

04.04.2022
SL No. 36
Court No. 24
(P.M)

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 918 of 2022

**Md. Kaisar Ali
Vs
The State of West Bengal & Ors.**

Mr. Arindam Das
Ms. Rumeli Sarkar
... for the petitioner

Mr. Bhaskar Prasad Vaisya,
Mr. Pinaki Bhattacharya
... for DPSC North 24-Parganas

Mr. Pinaki Dhole
Mr. Avishek Prasad
... for the State

Report in the form of affidavit filed by the respondent No. 6 in Court today is taken on record.

The petitioner participated in the Primary Teachers' Recruitment Examination, 2009 initiated by the District Primary School Council, 24-Parganas (North).

The petitioner applied in the General (EC) category. Identity card issued by the Joint Director, Exempted Category Cell, Directorate of Employment, Government of West Bengal on 3rd May, 2010 under the Exempted Category (Land Looser) is annexed to the writ petition.

Relying on the said certificate the petitioner made application seeking reservation in the Exempted Category. Admit Card was issued in favour of the petitioner mentioning the category as General/Exempted.

The petitioner appeared in the process of interview/verification of documents, but the name of the petitioner did not figure in the final panel of candidates for recruitment as Primary Teachers.

The petitioner challenged the same by filing the instant writ application.

A report in the form of affidavit has been filed by the Chairman, North 24-Parganas District Primary School Council wherein it has been mentioned that the petitioner was considered in the unreserved category as he failed to produce any authentic document/certificate of exempted category at the time of verification.

The report further mentions that the marks scored by the petitioner is 15.57. The marks obtained by the last empanelled candidate in the Exempted Category is 9.84 as appearing from the panel which has been published by the Council.

The notice published by the North 24 Parganas District Primary School Council in relation to the said recruitment process mentions that, caste certificates issued after 12th June, 2010 will not be considered by the Council.

In the present case, Exempted Category certificate was issued in favour of the petitioner on 3rd May, 2010 i.e. before the cut-off date as prescribed in the notice published by the Council. Accordingly, it was incumbent upon the council to accept the certificate issued in favour of the petitioner by the Exempted Category Cell, Directorate of Employment and treat the petitioner as exempted category candidate.

It is not believable that the candidate, even though had the caste certificate in his possession, did not produce the same at the time of verification of documents. The petitioner asserts that the caste certificate was produced at the time of scrutiny and verification of documents, but even thereafter the petitioner was not given the benefit of reservation.

In view of the above, the instant writ petition is disposed of by directing the Chairman of North 24-Parganas District Primary School Council being the respondent No. 7 herein to take necessary steps in the matter by treating the petitioner's candidature in the Exempted Category after verification of the certificate relied upon by the candidate.

It is obligatory for the Council to appoint a candidate who obtained higher marks than the candidate who obtained lower marks in the said category. As it appears that the petitioner has scored more marks than

the last empanelled candidate in the Exempted Category, accordingly, consequential steps is required to be taken by the aforesaid authority, strictly in accordance with law, by recasting the panel, if necessary.

Steps shall be taken in the matter at the earliest but positively within a period of six weeks from the date of communication of a copy of this order.

After the order is dictated in open Court, it has been submitted by the learned advocate representing the Council that there is no vacancy in the Exempted Category. Filling up of vacancies by candidates with lesser marks is impermissible. Law mandates that vacancies are to be filled up by candidates securing higher marks. Non availability of vacancy cannot be a ground to deprive a meritorious candidate who scored more marks than the last empaneled candidate in a respective category.

The writ petition stands disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)