

10.05.2022

WPST 39 of 2022

Court : 04
Item : PB-11
Matter : WPST
Status : DISMISSED
Transcriber: nandy

Soumen Saha & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Balai Lal Sahoo, Advocate
Mr. Surajit Samanta, Advocate
Ms. Chhabi Chkaraborty, Advocate
Mr. Sankha Prosad Roy, Advocate
Ms. Sohini Samanta, Advocate

...for the Petitioners

Mr. Tapan Kumar Mukherjee, Advocate
Mr. Rajat Dutta, Advocate

...for the State

Mr. Pradip Kumar Roy, Advocate
Mr. Joydeep Roy, Advocate
Ms. S. Shyam, Advocate

...for the Public Service Commission

The instant writ-petition has been filed assailing the order dated March 22, 2022 passed by the West Bengal Administrative Tribunal in OA 134 of 2022 by which the prayer for interim order was rejected and direction was passed upon the parties to exchange affidavits.

The dispute pertains to the recruitment process concerning the post of clerks initiated in the year 2019. Pursuant to the said advertisement the writ-petitioners offered their candidature by making applications in terms of the modalities provided therein and was called to sit in the written examination. The written examination has been divided into two parts. The first part relates to multiple choice of questions and the other one being subjective. The petitioners appeared in both the written examinations but the moment they found that their names do not find place in the list of successful

candidates, approach was made to the Tribunal challenging the entire selection process having not conducted in terms of the relevant rules/regulations and an interim order was sought restraining the respondent authorities to conduct the computer/typing test as notified subsequently.

A plea was taken before the Tribunal that the conditions enshrined in the Advertisement published for filling up the posts of the clerks is not in conformity with the West Bengal Services (Recruitment to Clerical Cadre) Rules, 2010 as amended in 2012, the selection process having conducted in contravention thereof, shall not be allowed to continue. The Tribunal refused to pass an interim order on the ground that once the writ-petitioners have consciously participated in the selection process by offering their candidature, it is too late in a day to take a rebound and challenge the selection procedure.

Mr. Surojit Samanta, learned Advocate appearing for the writ-petitioners seeks leave to file a supplementary affidavit incorporating the aforesaid Rules which was inadvertently not annexed with the instant writ-petition. We permitted Mr. Samanta to file such supplementary affidavit and the same is taken on record.

According to Mr. Samanta, the schedule of examination envisaged in the said Rules, is lucid and explicit in the sense that the examination shall be conducted in two parts namely Part-I and Part-II to be held on a single day. The Part-I shall carry 100 marks

consisting of 100 questions of multiple type objective questions and the Part-II shall have the subjective questions. The Note-III appended thereto has been projected by Mr. Samanta to be seminal as it mandates the Commission to assess the answer-scripts by Part-I examination and the assessment of Part-II can only be made or evaluated in respect of the candidates who obtained qualifying marks in Part-I examination as would be fixed by the Commission from time to time. Thereafter the final merit-list shall be prepared on the basis of total marks obtained in two parts.

Putting much emphasis on the aforesaid Note-III, Mr. Samanta would submit that it was obligatory on the part of the Commission to publish the result of both the parts in order to maintain fairness and transparency therein. Mr. Samanta further submits that the qualification enshrined in the said Rules gives a clear indication that apart from the academic qualification the candidate must have acquired a computer literacy. Since there was no mechanism provided to assess the computer literacy, Mr. Samanta relies upon a Notification dated November 9, 2012, which inserted an additional clause pertaining to acquisition of elementary knowledge in computer operation with the ability of typing on computer. By the said Notification dated November 9, 2012, clause 9(A) was introduced requiring elementary knowledge on computer operation and ability of typing in computer and the examination to be held twice in every year; otherwise the candidate would not be entitled to other

career benefits including promotion or benefits under Career Advancement Scheme. As per Mr. Samanta the newly inserted clause 9(A) applicable to post-recruitment only and cannot be included in the examination as condition precedent under the eligibility criteria.

Mr. Samanta emphasized on the clause VII of 'CAUTION' in paragraph 4 of the said Advertisement to contend that putting a restriction on being successful in the recruitment process relating to qualifying test with regard to the elementary knowledge in computer operation and ability of typing in computer is *par se* illegal and runs counter to Clause 9(A) of the said Rules.

Initially, we are not inclined to go into such aspect, as the scope of the instant writ-petition is limited as refusal to pass an interim order is challenged herein. It is beyond cavil of doubt that the Court should not pass an interim order simply on the *ipse dixit* of the pleadings or the submissions made at the Bar but must decide on three golden parameters namely, the existence of prima facie case, balance of convenience and inconvenience and irreparable loss and injury. If the Court finds that the points urged have legal recognition and authorities have acted in violation thereof causing immense prejudice to the initiator of the litigation, there is no fetter on the part of the Court to hold that a prima facie case has been made out and the injury causes or likely to cause for the same may not be allowed to continue. Neither the

aforesaid Rules nor the amendment having brought in the year 2012 are the matter of challenge in the tribunal application or before us.

