

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice Subhasis Dasgupta

W.P.A. 987 of 2019

Debabrata Dey & Anr.

Vs.

The State of West Bengal & Ors.

For the Appellants/Petitioners: Mr. Jagriti Mishra, Adv.
Mr. Subham Gupta, Adv.
Mr. Debayan Goswami, Adv.

For the State : Mr. Subir Kumar Saha, Ld. A.G.P.
Mr. Bikramaditya Ghosh, Adv.

Heard on : 19.03.2021

Judgment on : 26 .03.2021.

Subhasis Dasgupta, J.:

This is an application under Article 226 of the Constitution of India, wherein the writ petitioners challenged the examination/selection process pertaining to the selection of 'Gram Panchayat Karmee' held on 30th November, 2019, for filling up a good number of vacancies to the said post, alleging that the respondents authority had changed the rules of game, subsequently after commencement of the game by introducing negative marking system and also setting questions in the questions-answers booklet, disproportionate with Class-VIII standard of West

Bengal Board of Secondary Education in violation of relevant rules & notifications.

At the very threshold of this case, it may be mentioned over here that since there was delay caused in the conduction of selection process, a writ application being WPA No. 253 of 2019, was taken out, and pursuant to the direction of WPA 253 of 2019, disposed of on 21.08.2019, the examination for the post of 'Gram Panchayat Karmee' was held on 30th November, 2019. A result was thereafter published on 10th December, 2019.

The contention of the writ petitioners is on two folds:

- (i) That the rules of the game have been subsequently changed after the commencement of the game without letting the writ petitioners know that there may be negative marking in the selection process.
- (ii) That the questions set up were hard, tough and not befitting with the standard of Class-VIII of West Bengal Board of Secondary Education.

Upon taking such points the writ petitioners incidentally submitted that since not a single candidate could be found to have been emerged out successful from the said examination, *malafide* on the part of the respondent authority could be sufficiently perceived by reason of elimination of suitable candidates, who were at the relevant point of time worked as Tax Collecting Sarkars of concerned Gram Panchayat.

The selection of Gram Panchayat Karmees from serving Tax Collecting Sarkars of different Panchayats, was supposed to be held

adhering to the amended provisions of West Bengal Panchayat (Recruitment of Employees of Gram Panchayat) Rules, 2007.

As per amended provisions of the rules, 33% of total number of posts shall be filled up by selection through a recruitment test, to be conducted by District level Selection Committee from the existing eligible Tax Collecting Sarkars, who have rendered service for at least Six (6) years in any Gram Panchayat.

It was also contemplated in such amended rules that in the event of non-availability of suitable candidates, the posts shall be filled up by direct recruitment.

Learned advocate representing the writ petitioners, Mr. Mishra, contended that the instant selection process was nothing but an eye-wash, simply to eliminate candidates, so that the seats/vacancies available for appointment to the posts of Panchayat Karmee from the Tax Collecting Sarkars could be filled up by holding a direct recruitment, causing serious prejudice and deprivation to the legitimate right of the Tax Collecting Sarkars, who had already rendered satisfactory service, for some considerable period of past, and upon consideration of which the concerned B.D.O. recommended the names of the eligible Tax Collecting Sarkars for taking part in the selection process.

Indisputably, the modality of the selection process was published from District Panchayat and Rural Development Officer/Member Secretary, District Level Selection Committee (DLSC), Cooch Behar on 31.12.2015. In such notification there was a remarks column, where it was conspicuously mentioned that the standard of question in Bengali, English and Arithmetic

will be of Class-VIII standard syllabus of West Bengal Board of Secondary Education.

Nothing was mentioned in such notification dated 31st December, 2015, that there will be negative marking system in the selection process.

In the instructions mentioned in the admit card, issued for the purpose, there was absence of conspicuous disclosure of introduction of negative marking in the selection process, though there was sufficient reflection that the standard of question will be as per the syllabus of Class-VIII standard of West Bengal Board of Secondary Education.

According to writ petitioners it was an element of surprise to the writ petitioners taking part in the said selection process, when for the first time inside the examination hall they could learn that there would be negative marking for the wrong answers in respect of the questions being set up in the said selection process.

