

30.03.2022

Court : 04
Item : PB-07
Matter : MAT
Status : DISMISSED
Transcriber: nandy

MAT 402 of 2022

with

CAN 1 of 2022

District Primary School Council, Malda & Anr.

Vs.

Dipak Chowdhury & Ors.

Mr. Shamim-ul Bari, Advocate

.....for the Appellants

Mr. K.M. Hossain, Advocate

Ms. Keya Chatterjee, Advocate

.....for the Writ-Petitioner/Respondent

The matter pertains to the recruitment of Primary Teacher in the Schools under the territorial jurisdiction of the Malda District Primary School Council. The recruitment process was initiated way back in 2010 but the examination could not be held until late 2015. The respondent no. 1 after noticing that his candidature has been shown under the General Category though he applied as exempted category (SC), approached this Court by filing a writ-petition being WP 5129 (W) of 2015.

Mr. Shamim-ul Bari, learned Advocate who is appearing for the appellant in this matter also appeared in the said writ-petition which came up for final disposal on May 5, 2015. The submission of Mr. Bari was recorded and it would reveal that the panel was not finalized and the case of the petitioner may be considered. There was no challenge to the right of the petitioner to be considered under the exempted category (SC). However, while disposing of the said writ-petition, this Court directed the Chairman of the Council to consider the case of the petitioner under

the exempted category (SC) and then the merit list of such category would be finalized.

It is not in dispute that the respondent no. 1 was allowed to participate in the selection process as an exempted category (SC) candidate but later on he was thrown out of the zone of consideration as the last cut off marks fixed under the general category, has not been secured by him. When the instant writ-petition was filed by the respondent no. 1 challenging the aforesaid action of the Council, the single Bench noticed that the moment the Court directed the candidature of the respondent no. 1 to be considered under the exempted category (SC), it is a blatant violation of the said order when the candidature of the petitioner has been treated under the general category.

The startling facts can also be visualized that as there was dearth of exempted (SC) category candidates, remaining posts were filled up from the candidates who applied under the general category. Such being the fact and the petitioner was considered under the exempted category (SC), we find no reason why the petitioner has not been appointed and shown in the panel. The petitioner was one of the candidates under the aforesaid exempted category (SC) and, therefore, should have been included in the panel in view of the order passed in an earlier round of litigation.

It is an brazen attempt on behalf of the Chairman of the Council in acting in violation of the order of this Court passed in an earlier writ-petition for the reasons undisclosed and unknown to us. There may be some extraneous factors that may stand in the way of the petitioner, coming from the other side of the curtain, which is invisible. The authority cannot defy the order of the Court nor can show reluctance to implement the same but must show alacrity in executing the directions passed by the Court in order to maintain its sanctity and majesty. When the right of the petitioner has been crystallized in an earlier writ-petition filed before this Court, there cannot be any other consideration for defeating such right as it patently violates the mandates of the Court and would create an impression that the said authority has least respect to the orders of the Court and may take any other decision which suits its wisdom or in tune with some other extraneous factors which might have played a vital role in its mind.

There is no illegality and infirmity in the impugned order having passed upon noticing the order of this Court passed in an earlier round of litigation and, therefore, the instant appeal has been filed with an intent to get away with the same and postpone the implementation of the order. It is a fit case where this Court must impose costs upon the Council.

We thus do not find any infirmity in the order impugned.

The appeal being **MAT 402 of 2022** and the connected application being **CAN 1 of 2022** are **dismissed with costs** assessed at Rs.25,000/- to be deposited with the Calcutta High Court Bar Association Lawyers' Benevolent Fund within two weeks from date.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)