

18.04.2022

Court : 04
Item : PB-01
Matter : MAT
Status : DO
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MAT 391 of 2022
with
CAN 1 of 2022

Md. Asadul Islam
Vs.
The State of West Bengal & Ors.

Mr. Md. Sarwar Jahan, Advocate

Mr. Sk. Nayeemul Haque, Advocate

.....for the Appellant

Mr. Bhaskar Prasad Vaisya, Advocate

Mr. Pinaki Bhattacharya, Advocate

.....for the DPSC (N-24)

Mr. Malay Singh, Advocate

Mr. Raja Ram Banerjee, Advocate

.....for the State

The writ-petition filed by the appellant is dismissed solely on the ground that the disputed questions of fact pertaining to the recruitment ensued in the year 2009 cannot be decided in the writ-jurisdiction.

Admittedly, pursuant to an advertisement widely published, the appellant/petitioner offered his candidature under Exempted Category (General) as an Ex-Census Worker. Though the recruitment process was initiated in the year 2010 pertaining to the vacancy of the posts of primary teacher in different primary schools within the North 24-Parganas district, but the written examination could not be held because of the intervening litigations pending before this Court. Ultimately, by an order of the Division Bench, the recruitment process was resuscitated and the appellant/petitioner sat in the written examination and was found eligible for

interview/viva voce.

The dispute cropped up the moment the petitioner did not find his name in the panel of successful candidates and approached this Court with the writ-petition challenging the action of the authorities in not including his name in the panel of the successful candidates. The pivotal issue, which was raised before the Single Bench, pertains to the eligibility of the appellant/petitioner in a particular category i.e. Exempted Category (General) when the Council submitted that the appellant/petitioner did not produce any document justifying his claim in the aforesaid category. The report in the form of an affidavit has called for by the Single Bench, which is annexed at page 71 of the said application. The report would reveal two salient facts; firstly, though the petitioner applied under the Exempted Category (General) but did not produce any document in support thereof and, therefore, was treated as General Category (unreserved) candidate; secondly, the appellant/petitioner secured 19.44 marks whereas the last empanelled candidate under the unreserved category in Bengali Medium obtained 30.88 marks.

The aforesaid disclosure encouraged the petitioner to contend before the Single Bench by relying upon a panel of the successful candidates prepared for Exempted Category (General) in Bengali Medium that having secured higher marks

than the last appointed candidate under the aforesaid category, he is entitled to be appointed.

The report contained the specific stand of the Council that no document in support of the claim was produced by the appellant/petitioner, therefore, his candidature cannot be considered under such category; on the other hand, the appellant/petitioner, submits that he produced all the relevant documents at the time of verification or even prior thereto but for some reasons unknown to him, his candidature has not been considered under the exempted category. Precisely for such disputed facts, the Single Bench dismissed the writ-petition, as it cannot decide the same.

The primary question involved in the instant appeal is whether there was any fetter on the part of the Single Bench in deciding the writ-petition on merit when the stand of such nature was taken and appropriate relief be granted to the appellant. Such disputed facts requires to be determined and/or considered on the basis of the materials disclosed in the writ-petition and on a ground of strong presumption.

Our attention is drawn to the certificate issued by the Employment Officer-in-charge (E.C. Cell), Directorate of Employment, Government of West Bengal, as far back as on May 30, 2003 wherein the appellant/petitioner has been registered under the Exempted Category (General) from the date of the

issuance of the said certificate as Ex-Census Worker. Our attention was further drawn to the certificate issued on March 13, 2012 by the Sub-Divisional Officer, Baruipur, South 24-Parganas indicating that the petitioner is an Other Backward Class (OBC) category of person.

So far as the certificate issued by the Sub-Divisional Officer is concerned, the same having issued after the initiation of the recruitment process, the same cannot be considered as a valid piece of evidence for the purpose of ascertaining the category of the petitioner/appellant. However, we find that the identity card issued by the Employment Officer (E.C. Cell) was much prior to the date of initiation of the recruitment process. Precisely for such reason the application was made under the aforesaid Exempted Category (General). Our attention is also drawn to the advertisement published for such recruitment process that after June 12, 2010, no request for change of the category shall be accepted.

We do not find any relevance to the aforesaid clause as it has its limited applicability, more particularly, when a person is applying under different category but later on sought to change such category after the said cut-off date, which is impermissible. The admit card for appearing in the written examination was issued by the authority showing the candidature of the petitioner under Exempted Category (General) in Bengali Medium

and it is undeniable that the petitioner was permitted to sit in the written examination on the basis of such admit card. After the petitioner was found successful in the written test, the letter for aptitude/ interview was issued on October 31, 2014 where the instruction no. 5 indicates that the certificate regarding category SC/ST/OBC/PH/EC/Ex.S etc. to be produced at the time of interview.

All along the petitioner was considered as an Exempted Category (General) candidate by the authority, not only while issuing the admit card for appearing in the written examination but also for interview. We had no hesitation in our mind that once the authority has issued such letter/admit card being alive of the fact that the candidature of the appellant/petitioner is under the Exempted Category (General), it is inconceivable that the candidature of the petitioner shall be shifted from such exempted category to unreserved category as he did not produce the documents. The document issued by the Employment Exchange (E.C. Cell) on a date prior to the initiation of the recruitment process and the presumption heavily lies in favour of the petitioner who is in possession of such certificate that he would not produce the same which would deny his candidature under the said category. Even we find from the call letter for interview issued in the year 2014 which contains the specific instruction with regard to the production of the certificate pertaining to a particular category and the moment the

petitioner has been allowed to participate in the interview and assigned marks therein, there is no justification in believing that the petitioner would not produce such certificate at the time of an interview.

The question is not to believe or disbelieve the statements of the respective parties. Without delving to go into the same, we find that the matter could have been conveniently decided on the basis of the preponderance of probability and strong presumption in favour of the party. It is unconceivable and improbable that a person having a requisite certificate issued by the competent authority prior to the date of advertisement would not produce the same even after a gap of eleven years when the interview was held inviting an action prejudicial to his interest. The disclosure made in the form of an report indicates that marks obtained by the petitioner in the said recruitment process which after taking into consideration the panel prepared under the aforesaid category i.e. Exempted Category (General), leaves no doubt in our mind that the petitioner ought to have been included therein having obtained higher marks than the last cut-off marks for the aforesaid category.

In view of the findings recorded hereinabove, the order impugned is **set aside**.

The Chairman, District Primary School Council, North 24-Parganas, is directed to recast the panel pertaining to the Exempted Category (General) for Bengali Medium including the petitioner in a suitable

position in commensurate with the marks obtained in the recruitment process and after verification of the documents pertaining to the claim under the particular category shall forward the same to the Commissioner of School Education (Primary), West Bengal for due approval.

The entire exercise shall be completed within six weeks from the date of communication of this order. If all the exercises have gone favourably to the petitioner, it is expected that the concerned authority would take all consequential steps immediately.

After the order is passed orally in open Court, Mr. Bhaskar Prasad Vaisya, learned Advocate, appearing for the District Primary School Council, North 24-Parganas, prays for stay of the operation of this order.

Since we do not find any ground justifying the stay, such prayer is refused.

With these observations, the appeal being **MAT 391 of 2022** and the application being **CAN 1 of 2022** are **disposed of**.

Urgent Photostat Certified Copy of this order be given to the parties, if applied for, preferably within three days from the date of application.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

