

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 7931 of 2018

Monika Ghosh

Versus

State of West Bengal & Ors.

Mr. Sukumar Sarkar

Mr. Anirban Saha

.....For the Petitioner

Mr. Bhaskar Prasad Vaisya

Mr. Ranjan Saha

.....For the Respondent Nos. 4 & 5

Heard on : 31.03.2022

Judgment on : 17.05.2022

Krishna Rao, J.: As per the advertisement published by the District Primary School, Council, Paschim Medinipur for filling up the post of Primary School Teacher, the petitioner had applied for the said post. As per the recruitment Rule, the total marks was 100 out of which 50 marks was fixed for academic qualification, 30 marks for written examination and 20 marks for Viva Voce. The petitioner had participated in the written test conducted by the respondent authorities and was declared pass. The

petitioner was called for Viva Voce by the interview board on 18.05.2010 and the petitioner had appeared before the interview board. The petitioner did not find her name in the panel. Being aggrieved with the same, the petitioner had filed a writ application before this Court and Coordinate Bench of this Court had disposed of the writ application filed by the petitioner with the direction that if the petitioner make an application under Right to Information Act for obtaining answer script, the same shall be dealt with by the concern authority in accordance with law.

The petitioner had made an application under Right to Information Act for supply of answer script of the written examination. The respondents failed to supply the information as sought for by the petitioner and again the petitioner had filed a writ application before this Court and the same was disposed of by the Coordinate Bench of this Court by directing the authorities to answer the queries made by the petitioner. In spite of the direction passed by the Coordinate Bench of this Court, the respondents have not supplied with the documents and the petitioner had filed a contempt application for violation of the order passed by the Coordinate Bench of this Court and in the said contempt proceeding, the respondents have filed their compliance report in which the respondents have disclosed that the subjective answer script of the petitioner is traced out but the objective answer script of the petitioner is not traced out in spite of all efforts.

The petitioner had again made representation to the respondent authorities for consideration of the case of the petitioner for appointment as

Primary School Teacher as per the selection process conducted by the petitioner and the petitioner had passed the written test but the respondents have not considered the application filed by the petitioner and accordingly the petitioner had again filed a writ application before this Court and the same was disposed of by the Coordinate Bench of this Court by directing the Chairman, District Primary School Council, Paschim Medinipur to take decision with respect of the representation of the petitioner. In compliance of the order of this Court the Chairman had passed the impugned order rejecting the claim of the petitioner.

Mr. Sukumar Sarkar, Ld. Counsel representing the petitioner submits that immediately when the petitioner came to know that without publishing the merit list, the respondents are issuing order of appointment to the other candidates, the petitioner had made representation but no reply was given to the petitioner and the petitioner had approached before this Court time and again.

Ld. Counsel for the petitioner further submits that in one hand the respondents have taken the stand that the objective answer script of the petitioner is not available and no answer script is kept beyond two years except court case but in other hand the respondents have supplied the answer sheet to one Shri Amal Kumar Bhattacharya on 30.10.2015.

Ld. Counsel for the petitioner by relying upon the unreported order passed by the Hon'ble Division Bench in MAT No. 1002 of 2012 dt. 30.9.2013 submits that an adverse inference under Section 114 of the Evidence Act is to be drawn and to hold that the petitioner is duly qualified.

Per contra, Mr. Bhaskar Prasad Vaisya representing the respondents submits that the petitioner had obtained total 25.56 marks (M.P. Score 7.23 + Subjective Marks 6.00 + OMR Marks 10.00 + Viva Voce marks 2.33) wherein the last General Category candidate who was appointed as Primary School Teacher had obtained 28.56 marks.

Ld. Counsel for the respondent further submits that objective answer script of the petitioner is not available and the score sheet clearly shows that the petitioner had obtained 10 marks in the objective papers.

Considered the rival submissions of the parties and the documents available on record.

After the selection process was completed, the petitioner did not find her name in the panel and accordingly, the petitioner through his Ld. Advocate had submitted a representation for supply of answer script and when the same was not provided, the petitioner had approached before this Court. In spite of the direction passed by this Court the respondents have not provided any information and when the petitioner had initiated a contempt proceeding, the respondent have come with the plea that the objective answer script of the petitioner is not available but as per the score sheet prepared by the respondents, the petitioner had obtained 10 marks in the objective papers.

The respondents have taken further stand that no answer paper can be kept beyond two years except court cases. One candidate Shri Amal Kumar Bhattacharya had also applied for OMR answer sheet and on

30.10.2015 the respondents have supplied the same to Shri Amal Kumar Bhattacharya.

The order passed by the Hon'ble Division Bench in MAT No. 1002 of 2012 dt. 30.09.2013, the Hon'ble Court held that :

“Mr. Bhattacharyya, learned advocate, appearing for the State submitted that the answer script cannot be produced as indicated in our order dated 29th August, 2013. We as such draw an adverse inference under Section 114 of the Evidence Act, that the answer script if produced would not have supported the contention of Mr. Bhattacharya. Accordingly, we hold that the appellant was duly qualified.

The Chairman of the Murshidabad District Primary School Council, being the respondent no. 3, is, as such, directed to issue appointment letter to the appellant within six weeks from the date of communication of this order.

The appeal and the application are thus disposed of.”

The respondents have relied upon the score sheet prepared by the respondent wherein it is mentioned that the petitioner had obtained 10 marks in OMR and the petitioner had obtained total 25.56 marks and the last candidate who was selected in General Category had obtained 28.56 marks. This Court vide order dt. 25.03.2022 directed the Chairman of the District Primary School Council to produce calculation sheet and all the documents of the selection process on 31.03.2022. On the date fixed the Chairman was present but had not produced any document except a copy of page no. 173 of the score sheet in which the name of the petitioner is appearing at Sl. 2417 and it was mentioned that the petitioner had obtained 10 marks in OMR. The said score sheet does not contained the date when it

was prepared as the said score sheet does not bear signature of any selection committee member.

Due to the above mentioned act of the respondent authorities, this Court draw an adverse inference under Section 114 of the Evidence Act, that the answer script if produced would have not supported the contention of the respondent authorities.

In view of the above the impugned order dt. 11th May, 2018 issued by the Chairman is set aside and the respondents are directed to consider the case of the petitioner as duly qualified for the post of Primary School Teacher within period of four weeks from the date of communication of this order.

WPA NO. 7931 of 2018 is thus allowed.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)