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WP.ST. 16 of 2014

Ct. No. 04

Akd

Tapan Kumar Ray Chowdhury
Vs.
Directorate of Social Welfare, I.C.D.S.
& Nutrition Programme & Ors.

Mr. Siva Prasad Ghosh.
... for the petitioner.
Mr. Tapan Kumar Mukherjee,
Mr. Somnath Naskar.
... for the State.

A belligerent litigant taking advantage of the discrepancy between the letter for appearance in the written examination and the letter for appearance in the typing test and interview has taken out a plea that there is a gross anomaly manifest therefrom and the candidature of the petitioner has been wrongly considered on a different category than for which he applied for.

Our attention is drawn to the advertisement pertaining to the recruitment under Women and Child Social Welfare Department for different posts earmarking different qualifications and the age as on the date of an application.

As indicated above the petitioner claimed to have applied under serial no. 6 of the said advertisement for the post of cashier-cum-LDC for which the education qualification is Madhyamik-pass, but according to him, at the time of typing test and interview, the letter so issued in this regard depicted that the petitioner's candidature is considered under the typist-cum-store-keeper, which is appearing in serial no. 7 of the said advertisement. There is a different qualification required for such post.

Admittedly the petitioner participating in the typing test and interview claimed to have provisionally enlisted in the panel so prepared. Subsequently the petitioner found that his name has not been included and immediately an approach was made for the substantive relief that the moment petitioner was finally selected on the basis of the competitive written examination, type test and interview, the respondents have no right or authority to cancel the said panel and to prepare a fresh panel. Therefore, such action is liable to be quashed and set aside.

The second relief claimed therein relates to the direction to prepare fresh panel upon including the name of the petitioner, who did not even appear at the competitive test, without giving the petitioner's chance to appear at a fresh test and the other consequential reliefs depending upon the said main relief.

What can be gathered from the aforesaid reliefs claimed in the tribunal application that the petitioner considered himself to have qualified in the written test, type test and the interview and the moment the names have been included, the authorities cannot subsequently cancel the same and prepare a fresh panel.

Our attention is drawn to various paragraphs of the tribunal application in support of the contention that the plea, which is taken in the instant writ petition, the foundation whereof was led in the tribunal application.

We find from the meaningful reading of the averments made in paragraph 6 of the tribunal

application that it is a specific stand of the petitioner that he was successful in the written examination, type test and interview and, therefore, withholding his name and not including the same in the panel is arbitrary.

The manner in which the learned Advocate for the petitioner attempted to assign the meaning of the language employed therein, does not appear from the reading of the aforesaid provision and we do not find that there is any case of the nature that the authorities have coerced or inflicted duress upon the petitioner's appearing in the type test, which was not an essential requirement for filing up of the post of cashier-cum-LDC.

It is all along the stand of the petitioner that he successfully participated in the written test, type test and interview; and, therefore, his name ought to have been included in the panel so prepared and, therefore, the authority's action to cancel the panel in which the name of the petitioner figured and the attempt to make a fresh panel is illegal, whimsical and abuse of the powers.

We do not find that there is any foundation led for the point taken by Mr. Ghosh that the authorities have committed a gross error in coercing the petitioner to appear in the type test which was not the condition put in the advertisement for the post of cashier-cum-LDC.

A Counsel cannot make out a case standing at the Bar for his client but must proceed on the basis of the pleadings, as the importance of pleading in an

adversarial judicial system cannot be said to be an idle formality nor will loose its efficacy in such system. It is not permissible for the member of the Bar to argue the point dependant upon the facts contrary to the pleadings filed in the Tribunal.

We thus do not find any merit in the instant writ petition. The same is hereby dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)