

Dl. August 24,
17. 2021

Through Video Conference

W.P.S.T. 36 of 2020

Md. Samsuddoza

Vs.

State of West Bengal & ors.

Mr. Mohinoor Rahaman,
Ms. Maria Rahaman,
...for the petitioner.

Mr. Anirban Ray,
Mr. Raja Saha,
Mr. Pinaki Dhole,
...for the State.

This writ petition is at the instance of the writ petitioner, who was successful in the recruitment process for the post of Group-D under Irrigation & Waterways Directorate, Government of West Bengal.

The writ petitioner was not initially allowed to participate in the selection process. However, by virtue of an order dated January 29, 2008 passed by the West Bengal Administrative Tribunal in an earlier proceeding being Originals Application No. 11930 of 2007, the petitioner was permitted to participate in the selection process. Although the petitioner was empanelled for appointment, he was not offered appointment in view of notification dated February 17, 1995 issued by the Director of Employment in concurrence with the Finance Department, Government of West

Bengal. The relevant portion of the said notification is as follows :-

“Unless specifically mentioned in the recruitment rules, the prescribed age limit (both lower and upper) should be as on the first day of the year of recruitment i.e. the year when the procedure for recruitment has been taken up by the appointing authority in the case of vacancies under the State Government, its undertakings and in local bodies.”

In view of the said notification, the authority concerned held that the petitioner could not be appointed in the Group-D post under Irrigation & Waterways Directorate due to his lower age as on January 1, 2006.

The tribunal in deciding the matter against the writ petitioner has relied upon a decision of the Hon’ble Supreme Court rendered in the case of **Shankar K. Mondal vs. State of Bihar** reported in **(2003) 9 S.C.C. 5190** to arrive at a finding that in the absence of any recruitment rule for the purpose of deciding the minimum age for submission of the application for appointment to Group-D post, the notification dated February 17, 1995 is to be relied upon. The principles laid down in the said decision are as follows :-

“(i) the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking public employment, is the date appointed by the relevant Service Rules, (ii) if there is no cut off date appointed by the Rules, then such date shall be as appointed for the purpose in the advertisement calling

for applications and (iii) if there is no such date appointed, then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.”

In the instant case, no advertisement was published in the newspaper inviting applications for eligible candidates to fill up Group-D posts. Had there been an advertisement specifying certain guidelines, the case would be different.

It is an admitted position that no recruitment rule, save and except the notification dated February 17, 1995, is placed before the tribunal as well as before us for ascertaining the cut off date for deciding the minimum age for submission of applications for appointment to Group-D posts. In absence of any specific rule in this regard and in the absence of any advertisement in the newspaper, the cut off date for deciding the eligibility of the candidate with regard to his minimum age will be the first day of the year of recruitment as notified by the Director of Employment, Government of West Bengal, on February 17, 1995.

In view thereof, the decision of the authority concerned for not offering appointment to the writ petitioner to the post of Group-D under Irrigation & Waterways Directorate due to his lower age as on January 1, 2006 cannot be questioned. The tribunal has applied correct principles of law in the facts and circumstances of the case. As such, we find no reason to interfere with the order passed by the tribunal.

The writ application is, thus, dismissed without,

however, any order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Soumen Sen, J.)

dns

(HiranmayBhattacharyya, J.)