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27.01.2021
(Suvendu)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

WPA 275 of 2021

Ratan Chandra Roy
Vs.
The State of West Bengal & Ors.

Mr. Anindya Lahiri
Mr. Debajit Kundu
Mr. Surajit Basu
..... for the petitioner
Mr. Subir Kumar Saha, Ld. AGP,
Mr. Bikramaditya Ghosh
.....for the State
Mr. Sudipto Mazumder, Ld. ASG,
Mr. Arijit Ghosh
.....for the Union of India

The dispute in the present writ petition relates to appointment of Notaries in the State of West Bengal in terms of an advertisement dated 16th September, 2020 and the petitioner's grievance is for not calling him for the interview in relation to the selection process. Learned counsel for the petitioner submits that pursuant to the advertisement issued in the Anandabazar Patrika on 16th September, 2020 in relation to appointment of Notaries in West Bengal, the petitioner applied online in the prescribed form in the manner in which the petitioner was required to do. The online form downloaded from the internet has been placed by counsel setting out the requirements of candidate together with the filled in

Form which was submitted by the petitioner. Counsel submits that the list of selected candidates, who were called for interview, was published by the concerned authorities and the same did not feature the name of the petitioner. Counsel submits that there is extreme urgency in the matter as the date of interview has commenced today i.e. on 27th January, 2021 at 9.30 AM for Aipurduar and Coochbehar districts and will continue tomorrow i.e. on 28th January, 2021. The next phases of interview for the candidates of Darjeeling will commence on and from 29th January, 2021. Counsel submits that the petitioner does not know the reason for his exclusion from the list of candidates to be interviewed and prays for appropriate orders.

Learned counsel appearing for the concerned State respondents namely, the Competent Authority (Notary Cell), Department of Legal Affairs, Ministry of Law and Justice and the Secretary and the Joint Secretary of The Department of Law and Justice, Government of West Bengal, places Form I under Rule 4(2) of The Notaries Rules, 1956 and submits that under Note (I) of Form I, the candidate was to upload certain PDF documents before the interview. Counsel submits that the petitioner failed to upload the experience certificate from the concerned District Judge/ Presiding Officer relating to the practice of the

petitioner as an advocate. Counsel places the experience certificate dated 22nd January, 2021 which the petitioner submitted online while filling his application under Rule 1 on 29th September, 2020. It is submitted that the filled in Form along with all necessary credentials/supporting documents in PDF required to be submitted to the Law Department through official email within fifteen days from the date of publication of the advertisement in the daily newspaper. According to counsel, the fifteen days expired in the case of the petitioner on 13th September, 2020/1st October, 2020.

On hearing learned counsel appearing for the parties, this court is of the view that the entire matter revolves around the requirements indicated in Form I and particularly the Note under the said Form. Note (1) to the Form which the applicants were required to fill in provides for the following :-

“No hard copies or advance copies of the application in Form I and Form II will be accepted. The following documents shall be submitted at the time of interview :-

- (i) Proof pertaining to date of birth, copy of Aadhaar and PAN Card (self-attested),*
- (ii) Copy of Graduation Degree (self-attested),*
- (iii) Copy of Law Degree (self-attested),*

(iv) Copy of Certificate of enrolment issued by the Bar Council concerned (self-attested),

(v) No objection certificate issued by the Bar Council concerned State need to be submitted on selection as notary

(vi) Experience certificate from the District Judge or Presiding Officer of the court or Tribunal where the applicant practices as an Advocate.”

The contention on behalf of the State respondents that the petitioner was required to submit a PDF copy of the experience certificate online before the date of interview is belied from Form I itself. Clauses 6 and 7 of Form 1 require that educational qualifications and enrolment number and date of the Bar Council should be uploaded by the applicant at the time of submission of the online application Form. This would be evident from the specific instruction namely, “(please upload self-attested scanned copies)”. The petitioner duly uploaded the documents under Clauses 6 and 7 at the time of submitting filled in online Form. A plain reading of Note (1) makes it clear that Clause 6 namely experience certificate was included in the six documents under the specific instruction that “the following documents shall be submitted at the time of interview”. Nowhere in the Form is it required for the

applicant to submit any of the six documents including the experience certificate online before the date of the interview. The explanation offered by learned counsel for the State that the experience certificate showing the tenure of experience of the applicant is one of the conditions for eligibility under Clause 10 of Form I is a construction of the Form which was not available to the petitioner at the time of submitting his online application. Such construction can therefore only be seen as an attempt to explain the ambiguity in the Form itself.

This court is of the view that any ambiguity which is apparent in Form, which is to be submitted online by an applicant and where an applicant has no opportunity of obtaining a clarification on the ambiguity, must be resolved in favour of the applicant. In the present case, the petitioner complied with all the requirements of the online application and there is no reason to come to a finding from the available records that there was laches on the part of the petitioner in submitting the online application Form for the post of notary in West Bengal.

Since the interview for the said post has already commenced today and is due to continue tomorrow for Alipurduar and Coochbehar districts and the petitioner is from Coochbehar, the

respondent authority namely, the respondent nos. 3 and 4 will permit the petitioner to appear in the interview upon the petitioner's fulfilling all the requirements for the selection process. The petitioner's candidature and appointment, if made, will be governed by The Notaries Rules, 1956.

The aforesaid direction is given without prejudice to the other rights and contentions of the parties.

WPA 275 of 2021 is disposed of in terms of the above.

The parties will be at liberty to act on the server copy of this order.

(Moushumi Bhattacharya, J.)