

ADSL. 16.  
November 20, 2020.  
MNS.

W. P. A 8923 of 2020  
(**Via video conference**)

Josnara Khatun  
Vs.  
The State of West Bengal and others

Mr. Partha Sarathi Bhattacharyya,  
Mr. Saikat Chatterjee

... for the petitioner.

Mr. Shamin ul Bari

...for the State-respondents.

Affidavit-of-service filed in court today be  
taken on record.

The grievance of the petitioner is that,  
despite having the requisite efficiency and the  
most number of trained members for being  
selected for the purpose of supply of two sets of  
school uniform, the petitioner has not been  
considered for the said work.

The genesis of the argument of the  
petitioner is an advertisement dated June 15,  
2020 (Annexure-P/1 at page 20 of the writ  
petition) which sets out various terms and  
conditions, for being selected for the  
aforementioned work.

Learned senior counsel for the petitioner argues that the respondents have not used any affidavit-in-opposition to the writ petition and, as such, the averments of the writ petition cannot be deemed to be controverted at this juncture.

More importantly, it is submitted, that the petitioner crossed the first hurdle, that is the documents verification stage, as per notice dated September 15, 2020, which is also annexed at page- 27 of the writ petition, as evident from the publication on the relevant website which has been annexed at Annexure – P/5 at page- 28 of the writ petition, the petitioner was shut out from getting the work on the basis of the “efficiency test” conducted by the respondent authorities, which had no objective yardstick sufficient to survive scrutiny by any competent authority and/or court of law.

It is further submitted that the petitioner has already made a representation to the respondent authorities, which is annexed at page – 31 of the writ petition, to consider her for the said work of school dress supply, which has not been decided as yet by the respondent authorities.

Learned counsel appearing for the State respondents counters the said argument on fact as well as law.

Upon hearing both sides, it is evident that the advertisement dated June 15, 2020 set forth certain criteria for being selected for the work. Out of the eight conditions set out therein, the first, second, seventh and eighth can only be applied once the selection is made and the work is to commence. Out of the rest, the third, fourth and fifth conditions can easily be verified from the screening of documents, which was done at the time of verification of documents, which stage was crossed by the petitioners, as evident from the website publication at page – 44 of the writ petition.

As regards the ascertainment of efficiency of the concerned Self Help Groups (SHGs), the same was stipulated to be ascertainable “through direct observation” as per the sixth term contained in the advertisement.

Although learned senior counsel for the petitioners argues that verifiable objective standards ought to have been employed while assessing the efficiency of the candidates, since the petitioners participated and submitted to the

advertisement dated June 15, 2020, which contains a specific clause as to the mode of assessment of efficiency of the Self Help Groups, the petitioners ought not to be permitted to resile from the said clause after the efficiency test was held and the petitioners participated therein.

Undoubtedly, learned senior counsel for the petitioners is justified in arguing that, generally speaking, there are circumstances which justify the interference by court even if candidates participated in an examination or selection of any sort on certain conditions, in the present case no gross miscarriage of justice, bias or arbitrariness has been shown to be done to attract judicial intervention.

Rather, the contention of the learned counsel for the State-respondents is more acceptable on the contention of the petitioners that all participants who have sought for a selection in any work have to be reconsidered even after the selection process, as per the petitioners' logic.

Moreover, no patent bias or arbitrariness and/or *mala fides* on the part of the authorities has been alleged in the present case.

Since the mode of “direct observation”, as specified in the advertisement, clarifies that the assessment of efficiency was to be subjective, there is no scope of consideration of the representation given by the petitioners, simply because such a consideration would tantamount to reopening the entire selection process without the petitioners having canvassed any new post-selection situation and/or gross injustice/bias in the selection process.

It may also be considered that, since the writ petition is not entertainable at the inception and there is no scope of entertaining affidavits from the parties, the contention, that the factual allegations made in the writ petition are undisputed, does not hold water.

In such view of the matter, WPA 8923 of 2020 is dismissed on contest without any order as to costs.

The parties are directed to act on the server copies of this order as and when uploaded in the official website of this Court. In any event, the petitioner is granted liberty to communicate the gist of this order to the respondents even without waiting for such server copy to be

uploaded and the respondents are directed to act upon the same.

(Sabyasachi Bhattacharyya, J.)