

Item No.5

08.12.2021
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

WPA 3996 of 2019
Pradip Middya
v.
The State of West Bengal & Ors.

Mr. Shuvro Prokash Lahiri
... for the petitioner.

Mr. Bhaskar Prosad Vaisya
Mr. Suman Dey
... for the State respondents.

Dr. Sutanu Patra
Ms. Supriya Dubey
... for SSC.

The petitioner participated in the selection process of 1st SLST, 2017 for recruitment of Headmaster/Headmistress in recognized Non-Government aided schools.

The panel in question was published in the year 2019. The name of the petitioner appeared in Serial No. 1599 and the waitlisted rank was 1603. The petitioner was not selected for appointment.

The petitioner filed the instant writ petition alleging that the merit list that was published by the Commission containing the names of the waitlisted candidates was not properly prepared. There are

discrepancies in the panel. Ranks of the candidates in the wait list were missing. For example, the petitioner refers to page 55 of the writ petition wherein after the waitlisted rank 195, the next rank is 197. The petitioner submits that the candidate whose name is in rank 196 has been accommodated otherwise, which ought not to have been done.

The petitioner also refers to the waitlisted rank 381 and thereafter 383 wherein rank 382 is missing. According to the petitioner the missing ranked candidates have been illegally favoured.

The next contention of the petitioner is that according to the West Bengal School Service Commission (Selection for appointment to the Posts of Headmaster/ Headmistress in Secondary and Higher Secondary and Junior High Schools) Rules, 2016, the Commission is required to prepare and publish in their website all details of the candidates to be called for personality test category-wise on the basis of merit (Marks of written test, Academic and Professional Qualification) in the ratio of 1:2 of final vacancies.

The Commission is also required to prepare and publish in their website the merit list of candidates prepared category-wise on the basis of marks obtained by a candidate in written test, evaluation of academic

and professional qualification and the marks obtained by a candidate in the personality test.

The petitioner submits that though the merit list has been published in the website of the Commission but the details, as required, have not been disclosed.

It has been submitted that the marks obtained by the candidates have not been mentioned in the merit list. Due to non-disclosure of marks the petitioner apprehends that there must have been illegalities at the time of preparation of the panel.

The petitioner refers to an unreported order dated January 21, 2019 passed by a coordinate Bench of this Court in ***CAN 556 of 2019 in WP 25827(W) of 2018 (Dipak Kumar Ghosh & Ors. v. State of West Bengal & Ors.)*** wherein the Court was pleased to direct that the merit list that has been published shall have to be rectified/recast depending on the results of the writ petitioners. The said writ petition was in connection with the self-same selection process.

The petitioner further refers to an unreported judgment dated October 1, 2019 passed by a coordinate Bench of this Court in ***WP 9597(W) of 2019 with CAN 5957 of 2019 (Aktarul Islam Kayal & Ors. v. State of West Bengal & Ors.)*** wherein the Court granted leave to the Commission to publish a final merit list containing the information category-wise on the marks

obtained in TET, academic qualification, professional qualification and personality test for each of the candidates.

The aforesaid order was passed in connection with recruitment for the post of Assistant Teachers for Upper Primary Schools governed by the West Bengal School Service Commission (Selection for appointment to the Posts of Teachers for Upper Primary Level of Schools) Rules, 2016.

The petitioner's specific contention is that the Commission is required to publish the merit list containing the break-up of the marks obtained by the candidates in the recruitment process.

The Commission has filed a report in terms of the direction passed by this Court and disclosed the marks obtained by the petitioner in the recruitment test.

It appears therefrom that the petitioner obtained 67 marks (Academic score-28, Subject score-36 and PT score-3). The position of the petitioner in the waitlist is Serial No. 1603 in Male/Female category and Serial No. 1605 in Male category.

