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25.06.2021
Ct. No. 16

WP.ST. 33 of 2020

THE STATE OF WEST BENGAL
Vs.
TUTU KAPRI & ORS.

(Via Video Conference)

Mr.Tapan Kumar Mukherjee, AGP

Mr. Somnath Naskar For the petitioner

Mr. Kaushik Dey For Respondent no. 1

The writ petition at the instance of the State. In the writ petition the State has challenged the order dated 26.09.2018 passed in O.A. 955 of 2015. The petition was filed on 27.02.2020. It is important to note that the State did not file any affidavit before the learned Tribunal although several opportunities were given to the State to file its affidavit in the said proceedings. The learned Tribunal accordingly proceeded on the basis of the record made available to the Tribunal and submission made on behalf of the State.

The respondent No. 1 admittedly belongs to BC-B Category. The respondent no. 1 had applied before the respondent authorities to appear in the post of Sub-Inspector of Food Recruitment Examination, 2014. In the application the respondent no. 1 stated that she belongs backward class and in the application she provided all the information accurately. She appeared in the written examination on 27.07.2014 conducted by the respondent authorities and was successful in the said examination. After declaring her successful the present petitioner asked her to appear in the interview for verification of documents

and personality test in the category of BC-B Sub-Category EC. In view of the facts that the respondent no. 1 never applied under the Exempted Category (EC) but under OBC : B category the question of production of EC certificate could not and does not arise. This was brought to the notice of the authorities concerned on 05.02.2015. The respondent no. 1 was informed by a communication dated 20.04.2015 that the name of the respondent no. 1 has been provisionally short listed for document verification and personality test in connection with the Sub-Inspector of Food Recruitment Examination held on 27.07.2014. The respondent no. 1 was further asked to appear with all relevant documents for verification and personality test on 09.07.2015. In the said interview the authorities concerned insisted for production of Exempted Category certification from respondent no. 1. In view of the fact, she had applied under OBC : B category and not under sub-category of Exempted Category the question of producing her EC certificate does not arise. In the interview she drew the attention of the authority regarding a representation dated 05.02.2015 in which she has categorically stated that she belongs to OBC : B category.

In view of the fact the respondent authorities illegally did not consider her case, she approached the learned Tribunal immediately and the learned Tribunal by an order dated 26.02. 2016 observed that the appointment in the OBC : B Category shall abide by the result of the original application. It is to be noted that the authorities had the

opportunity to amend the action taken by the Staff Selection Commission on 1st September, 2017. It is, thus clear that the State was put to notice about the consequence that may follow if the original application is allowed, still then the State did not make any attempt to rectify its own mistake. The State was aware of the consequences likely to follow if it is found that the applicant was successful in the said proceeding. The State had enough notice of the fact that there is a glaring mistake at their end and instead of rectifying it, it remained silent. There cannot be any doubt that the action of the Staff Selection Commission in not allowing the applicant to appear in the interview on the ground that the applicant could not produce exempted category certificate is ex facie illegal. The State instead of amending its action and to proceed with the matter in a judicious manner and rationally, as expected from the State, now try to shift the burden to the West Bengal Public Service Commission which has taken over the functions of the West Bengal Staff Selection Commission on and from 1st September, 2017. At least prior to 1st September, 2017, the State had the opportunity to rectify its mistake as it is obvious that she cannot be asked to produce EC certificate.

It is now being contended before us that the selection process is over and the post of Sub-Inspector of Food has been filled up pursuant to the selection made by the West Bengal Public Service Commission. We feel that for the wrong committed by the writ petitioners, the original

applicant cannot suffer or made to suffer. She was found to be eligible for the post but was not allowed to participate in the personality test on a specious plea that she failed to produce the exempted category certificate. It is a completely *mala fide* and arbitrary action on the part of the writ petitioner in not allowing her to participate in the personality test after she was successful in the written examination and selected provisionally. The State admits that the selection committee has committed a mistake which we consider to be arbitrary as the authorities had deliberately ignored the letter dated 5th February 2015.

On such consideration and on such special facts, we are of the considered opinion that the order passed by the learned Tribunal does not call for any interference.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)