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26.04.2022
d.p.

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

W.P.A 5783 of 2021

**Mozaffar Ahmed
-versus
The State of West Bengal & Ors.**

**Mr. B. N. Ray,
Ms. S. Ray.
...For the Petitioner.**

**Mr. Shamim Ul Bari.
...For the DPSC, Malda**

**Mr. Bhaskar Prasad Vaisya,
Mr. Sagnik Chatterjee.
...For the State.**

The petitioner participated in the Recruitment Process of Primary School Teachers, 2009 conducted by the Malda District Primary School Council. He applied in the Exempted Category (General/Unreserved).

The petitioner qualified in the written examination but he was not permitted to appear in the interview because at the time of verification of his academic credentials it was revealed that the petitioner was under age at the time when he participated in the Census Operation.

In terms of the order passed by this Court, the petitioner was permitted to appear in the interview, which was held on 31st March, 2015.

The verification report prepared on the day of the interview mentions that the petitioner was fifteen years of age at the time of Census Operation, 1991. At the time of verification of his credentials, it was further revealed, that the petitioner registered his name in the Employment Exchange office as EC candidate on 14th June, 2010 which was after the last date of submission of application for the post i.e. on 3rd November, 2009.

The District Primary School Council treated the petitioner as General/Unreserved category candidate.

The petitioner is aggrieved by the act of the Council.

The final merit panel for appointment of primary school teachers prepared by the Malda, District Primary School Council has been annexed to the writ petition only to show that there are several other candidates who have been enlisted in the EC category, who participated in the Ex-Census Operation of 1991 and were minors at the time of Census Operation.

The petitioner relies upon the notification of the Labour Department being 301-EMP dated 21st August, 2002 and the notification No. 303-EMP dated 21st August, 2002.

According to the petitioner, the Council adopted a pick and choose method to give appointment to candidates of their choice who were in the same footing as that of the petitioner.

The petitioner relies upon the judgment delivered by a Coordinate Bench of this Court in the matter of

Puspita Mondal (Halder) –vs- State of West Bengal & Ors. reported in 2011(3) CHN (CAL) 852 paragraph 12.

The petitioner also relies upon an unreported order dated 13th July, 2012 in W.P. 7782(W) of 2011 (Sharmila Das –vs- State of West Bengal & Ors.).

The petitioner submits that the report filed by the Malda, District Primary School Council clearly mentions that candidates below 18 years of age were appointed by the Council in the exempted category whereas the petitioner has been singled out and discriminated by not giving appointment to him.

The petitioner prays for a direction upon the respondent Council to issue letter of appointment in his favour.

The prayer of the petitioner has been strongly opposed by the learned advocate appearing for the Council. It has been submitted that the petitioner does not come within the purview of the provision as laid down in the notification being 301-EMP dated 21st August, 2002 wherein it has been mentioned that Ex-Census employees are required to put in at least six months continuous service and at least 240 days' work.

According to the respondents, the petitioner has worked from only 59 days and cannot be treated as an Ex-Census candidate. It has been submitted that as the petitioner produced the exempted category certificate after the last date of submission of the application form, accordingly, the benefit of reservation cannot be extended in his favour.

The Council contends that there was no direction upon the Council to treat the candidature of the petitioner in the exempted category in the earlier writ petition which was filed by the petitioner. It has been submitted that the petitioner was, however, directed to appear in the interview only in compliance of the order dated 24th March, 2015 passed by this Court in favour of the petitioner in W.P. 6487 (W) of 2015.

The respondents pray for dismissal of the writ petition.

I have heard the submissions made on behalf of both the parties.

It appears from record that a letter of appointment as enumerator was issued in favour of the petitioner by the District Census Officer for conducting the Census work for the year 1991 and identity card issued by the Block Development Officer for conducting the Census work for the period 1991 was also issued in his favour.

The Census Charge Officer and the Block Development Officer, Kaliachak-I, Malda, by a certificate dated 21st August, 1991, certified that the petitioner worked as enumerator in the Census work of 1991 for 59 days.

The identity card issued in favour of the petitioner on 14th June, 2010 by the Department of Labour mentions that the petitioner belongs to the Ex-Census 1991 category.

The documents which has been placed on record by the Malda District Primary School Council clearly

shows that at least two candidates who were below 18 years of age at the time of Census Operation were given appointment by treating their candidature in the exempted category.

No reason whatsoever has been put forward as to why the said candidates were given the benefit of reservation but the petitioner has been deprived from the said benefit by the Council.

According to the notification No. 301-EMP, a candidate may be treated as an Ex-Census employee only if the candidate holds an authentic "Experience Certificate" issued by the Directorate of Census Operations, West Bengal or any other competent authority by the said Directorate.

There is no requirement to put in at least six months continuous service under the Director of Census Operation or working at least 240 days during the said period of Census Operation. The same is a requirement for Ex-Census employee who worked in connection with 1981 Census Operation only and not with regard to the Ex-Census Enumerator for the 1991 Census Operation.

The petitioner does hold an experience certificate issued by the competent authority. He also holds an identity card issued in his favour by the Employment Exchange under the exempted category.

The Court in Puspita Mondal's case (supra) held that the authenticity and/or genuineness of a candidate falling under the exempted category by virtue of being a former census worker/enumerator could only be verified from the concerned employment exchange.

The Court in Sharmila Das (supra) observed that the Director of School Education raised certain doubts relating to issuance of Census Certificate by the competent authority; reason behind such suspicion, is that the petitioner was under age at the time census work was conducted.

The Court further recorded that the authority could not place before the Court any material or relevant statutes disapproving such engagement.

The Court was of the opinion that the Exempted Cell, upon subjective satisfaction, found the petitioner was an Ex-Census worker/Enumerator of a Census work conducted in the year 1991 and registered her name in the exempted category. Statutory authority to whom, sponsorship is made by Exempted Cell, cannot question subjective satisfaction of the Exempted Cell in respect of registration of the name of a candidate, by saying that the candidate did not work in the census conducted in the year 1991 as the candidate was under age.

In the case at hand, the candidature of the petitioner was rejected primarily on the ground that the petitioner was under age at the time of conducting the census work.

The aforesaid contention of the Council cannot be agitated further in view of the law laid down by the Court in the matter of Puspita Mondal (Halder) (supra) and Sharmila Das (supra).

The next limb of the argument of the Council is that the certificate relied upon by the petitioner to avail

the benefit of reservation was issued after the last date of submission of the application.

The petitioner admittedly worked in the Census work of 1991. Certificate of engagement was issued in his favour in the year 1991 itself. The petitioner has strongly submitted that Identity Card was issued by the Employment Exchange long after the same was applied for.

The fact that the petitioner participated in the Census 1991 work is very evident from the face of record. Council has not denied the veracity of the said documents relied upon by the petitioner. Issuance of the Identity Card by the Employment Exchange in the year 2010 does not belie the fact that the petitioner participated in the Census work of 1991.

The Council has admittedly given appointments to candidates, who are similarly placed as that of the petitioner. There is no reason as to why the petitioner will not be treated in the same manner.

In view of the above, the Council is directed to treat the candidature of the petitioner in the exempted category and take necessary consequential steps in the matter, strictly in accordance with law, at the earliest, but positively within a period of six weeks from the date of communication of a copy of this order.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

(Amrita Sinha, J.)