

Dip Sarkar & Ors.

Vs.

The State of West Bengal & Ors.

Mr. D. N. Ray,

Mr. Biswarup Nandy,

Mr. Rajesh Kumar Shah.

... for the petitioners.

Mr. Raja Saha,

Mr. Biswabrata Basu Mullick,

Mr. Sayan Ganguly.

... for the State.

The instant writ petition is filed challenging an order dated 13th April, 2022 passed by the West Bengal Administrative Tribunal in OA 173 of 2022 refusing to pass an interim order and directing the affidavits to be exchanged and the matter to be disposed of finally.

The challenge is made to an advertisement published on 21st January, 2021 for recruitment to different posts of Medical Technologist Grade – III under the Department of Health & Family Welfare, Government of West Bengal. The challenge is restricted on the distribution pattern of the marks where the marks were decided to be awarded to such Medical Technologists, who have gained experience in the State Government service as a permanent or contractual employee and no marks was decided to be awarded to the Medical Technologists, who acquired experience while working in private organization.

It appears that the said grievance was raised by the petitioners immediately after the said advertisement having published with the Secretary of the Department of Health & Family Welfare, Government of West Bengal and subsequently the

Tribunal was approached on the inaction on the part of the said authority to take decision thereupon.

The Tribunal disposed of the application directing the consideration and disposal of the said representation and by a reasoned order dated 2nd March, 2022 the Secretary and Controller of Examination, West Bengal Health Recruitment Board upheld the decision of the authorities in awarding marks on experience in the State Government Sector.

The said reasoned order is assailed in the instant writ petition primarily on the ground that the authorities cannot create a class within the same class. It is further contended that though the same is permissible but there must be a reasonability, rationality and intelligible differentia weeding out of section from the homogeneous class with another section which is conspicuously absent in the instant case.

Our attention is drawn to a further guideline issued by the authority containing an instruction for online application and it appears that the date for online application was extended and the portal was directed to be open between 15th March, 2022 to 22nd March, 2022. The Tribunal was moved after the said period, at least it would be evident from the impugned order.

We find that the main tribunal application is fixed on 22nd June, 2022 and, therefore, the disputes so raised herein is likely to be decided by the Tribunal.

We do not find either from the averments made in the instant writ petition nor the learned Advocate appearing for the State could apprise us whether the date for interview/examination has been fixed or not.

Therefore, we do not find that there is any emergent situation warranting the interim order to be

passed more particularly when the main tribunal application is fixed for hearing on 22nd June, 2022.

In view of the above, we request the Tribunal to take up the application already fixed on 22nd June, 2022 and endeavour shall be made to dispose of the same within two weeks.

However, liberty is granted to the petitioners to renew the prayer for an interim order on the self-same application, if the subsequent events warrant so and if such prayer is made, the Tribunal would take a decision independently without being influenced by the fact that this Court declined to pass an interim order, as the facts exist today may not be the same because of the subsequent events.

The writ petition is thus disposed of.

There will be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)