An argument was advanced that the authority cannot travel beyond the periphery of the statutory Rules, which in our opinion does not require any elaboration, nor any dissent can be presumed. The authority cannot travel beyond the boundaries of law, as any action taken in violation thereof shall entail such action liable to be interfered with by a Court of competent jurisdiction. The question is still begging an answer whether there has been any infraction of such Rules while making an Advertisement inviting applications from the intending candidates and also disclosing the procedure and the modalities of such selection process. The statutory rules which have been framed in exercise of power under Article 309 of the Constitution has a statutory flavour and it is beyond any conceivable imagination that it is binding on the authorities.

Rule 6 of the said Rules contains the qualification pertaining to a direct recruitment wherein the candidate must possess the academic qualification i.e. Madhyamik pass from the West Bengal Board of Secondary Education or its equivalent and also acquisition of computer literacy. The words “acquisition of computer literacy” is somewhat ambiguous as its evaluation, in absence of any specific procedure, is somewhat difficult and may augment the favouritism and nepotism at the behest

of unscrupulous officials. Precisely for such reason the amendment was subsequently brought on November 9, 2012 to such Rules incorporating clause (2) to Rule 6 wherein an exhaustive modalities have been provided to evaluate the computer literacy. The moment the aforesaid Rules are occupying the field and the initial eligibility criteria as envisaged in Rule 6 encompasses the same, the conditions which have been put in the Advertisement that the candidates should have been found qualified in the test judging the elementary knowledge in computer operation and ability of typing in computer cannot be said to have contravened such provision. The un-amended Rule 6 does not contain the mechanism of evaluating the computer literacy but by virtue of an amendment brought subsequently, the modalities and the process of evaluation have been incorporated and, therefore, if the authority have incorporated a condition that the candidate must qualify the test in this regard, does not in our opinion appears to have violated such law. The initial eligibility criterion was not restricted to an academic qualification only but the candidate must also acquire the computer literacy. The moment the methodology has been adopted by incorporating the amendments in the statutory Rules to evaluate and/or judge the computer literacy/typing ability which being one of the twin conditions under the eligibility clause, we do not find that the authorities have acted in contravention therewith.

So far as the plea relating to conducting the examination of Part-I and Part-II on a single day as

envisaged in the said Rules are concerned, the same has to be understood in a more pragmatic manner than to create a hurdle and/or obstacle in the selection process. The Rules say that both the Part-I and Part-II examination should be held on the same day but the Advertisement indicates that the Part-I examination shall be held at the first instance and the candidates obtaining qualifying marks in the Part-I examination shall be allowed to appear in the Part-II examination on a subsequent date to be notified by the Commission. The expression “limited number of candidates obtaining qualifying marks in Part-I examination” conveys the message in unequivocal terms that unless a candidate obtains the qualifying marks, there is no necessity in permitting him to appear in the Part-II examination, yet Rule 6 and the Note appended thereto mandates the appearance in both the parts, which, in fact, has been done in the instant case as well.

So far as the fixation of the qualifying marks or a benchmark whatever the terminology is used is within the domain of the authority which would be evident from the Note-III by incorporating the expression “from time to time”. The language employed in Note-III is suggestive of the manifest intention that the assessment of the answer-scripts of Part-I shall be done and even if the candidates are permitted to appear in the Part-II examination such evaluation is depended upon securing the qualifying marks as may be fixed by the Commission from time to time. Therefore, it is not obligatory on the part of the

Commission to publish the result of Part-II if the candidate has not secured the qualifying marks in Part-I.

The condition pertaining to qualifying the test for judging the elementary knowledge in computer operation and its ability to type the same does not appear to have contravened Rule 9(A) of the said Rules. The said newly inserted clause has no manner of applicability at the time of recruitment/selection process but gets activated the moment the recruitment is complete and appointment is made. The said amended Rules starts with the expression “after recruitment to the post of Lower Division Assistant, Lower Division Clerk etc.” which necessarily imply that the said Rules have its applicability after the recruitment and/or appointment is made to such posts. The consequences provided therein is relatable to other career benefits including the promotion but does not impinge upon the initial qualification and the test to be successfully undertaken by the aspiring candidates. The dichotomy between the newly inserted Rule 9(A) and the clause (7) of the Advertisement is evidently explicit and clear as both have its operation in a specified sphere and does not override or supersede the other. The Rules which impedes the benefits including the promotion after the recruitment is made, cannot be said to have been violated if the criteria required for selection process has been strictly adhered to. The harmony to complete various provisions of the Rules is evidently clear and does not overlap on another nor we can go

into such aspect as the writ-petitioners have not challenged any such Rules to have contravene the constitutional ethos or the procedural law applicable in this regard.

So far as the participation in the written examination both Part-I and Part-II is concerned even if the Rules say that it has to be done in a single day yet the petitioners knowing fully well participated in the Part-II examination held subsequently to the Part-I examination on another specified day, cannot take a rebound and contend that the aforesaid process contravenes the specific provisions of the Rules.

We thus do not find any *prima facie* case has been made out for an interim order and, therefore, the order of the Tribunal cannot be said to have been passed illegally and or infirmly and/or in violation of the statutory Rules.

The writ-petition being **WPST 39 of 2022** is thus **dismissed**. No order as to costs.

(Harish Tandon, J)

(Rabindranath Samanta, J)

