

(I.P. MUKERJI, J.)

Later :

Considering the issues involved there will be stay of operation of the judgment and order for a

period of three weeks from date.

Urgent certified photocopy of this judgment and order, if applied for, to be provided upon

complying with all formalities.

(I.P. MUKERJI, J.)