

05.01.2021
SL No.2
Court No.12
(gc)

**MAT 920 of 2019
With
CAN 1 of 2019
(Old No: CAN 8656 of 2019)**

**Council of Scientific and Industrial Research & Ors.
Vs.
Partha Chakraborty & Ors.**

(Via Video Conference)

Mr. Srinjoy Das,
...for the Appellants.

Mr. Kumar Jyoti Tewari,
...for the Respondent No.2.

Mr. A.K. Gupta,
...for the U.G.C.

Mr. Subhrangsu Panda,
...for the W.B. College Service
Commission.

The report filed by the West Bengal College Service Commission in Court today be kept on record.

This appeal is arising out of an order dated 21st January, 2019 in a writ application filed by Sri Partha Chakraborty. The writ petitioner/respondent No.1 is a visually handicapped person who had taken entrance test for being awarded Junior Research Fellowship by Council of Science and Industrial Research (CSIR).

The University Grants Commission (UGC) in its communication sometimes in February, 2012 informed Director General, CSIR, with a copy marked to the Controller of Examinations, as under:-

“The University Grants Commission in its 482nd meeting held on 22nd Dec. 2011 has decided to extend

the same relaxation in cut-off qualifying marks in the UGC-NET to the Physically Handicapped (PH)/Visually Handicapped (VH) candidates, which is extended to the SC/ST category candidates. The SC/ST category is provided 10% relaxation in qualifying criteria below the general category in the UGC-NET. This decision has been implemented by UGC for the UGC-NET held from 24th Dec. 2011 onwards. You are requested to implement it with immediate effect for the Joint CSIR-UGC NET.”

The writ petitioner/respondent No.1 conforms to the criteria laid down by the UGC to qualify for the examination as he is admittedly a visually handicapped person with disability and he is entitled to relaxation of cut-off qualifying marks in the UGC-NET Examination which was extended to SC/ST category candidates. The appellants appear to have accepted such recommendation in the year 2014 and in denying the benefit to the petitioner, the appellants contend that since at the relevant time the said recommendation was not accepted by the appellants, the writ petitioner/respondent No.1 was not entitled to the benefit of such relaxation.

During the pendency of the appeal, it has come to our notice that a provisional certificate granting relaxation to the writ petitioner/respondent No.1 was issued but the West Bengal College Service Commission had refused to accept the same. The writ petitioner appeared in-person before us on 24th January, 2020. On consideration of the materials on record, we passed the following order:-

“We direct the West Bengal College Service Commission to accept the said provisional certificate and decide the eligibility criteria of the writ petitioner on relaxation strictly without prejudice to the rights and contentions of the parties in the appeal.

In view of the aforesaid direction, we direct the appellants to seek an adjournment in the contempt proceeding.

The stay application shall be listed after three weeks.

This order shall not create any equity in favour of the writ petitioner and all steps shall abide by the result of the appeal.”

Following the aforesaid direction, a report has been filed by the West Bengal College Service Commission. The report states:-

“Moreover, the letter dated 20/11/2019 issued by the Administrative Officer, CSIR – Indian Institute of Chemical Biology inter alia states “I am directed to state that in accordance with the Hon’ble High Court Order dated 15/11/2019 in the matter of CPAN 641/2019 with WP 16655W/2018 in the case of Partha Chakrabarti vs D. Vijayalakshmi & Others. The Exam Unit CSIR-HRDG, New Delhi has issued the provisional certificate vide Ref. No.23/12/2012(ii)EU-V dated 18/11/2019, granting relaxation of marks, as directed, in connection with the participation of the Petitioner Sri Partha Chakrabarti in the next round of counselling held on the 16th of November at the West Bengal College Service Commission, subject to the outcome of the Appeal MAT No.920 of 2019 in the matter of CSIR vs Partha Chakrabarti pending before the Hon’ble High Court of Calcutta.”

In terms of the aforesaid Order passed by the Hon'ble Division Bench, High Court, Calcutta and in terms of letter dated 20/11/2019, the Petitioner namely, Shri Partha Chakraborty was allowed to appear before the interview Board under PWD Category in the subject of Physics for the Post of Assistant Professor in Government Aided College in West Bengal.

It appears from the available office records that the Petitioner namely Partha Chakraborty has successfully placed himself in the Provisional Merit Panel and also attended in counselling process. He opted Raja Narendra Lal Khan Women's College in the counselling process."

The learned Counsel for the appellants has strenuously argued before us that the UGC request is in the nature of a recommendation and it was open to the appellants either to accept or reject such proposal. However, having regard to the fact that the appellants found it relevant and beneficial and in fact had extended the benefit as recommended by UGC to a visually handicapped candidate may be after two years justify sympathetic consideration by the appellants for allowing the case of the writ petitioner for appointment. It further appears that the writ petitioner has the potentiality with the bench mark disability and was successful in getting his name included in the provisional merit list and he also attended the counselling process conducted by the West Bengal College Service Commission.

Having regard to such facts and the writ court being a court of equity, we dispose of this appeal by directing the

West Bengal College Service Commission to recommend the name of the appellants for the post if he is otherwise eligible within one week from date irrespective of the fact whether the appellant issues any final certificate in favour of the writ petitioner/respondent No.1 in the meantime. Considering the peculiar facts and circumstances of the case, we pass the aforesaid order and make it clear that this order shall not create any precedence for any candidates similarly placed.

The appeal being MAT 920 of 2019 and the application being CAN 1 of 2019 (Old No: CAN 8656 of 2019) are disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)