

17.03.2022

BP
Sl.1
Court No. 17.

WPA 7258 of 2021
With
CAN 1 of 2022

Plaboni Hossain
Vs.
The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya
Mr. Jakir Hossain
.. for the Petitioner.

Dr. S.K. Patra
Ms. Supriya Dubey
..for SSC.

Ms. Mayuri Ghosh
..for the respondent no. 8.

The grievance of the writ petitioner is that a candidate below the rank of her has been recommended for the post of Assistant Teacher in Geography but she has not been recommended though being in the higher position. From the affidavit filed by the School Service Commission it appears from the Annexure A-1 that the petitioner's total marks in the said selection test was 78.67 and the candidate below the rank of the petitioner, who is respondent no.8, was given recommendation and appointment, her total marks is also 78.67.

The rule in this regard, when the marks of two candidates are equal, is that the candidate, who is senior

in age, is to be recommended. Here the petitioner is senior in age as her date of birth is 19.08.1988 and the date of birth of the respondent no.8 is 01.05.1990. It appears from the provisional waiting list itself (vide page 6 of affidavit of respondent nos. 3 and 5, affirmed on 09.12.2021). So the petitioner is almost two years senior in age comparing to the respondent no.8 but the name of the petitioner was not recommended. Therefore, the recommendation issued to the respondent no.8 by-passing the petitioner is wholly illegal. Why such illegality has been committed is not at all clear from the report of the Commission affirmed on 9th December, 2021. However, the provisional waiting list being Annexure A-1 has been annexed thereto. Therefore, the said recommended candidate being the respondent no.8 was recommended illegally and her appointment was also illegal. Her recommendation should be withdrawn immediately by the School Service Commission.

On the last occasion, the respondent no.8 wanted to make out a case to the effect that after re-examination her marks have been increased by one which is wholly untrue and incorrect statement. In the report filed today by the School Service Commission, the Commission has stated that no such reassessment has been done as per the Commission's record. The said private respondent

no.8 has also failed to show any communication from the end of the Commission that one mark was enhanced in this selection test in her favour. In fact there is no provision of re-examination in the relevant rules.

Under such circumstances, I direct the School Service Commission to consider immediately after giving an opportunity of hearing to the petitioner whether the petitioner can be recommended in any school in the post of Assistant Teacher in Geography (Graduate) within a period of ten days from the date of communication of this order.

The interim order passed earlier on 26th November, 2021 protecting the interest of the respondent no.8 is also vacated as the writ application has been allowed to the above extent.

For making such incorrect and untrue statement, before the court, of enhancement of marks, I intended to impose heavy cost upon the respondent no.8 but I restrain myself from passing such order.

The concerned District Inspector of Schools should take immediate steps for not paying any salary to respondent no.8 and to declare the said post as vacant which vacancy will be considered as a vacancy under the said Regional Level Selection Test wherein the petitioner participated. The respondent no.8 has already enjoyed

the salary from the Government exchequer and the Government should take steps for realising the amount of salary paid to the respondent no.8 from the School Service Commission. The vacancy which will arise due to declaration of the post as vacant shall not be filled up till the case of the petitioner is considered by the School Service Commission as has been stated above.

With the above direction, this writ application is allowed. The application being CAN 1 of 2022 filed by the School Service Commission is disposed of.

(Abhijit Gangopadhyay, J.)