The writ petitioners were thus dumb founded, sitting in examination hall, and to their utter amazement they could discover that the said selection was nothing but a process of elimination, simply to deprive the candidates including the writ petitioners from being appointed to the post of Gram Panchayat Karmee.

Mr. Mishra, learned advocate for the petitioners strenuously contended that with introduction of negative marking, the respondent authority had deliberately and purposefully changed the rules of game midway in order to ensure elimination.

Referring some of the questions to the questions and answers booklet, Mr. Mishra proposed that such questions were not only hard and

tough, but could be comparable to the selection of posts like Bank Officers, and other relevant selection of Officers in the Government posts.

Per contra, Mr. Bikramaditya Ghosh, learned advocate representing the State respondents nos.1 to 6 submitted that petitioners being disgruntled candidates, they could not be allowed to challenge the selection process having already taking part in the selection process, merely upon taking the grounds of negative marking together with harder and tougher questions being set in the relevant examination.

According to Mr. Ghosh, since writ petitioners are unsuccessful candidates to the selection process, the instant writ application should be dismissed being without any merits.

The rules of the game, according to State/respondents were never changed, as in the referred booklet, candidates taking part in the selection process were given sufficient scope to know about the negative marking in respect of the questions being set in the said selection process.

Mr. Ghosh, adhering to the question/answer booklet drew attention of the Court to the instruction no. 4 in order to establish that writ petitioners had enough occasion to know about the introduction of negative marking, and upon sufficient comprehension of the same, the writ petitioners voluntarily took part in the selection process. Therefore, according to State/respondents, it could not be regarded as an element of surprise.

As regards the harder and tougher questions being set up in the question/answer booklet, Mr. Ghosh confined his submission to the point

that questions had been set up according to the standard of Class-VIII of West Bengal Board of Secondary Education.

There could not be any right to appointment merely upon participation to the selection process. In the absence of any express perversity, the selection process, according to State, cannot be cancelled.

Further contention of State is that the amended rules only provided for selection to the posts of Gram Panchayat Karmee from Tax Collecting Sarkar, and there was nothing mentioned as regards the modality to be adopted for the relevant examination. The modality was thus left to be decided by the selection committee devising a selection process relevant for the purpose upon due adherence to rules, if there be any.

The gist of the objection raised in the affidavit-in-opposition of the respondents is that the selection process conducted never *de hors* the rules, as contended to have done in this case by writ petitioners.

Raising age dispute, Mr. Ghosh incidentally drew attention of the Court to the affidavit furnished by the writ petitioners, annexed with the instant writ application, wherein the writ petitioner, namely Debabrata Dey described himself to be of 58 years old. Upon referring such affidavit, Mr. Ghosh contended that writ petitioner namely, Debabrata Dey being an over aged candidate, his contention raised in the writ application should be dismissed.

As regards the age dispute raised by the State/respondents, the Court is of the view that whenever the writ petitioner, namely Debabrata Dey, was allowed to take part in the selection process after being recommended by the concerned B.D.O., upon due verification of official

records, such point of objection as regards over age is without any significance.

With regard to the point raised by the State in respect of the eligibility of the candidates taking part in the selection process for their existing age, such point was considered in W.P.A. 253 of 2019, wherein the submission of State/respondent was considered and the same may be mentioned as hereunder:

“It is fairly submitted on behalf of the respondents that even the candidates for the post-in-question, whose names had been recommended previously in the year 2017, would be considered for recruitment, taking their age to be as on first day of the year of the recommendation, that is, 2017.”

The age dispute having adequately taken care of in W.P.A.253 of 2019, such point again raised by the State/respondents appears to be inconsequential.

The primary challenge, as raised by the petitioners in simpliciter is that respondents authorities have subsequently introduced a concept of negative marking in the midway of selection process, and further that the questions set up in the selection process were hard and tough also, being disproportionate with Class-VIII standard of West Bengal Board of Secondary Education.

Mr. Mishra, referring an unreported decision of Madras High Court, delivered in W.P. No. 14596 of 2013 and M.P. Nos. 1 & 2 of 2013, submitted

that the intelligent guessing, while attempting to answer questions in a competitive exam should not be saddled with negative marking.

Upon perusal of such unreported decision of Madras High Court, it appears that the observation of the Court as regards the negative marking was communicated to authorities for taking future course of action.

