

Constitutional Writ

Present: The Hon'ble Mr. Justice Jayanta Kumar Biswas.

Judgment on: March 12, 2010

W.P. No. 2524 (W) of 2007

Kausik Mallik

v.

West Bengal College Service Commission & Ors.

POINTS:

Appointment---Lecturer in a non-governmental college ---Petitioner's grievance about not considering his name made after the expiry of the panel and after the Petitioner had participated in subsequent selection process---Such grievance of Petitioner if valid---West Bengal College Service Commission (Manner of Selection of Persons for Appointment to the Posts of Teachers including Principals) Regulations, 1980.

FACTS:

In 1999 the respondent applied for the post of lecturer in non-government college. The interview panel selected him. The panel of names of the select candidates was published on September 7, 2000. According to regulation 8(3) of the West Bengal College Service Commission (Manner of Selection of Persons for Appointment to the posts of Teachers including Principals) Regulations, 1980 the panel was to remain valid for one year from the date of its "finalisation" by the commission. Accordingly, it expired on September 7, 2001.

During the lifetime of the panel the petitioner did not make any grievance that without considering him persons of lesser merit were recommended for appointment. On the contrary, he participated in the subsequent selection process carried out by the commission in 2003, for selecting lecturers for non-government colleges in the state. It is only in June, 2006 that for the first time he submitted a representation expressing his grievance to the Chairman of the Commission that persons of lesser merit were recommended by the Commission for the posts of lecturer without considering his case. Then he gave a legal notice dated September 8, 2006, calling upon the Commission to recommend him. Since the Commission did not give any attention to his representation, he brought this petition.

HELD:

The life of the petitioner's right to consideration was coterminous with the life of the panel in which his name appeared. The panel died a statutory death on September 7, 2001. The petitioner's right to consideration did not survive the death of the panel. Allegation of supersession, if any, by persons of lesser merit he could seek appropriate relief only during the lifetime of the panel. He alleged supersession by making representation in 2006. At this date his right to consideration was not alive.

PARA--6

The commission has rightly pointed out that the fact of the petitioner's participation in the subsequent 2003 selection process is indicative of the fact that he was aware of everything about the 1999 selection process that stood concluded for all purposes with the expiration of the panel concerned on September 7, 2001.

PARA---7

Mr Soumya Mazumdar and Mr Dipankar Ghosh, advocates, for the petitioner.

Mr Pulak Ranjan Mondal, advocate, for the commission.

The Court: -

1. The petitioner in this art.226 petition dated January 29, 2007 is seeking a mandamus commanding the respondents to recommend him to an appropriate non-government college in the state for appointment to the post of lecturer.

2. In 1999 he applied for the post of lecturer in non-government college. The interview panel selected him. The panel of names of the select candidates was published on September 7, 2000. According to regulation 8(3) of the West Bengal College Service Commission (Manner of Selection of Persons for Appointment to the posts of Teachers including Principals) Regulations, 1980 the panel was to remain valid for one year from the date of its "finalisation" by the commission.

Accordingly, it expired on September 7, 2001.

3. During the lifetime of the panel the petitioner did not make any grievance that without considering him persons of lesser merit were recommended for appointment. On the contrary, he participated in the subsequent selection process carried out by the commission in 2003 for selecting lecturers for non-government colleges in the state.

4. It is only in June, 2006 that for the first time he submitted a representation expressing his grievance to the chairman of the commission that persons of lesser merit were recommended by the commission for the posts of lecturer without considering his case. Then he gave a legal notice dated September 8, 2006 calling upon the commission to recommend him. Since the commission did not give any attention to his representation, he brought this petition.

5. I am unable to agree with Mr Mazumdar, counsel for the petitioner, that since the petitioner alleged wrongful supersession by persons of lesser merit and the commission, as a statutory body, was under the obligation to act fairly, the petitioner's right to consideration flowing from his merit position in the panel could not extinguish with the expiration of the statutory life of the panel.

6. The life of the petitioner's right to consideration was coterminous with the life of the panel in which his name appeared. The panel died a statutory death on September 7, 2001. The petitioner's right to consideration did not survive the death of the panel. Alleging supersession, if any, by persons of lesser merit he could seek appropriate relief only during the lifetime of the panel. He alleged supersession by making representation in 2006. At this date his right to consideration was not alive.

7. It is to be noted that in its opposition the commission has categorically denied that during the lifetime of the panel the petitioner was superseded by any candidate of lesser merit. The commission has rightly pointed out that the fact of the petitioner's participation in the subsequent 2003 selection process is indicative of the fact that he was aware of everything about the 1999 selection process that stood concluded for all purposes with the expiration of the panel concerned on September 7, 2001.

For these reasons, the petition is dismissed. No costs. Certified xerox according to law.

(Jayanta Kumar Biswas, J)