

22.12.2021

Court : 04
Item : 14-15-16
Matter : WPST
Status : DISMISSED
Transcriber: nandy

WPST 112 of 2014

(Debdas Rajak & Ors. Vs. The Government of West Bengal & Ors.)

with

WPST 114 of 2014

(Chandi Prasad Dey & Ors. Vs. The Government of West Bengal & Ors.)

with

WPST 164 of 2014

(Saptarshi Chakraborty & Ors. Vs. The Government of West Bengal & Ors.)

Mr. Rama Prasad Sarkar, Advocate

.....for the Writ-Petitioners

Mr. Anirban Ray, Learned Government Pleader

Mr. Raja Saha, Advocate

Mr. Biswabrata Basu Mullick, Advocate

Mr. Sayan Ganguly, Advocate

.....for the State

The aforesaid three writ-petitions were clubbed together to be taken up analogously as the common point is involved therein. All the aforesaid writ-petitions are filed by several aspiring candidates who participated in the recruitment process for appointment in the Group-D post in the Food and Supply Department, challenging the order of the Tribunal passed on November 25, 2013 dismissing three respective tribunal applications.

The writ-petitioners of the aforesaid writ-petitions challenged the panel prepared by the authority after completing all the process of the recruitment on the ground that it has a smack of favouritism or nepotism. According to them, they did fairly well in the interview with the profound hope that their names would be included in the panel but such hope was shattered when they did

not find their names in the panel but the names of other candidates who according to them did not perform well in the interview. The Tribunal dismissed the aforesaid applications as the petitioners failed to produce any convincing evidence in support of the allegation pertaining to favouritism or nepotism.

Mr. Rama Prasad Sarkar, learned Advocate appearing for the writ-petitioners, vehemently submits that the action of the authority in preparation of the panel is *par se* illegal and smacked of favouritism or nepotism where undeserving candidates have been included in the panel sparing the deserving candidates including the petitioners. Mr. Sarkar further submits that the assessment of the suitability through an interview has been deprecated and the persons who have done well in the other process of the recruitment should be considered as the suitable and competent person to be appointed for such post. Mr. Sarkar arduously submits that the act of favouritism or nepotism offends Article 16 of the Constitution of India as it has negative impact of denying meritorious and competent candidates at the expense of the executive fiat tainted with favouriism or nepotism.

The State opposes the aforesaid contention

of Mr. Sarkar and submits that similarly circumstanced candidates approached this Court on an earlier occasion and the Coordinate Bench after ascertaining the record did not find any element of favouritism or nepotism and in fact, dismissed the writ-petition. It is further submitted that the petitioners could not secure the requisite cut-off marks in the category and, therefore, have no right to challenge the final panel published by the authorities.

On the conspectus of the aforesaid contentions and the undisputed facts which emerge the seminal points involved in the instant writ-petitions are, in an adversarial system of adjudication it is the ardent duty of the petitioner to prove with convincing material the allegations made in the petition. The favouritism or nepotism are generic term but has far-reaching consequences. The system, which is to act fairly, transparently and without any bias, is envisioned by the framers of the Constitution and equal opportunity in the employment, is the hallmark thereof in the field of service. The public employment has to be done strictly as per the statutory rules and norms and any departure therefrom may entail such decision liable to be interfered with by the Court in exercise of the power conferred under Article 226 of the

Constitution of India. Mere using the word 'favouritism' or 'nepotism' in the pleading without any corroboration with convincing material, does not absolve the responsibility of the petitioner from proving such facts. The initial onus lies on the petitioner to be discharged by producing convincing evidence/ material and thereafter it will shift upon the other side to dispel the same.

Mr. Sarkar is very much vocal that every action of the public authority is required to be zealously scrutinized because of the rampant favouritism or nepotism having seen in the recent past. We are unable to accept such contention for the simple reason that such general notion neither alters the law nor takes away the onerous responsibility of the petitioner to prove each of the allegations with convincing material. To perceive every action of the authority tainted with such allegation in absence of any corroborative evidence is never encouraged. It is the primary duty of the Court to uphold the ethos of the Constitution and interfere with the decision of the authority in departure of such constitutional ethos. No citizen can act in violation of the Constitution and, therefore, the Court must be vigilant in determining the cause based upon the allegations pertaining to violation of the constitutional provisions.

As indicated above, even at the time of hearing of this writ-petitions, we invited the attention of Mr. Sarkar to enlighten us on such allegations with convincing materials but apart from the statements made in the pleadings, we do not find any material forthcoming which may lead to a remotest connection therewith. Since there is no material produced by the writ-petitioners, which may suggest the action of the authority being smack of favouritism or nepotism, we do not find any merit in the instant writ-petitions.

The order of the Tribunal is not interfered with.

The writ-petitions being **WPST 112 of 2014**, **WPST 114 of 2014** and **WPST 164 of 2014** are accordingly **dismissed**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

