

04.04.2022
SL No. 39
Court No. 24
(P.M)

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

WPA 936 of 2022

**Md. Abdus Shaid
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

The report as directed to be filed by order dated 14th February, 2022 has not been filed till date. The petitioner has been intimated under the Right to Information Act that he secured 11.30 marks in the examination held by the Council. The marks obtained by the last empanelled candidate in the General Exempted Category is 9.84.

The information received by the petitioner under the Right to Information Act dated 2nd March, 2022 is retained with the records.

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 25th 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.

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 25th 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.)

