

**28.03.
2022**

Ct. No. 04

Ab

WP.ST 2 of 2022

**Chinmay Chattopadhyay
Vs.**

State of West Bengal and others.

**Mr. Shaunak Ghosh,
Mr. Rajib Mallick,
Ms. Shreyashi Maity.**

... for the petitioner.

**Mr. Tapan Kumar Mukherjee,
Mr. Pinaki Dhole,
Mr. Avishek Prasad.**

... for the State.

This writ petition has been filed challenging an order dated 18th December 2018 passed by the West Bengal Administrative Tribunal in OA 1119 of 2016 and OA 1121 of 2016 by which the said application was dismissed solely on the ground that the petitioner herein could not secure the minimum cut off marks.

At the time of admission of the instant writ petition, we noticed that while disclosing the total marks obtained by the petitioner on the basis of the break up marks obtained in different categories of the examination, there was an arithmetical error and, prima facie, it appears to us that upon adding all the marks (break up whereof was provided), the petitioner obtains higher marks than the last selected candidate.

Precisely for such reason, Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader, was directed to disclose the stand of the State on such discrepancy and the anomaly, prima facie, surfaced at the time of moving the instant writ petition. On the returnable date, Mr. Mukherjee after taking instruction submits that a proposal was sent by the Director General, West Bengal Fire and Emergency Services to

the Principal Secretary, Department of Fire and Emergency Services, Government of West Bengal on 5th February 2016 indicating the methodologies to be adopted in the selection process by fixing the minimum pass marks in each category of examination. Such proposal was accepted, which would appear from the letter dated 14th March 2016 issued by the Commissioner to the Government of West Bengal.

The aforesaid facts were not disclosed before the tribunal nor the tribunal had an occasion to consider the same as it proceeded simplicitor on the basis of the total aggregate marks obtained in different compartment of the examination and by committing arithmetical error surreptitiously jumped to the conclusion that the petitioner obtained lesser marks than the marks obtained by the last successful candidate.

The tribunal appears to have committed great error in calculating the aggregate marks so far as the petitioner before us is concerned but after noticing the aforesaid circulars disclosed by Mr. Mukherjee in course of the argument, we feel that the matter should be considered upon exchange of affidavits. We have given to understand that the tribunal dismissed the tribunal application at the threshold without inviting the parties to exchange affidavits and disclose the stands on the factual matrix, which, in our opinion, is improper.

We, thus, set aside the impugned order having passed on arithmetical error having committed so far as it relates to the petitioner no. 1 is concerned and remit the matter to the tribunal to rehear and decide the matter on merit.

Since the said proposal dated 5th February 2016 and its approval dated 14th March 2016 have been disclosed for the first time before this Court, an opportunity, in our opinion, is to be given to the

petitioner if the said documents are further disclosed by way of affidavit before the tribunal.

We, therefore, permit the State respondents to file affidavit-in-opposition within two weeks from date before the tribunal; reply thereto, if any, shall be filed within a week thereafter.

It is open to the petitioner to take appropriate steps the moment the aforesaid proposal and its approval are disclosed in the opposition.

With these observations, the writ petition is disposed of.

Since we have set aside the impugned order and remitted the matter back to the tribunal, the interim order passed in the instant writ petition to the effect that one post shall be kept vacant until further order, the same shall continue till disposal of the tribunal application.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)