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18.05.2022
d.p./BM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 9026 of 2016

**Khairun Nesa
-versus-
State of West Bengal & Ors.**

**Mr. B.N. Roy,
Ms. Priyanka Das.
...For the Petitioner.**

**Mr. Shamim Ul Bari.
...For the DPSC, Malda.**

The order dated 11th April, 2016 passed by the Chairman, Malda District Primary School Council rejecting the candidature of the petitioner on the ground of being over aged as she failed to submit the exempted category certificate from the District Magistrate, Malda at the time of submission of her application is under challenge in the present writ petition.

The petitioner participated in the selection process for recruitment of primary school teachers conducted by Malda District Primary School Council in the selection test of the year 2009.

The petitioner participated in the exempted OBC category 'A' (land loser). The petitioner has relied upon the certificate of other backward classes issued in her favour by the Sub-Divisional Officer, Malda (Sadar) on 3rd November, 2009 and the certificate issued by the Additional District Magistrate (LA) on 15th July, 2010 certifying that the petitioner belongs to family of land loser and her name has been forwarded to the Director of Employment, West Bengal for enrolment in the exempted category of land loser.

Relying upon the aforesaid certificate issued by the Additional District Magistrate (LA), Malda, identity card was issued in favour of the petitioner by the Department of Labour, EC Cell on 3rd May, 2020. The result published by the District Primary School Council, Malda Examination 2014 contains the name of the petitioner in the exempted category (OBC).

According to the Chairman, Malda District Primary School Council, the general information of the recruitment which was published, fixed 18 to 40 years of age as on 1st January, 2009 for being eligible for appointment and 3 years relaxation was permitted for OBC candidates. The date of birth of the petitioner is 5th May, 1967 and she was 41 years 7 months of age as on 1st January, 2009.

The Chairman, Malda District Primary School Council asserts that the petitioner wrongly applied in the EC (OBC) category because she obtained no valid documents of such category on the last date of submission of the application that is 3rd November, 2009.

As per the application filed by the petitioner, admit card was issued in her favour and the online status showed that the petitioner qualified in the written test. The petitioner gave attendance on the day of verification that is 19th February, 2015 but she was not present in the verification table and before the interview Board.

The petitioner filed a writ petition being WP 9879 (W) of 2015 praying for issuance of direction upon the District Primary School council, Malda to take interview of the petitioner as exempted category OBC candidate. The Court by an order dated 15th May, 2015 directed the concerned authorities to hold special interview and to allow the petitioner to appear in the same and the Council was directed to produce the result in a sealed cover.

In compliance of the direction passed by the Court, special interview of the petitioner was held on 7th July, 2015 and the petitioner participated in the same.

The candidature of the petitioner was however, rejected on the ground of over age.

By order dated 25th February, 2016 the Court disposed of WP 9879 (W) of 2015 by directing the Chairman of the Council to formally communicate the order of rejection of the petitioner's candidature.

The petitioner thereafter filed the present writ petition being WPA 9026(W) of 2016 to treat her candidature in the exempted category OBC in the selection process and to give appointment.

The respondent authorities have accepted that there is a relaxation of three years in the age criteria in respect of OBC candidates. If the age relaxation benefit is given to the petitioner then she will be entitled to be considered for appointment. The final panel of the primary teacher recruitment examination, 2009 has been submitted before the Director of School Education on 28th May, 2015.

The name of the petitioner was not included therein. It is admitted that special interview of the petitioner was held on 7th July, 2015 and accordingly, it was impossible to include the name of the petitioner in the panel which was forwarded to the Director of School Education on 28th May, 2015.

It appears from the documents annexed to the writ petition that the Sub Divisional Officer, Sadar Malda, issued the certificate for Other Backward Class, Category-A in favour of the petitioner on 3rd November, 2009. The written examination of the petitioner was conducted much later and the interview of the petitioner was conducted as per the direction passed by the Court in the year 2015.

The documents relied upon by the petitioner are all prior to the date of the written examination and the interview and the OBC, Category-A certificate was also issued within the time as specified in the recruitment notification. The respondent authorities ought to have accepted the documents filed by the petitioner in support of her reserved category that is OBC-A (EC).

Learned advocate for the Council submits that the petitioner applied under the OBC Category and not under the OBC (EC) category and accordingly, she is entitled to get the benefit under the OBC category only and she cannot be treated as the OBC (EC) category candidate.

Fact remains that the documents relating to the exempted category status of the petitioner were all available with her at the time of written examination and also on the date of the interview. The respondent authorities considered the documents of the petitioner with regard to EC category and accordingly enlisted her name in the OBC-EC category in the result that was declared by the District Primary School Council, Malda, which is annexed with page 28 of the writ petition.

Interview of the petitioner was also conducted by treating her candidature in the OBC-EC category. Thereafter, however, the authorities have rejected the prayer of the petitioner on the ground that she failed to submit the exempted category certificate at the time of submission of her application.

The last date of making application, as per the instruction given by the Chairman of the Council, was 3rd November, 2009. The petitioner acquired the certificate relating to her exempted category status, thereafter. The identity card issued by the Labour Department, Employment Exchange, E.C Cell is dated 3rd May, 2010.

It appears that the documents relating to the exempted category status of the petitioner was issued

after the last date for filing the application but all the documents were in the possession of the petitioner prior to the date of the written examination and the interview.

Accordingly, the instant writ petition is disposed of by directing Malda District Primary School Council to treat the candidature of the petitioner in the OBC-A category and will consider the prayer of the petitioner for being treated in the OBC-EC category in view of the fact that the EC category certificate was in her possession on the date of the written examination and the interview.

The benefit of relaxation of age of the petitioner shall be given as applicable in respect of reserved category candidates.

The impugned order dated 11th April, 2016 rejecting the candidature of the petitioner on being over aged is accordingly set aside.

The exempted category status of the petitioner is to be decided by the respondent in terms of the direction passed hereinabove positively within a period of eight weeks from the date of communication of this order.

The respondents are directed to take up necessary follow up consequential steps in the matter during the period of validity of the panel in question, if the petitioner otherwise qualifies in the selection process.

The writ petition stands disposed of.

The instruction given by the Chairman, Malda District Primary School Council to the learned advocate dated 12th May, 2022 be retained with the record.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)