To challenge the case of the writ petitioners, Mr. Ghosh, proceeded to rely upon a decision reported in **2010 SCC Online Cal 1064 : (2010) 2 CHN 772 : 2010 (2) CAL LJ 185**, delivered in the case of **Dr. Sayantan Banerjee & Ors. Vs. West Bengal University of Health Sciences & Ors.** that the writ petitioners being disgruntled should not be allowed to challenge the selection process doing an after-thought exercise, as the writ petitioners voluntarily participated in the selection process upon knowing that there will be negative marking for the wrong answers.

Upon perusal of the materials on record, it appears that on the date itself of holding the examination, the writ petitioners with others submitted a representation dated 30.11.2019, expressing their grievance after being dissatisfied with the modalities of the selection process including the standard of questions being set up for the purpose.

Even before the publication of result, within the best possible opportunity, the writ petitioners approached the writ jurisdiction of this Court expeditiously in exercise of their right for being adequately remedied, thereby raising their voice against the selection process, conducted for the purpose.

That being the position, the grievance of the writ petitioners so raised can hardly be perceived to be an after-thought one, as contended by State/respondents.

The settled proposition of law is very clear that ordinarily candidates having participated in the selection process cannot challenge the selection process merely upon taking the ground of hard and tough questions being set in the examination, unless there is express perversity in the selection process. When there has been previous publication from the office of the State/respondents, responsible to conduct the selection process, that the examination will be held following Class-VIII standard of West Bengal Board of Secondary Education, it is desirable that the questions to be set, must pass the tests of reasonableness, upon due application of fair, reasonable, rationale and practicable approach for the purpose, otherwise the intention of the legislator providing scope to suitable Tax Collecting Sarkar for selection of Gram Panchayat Karmee through a selection process, as contemplated therein from, upon successful completion of their service to the post, may be frustrated.

Since, none of the candidates taking part in the selection process emerged out to be successful one, the grievance of the writ petitioners; that with the introduction of the negative marking in the midway of the selection process, the respondent authorities have changed the rules of game subsequently after commencement of the game, which is *ex facie*, demonstrable from the instructions supplied in the questions and answers booklet, issued for the first time to the participants inside the examination

centre, taking part in the selection process, requires due redressal making interference at least on such score alone.

For the discussion as aforementioned, there lies sufficient justification to cancel and/or set aside the concerned examination held on 30th November, 2019, and result published thereafter on 10th December, 2019.

Accordingly, the concerned examination for the selection of “Panchayat Karmee” from “Tax Collecting Sarkars” held on 30th November, 2019, and the result list published on 10th December, 2019 are cancelled with a direction upon the respondent authorities, in particular the respondent no. 3 to hold and conduct an examination afresh, latest by 30th June, 2021, after collecting one (1) set of questions and answers booklet with key answers separately in sealed envelope, proportionate with the Class-VIII standard of West Bengal Board of Secondary Education; on the strength of notification dated 31.12.2015, relatable to Memo No. PRD/1324(12) issued from the office of District Magistrate, Cooch Behar (Panchayat & Rural Development Section) by District Panchayat & Rural Development Officer and Member Secretary, D.L.S.C., Cooch Behar, from the Headmaster of Government school (Zilla/District School) of Cooch Behar, under the West Bengal Board of Secondary Education situated within the District of Cooch Behar.

It is clarified that while making collection of questions and answers booklet from the Headmaster, mentioned above, confidentiality of the process has to be strictly ensured so as to reveal the fairness of the entire exercise.

The Selection Committee so constituted for the purpose is free to set such questions and answers booklet for the purpose of holding examination afresh after getting it printed of required numbers, preserving one questions and answers booklet in the custody of the Member Secretary of the Selection Committee until the selection process is over.

After holding the examination, the result may be published within a fortnight thereafter.

All the participants taking part in the selection process/examination held on 30th November, 2019, be provided with opportunity afresh to seat for the examination afresh, and Member Secretary of the Selection Committee must take sufficient, adequate steps for providing scope to the all the participants, who had already taken part in the previous examination held on 30th November, 2019, requiring them to seat for in the examination afresh.

With this direction and observation, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent certified photostat copy of this judgment, if applied for, be given to the parties upon compliance of all necessary formalities.

(Subhasis Dasgupta, J.)