It has further been disclosed that the lowest marks obtained by the candidate in Bengali Medium Male/Female panel is 72 and Bengali Medium Male panel is 82.67. The last candidate called for counselling

from the Bengali Medium Male/Female waitlist is Serial No. 785 and from the Male waitlist is Serial No.1.

It appears from the marks disclosed by the Commission that the petitioner's name appears far below in the waitlist and the petitioner hardly has a chance to compete with the candidates in terms of the marks obtained by them.

In response to the submission of the petitioner that all the details of the candidates required to be published in the website includes the marks obtained in the written test, academic and professional qualification it has been submitted that the Rules do not specify disclosure of the marks obtained by the candidates.

According to the Rules the Commission is only required to publish the details of the candidates to be called for the personality test i.e; the personal details of the candidates viz, the name, roll number and the subject.

It has also been submitted that there is no requirement of disclosing or publishing the marks obtained by the candidates in the recruitment process.

As regards the submission of the petitioner that there are missing ranks in the wait list that has been published by the Commission, it has been submitted that the candidate whose rank is missing is actually a female candidate who has been upgraded in the female

list which was prepared separately. Because of such upgradation, the name of the candidate is not reflected in the wait list.

I have heard the submissions of both the parties.

It appears from the marks obtained by the petitioner as disclosed in the report of the Commission that he failed to attain the lowest mark which has been obtained by the last empanelled candidate.

The petitioner accordingly being unsuccessful in the selection test has approached this Court trying to find fault with the action of the Commission in preparation of the merit list.

The court is of the firm opinion that such type of roving enquiry at the instance of an unsuccessful candidate cannot and should not be entertained.

At the same time, this Court is of the view that to rule out any allegation of nepotism or favouritism the Commission ought to publish the merit list of the candidates disclosing the marks obtained by them in the recruitment examination. The break-up of marks obtained by the candidates in the academic, professional qualification and interview, if published, then the Commission will be saved from the scores of litigations that are regularly filed challenging the selection process. The entire recruitment process gets held up for years

together due to pending litigations. Vacancies remain unfilled.

It is common knowledge that in present day joblessness there is cut throat competition between the candidates in any public recruitment examination. Thousands of candidates appear in such examinations. Vacancies are few but contenders aplenty, each vying with the other.

In every competitive examination the comparative marks of the candidates decide the ranking. It is obvious that candidates will be equally, if not more, interested to know the marks of the other candidates who appeared in the examination as the same will form the basis for their respective positions in the merit list. It is only when a candidate performs better in comparison to the other candidate that the candidate securing more marks remains in a relatively better position in the merit list.

Conducting public recruitment examination is undoubtedly a mammoth task. Chances of errors creeping in cannot be ruled out. The examining authority must adopt all necessary measures to ensure a free and fair recruitment process. There should be no doubt in the minds of the candidates that there was any partiality or unfair practice adopted in the process. The competition should be a healthy one. In a fair and transparent recruitment process a candidate gets to

know as to how he fared in the competition in comparison to other candidates who appeared in the examination.

Moreover, the idea of a competition is to select the best candidate. It serves no purpose in holding back the marks obtained by the candidates. On the contrary, non-disclosure of marks promotes speculation of unfair practice, bias and other illegalities. It leads to unrest amongst the educated youth leading to serious crimes which is absolutely unwarranted.

The Court sincerely hopes and expects that the Commission shall take necessary steps in the light of the observations made herein above in future examinations to be held by them.

WPA 3996 of 2019 stands dismissed.

Though WPA 3996 of 2019 and WP No. 4000(W) of 2019 were heard analogously but only WPA 3996 of 2019 has been assigned to this Court. Record of WP No. 4000(W) of 2019 is not before this court. Two affidavits of WP No. 4000(W) of 2019 are however tagged with the records of WPA 3996 of 2019. Let the affidavits in connection with WP No. 4000(W) of 2019 be de-tagged from WPA 3996 of 2019 and be placed in the proper file. Department is directed to take necessary steps immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

Sh

(Amrita Sinha, J.)