

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**MAT 1130 of 2021
With
CAN 1 of 2021
Tanusree Barua
Vs
Union of India and Others**

Ms. Mousomee Shome, Adv.
Mr. Subhajit Das, Adv.

..... for the Appellant

Mrs. S. Ray, Adv.

..... for the Respondent no. 3

Mr. Tapan Bhanja, Adv.

.....for the Respondent no. 4

Mr. Mainak Bose, Adv.
Ms. Sweta Mukherjee, Adv.
Mr. Kumarjit Das, Adv.
Ms. Mou Saha, Adv.

.....for the Respondent nos. 5 to 7

Mr. Anil Kumar Gupta, Adv.

.....for the Respondent

Judgment on : 29.07.2022

Rabindranath Samanta, J:-

1. This appeal has been preferred against the order dated 08.09.2021 passed by a learned Single Bench in W.P.A 11234 of 2021 whereby the writ petition filed by the appellant Tanusree Barua has been dismissed.

2. The facts which led the filing of the writ petition may be summarised as under:-

The appellant Tanusree Barua belongs to Scheduled Tribe. The respondent no. 5, the Indian Association for Cultivation of Science by a Gazette Notification dated 26th May invited applications for filling up Group 'C' Posts of 'Multi Tasking Staff' (MTS in short) for General and Technical category having total 21 (Twenty One) number of vacancies out of which there was only one vacancy for the Scheduled Tribe category.

The details of the vacancies are as under:-

UR	OBC	SC	ST	Total
10	04	06	01	21

3. The aforesaid notification did not mention about "cut off marks" either before or after holding the written as well as trade test, nor any information was provided about the procedure to be followed in case of a tie of marks of the candidates. Besides, the authorities did not reserve any right to include any additional criteria after the commencement of the selection process.
4. After filing up the form, the appellant received Admit Card or Call Letter for the examination on 23rd September, 2020 by way of an E-Mail bearing Roll No. IACS/ADVT/P/2/2019/MTS-Gen/520 from the Indian Association for the Cultivation of Science. The examination was to be conducted in two phases, the first one being a written examination which was held on 27th September, 2020 and the second

one being a trade test which was held on 14th March, 2021. The score sheet of both the examinations was published on 6th April, 2021 on the official website of the respondent no. 5.

5. The appellant secured 25 marks out of 50 marks of the written test and secured 33 marks out of 50 marks of the trade test. In total she secured 58 marks (25+33). Another candidate belonging to the Scheduled Tribe also secured 58 marks (8 marks in written test and 50 marks in trade test).
6. After the score sheet was published on 6th April, 2021 the appellant by an E-Mail dated 8th April, 2021 sought clarifications from the respondent no. 5 as to the procedure to be followed for breaking a tie between the two candidates of the same category obtaining similar marks since there was only one vacancy for the post of MTS General (Administrative) Category for the Scheduled Tribe candidate.
7. Getting no reply to her E-Mail, the appellant made applications under the Right to Information Act to get the information as sought for by her.
8. Ultimately, the respondent no. 7, the Registrar, Indian Association for the Cultivation of Science gave a reply to the application under the RTI on 14.06.2021 for the first time to the effect that “cut off marks” were to be obtained by the candidates in the selection process and amongst the 16 selected candidates, 10 candidates were from General category and 6 candidates were from the Scheduled Caste category. None of the candidates from other categories secured the cut off marks. The appellant submits that the respondent no. 5 in the notification inviting applications for filing up posts did not mention about the cut off marks to be secured by a candidate to succeed in the selection process. Besides, the notification is silent about breaking of tie if two candidates of the same category secure the same marks.
9. On the grounds as narrated above, the appellant sought for direction in the nature of Mandamus commanding the respondent no.

- 7 to reevaluate the answer script of the written examination of the appellant and after evaluation give appointment to the deserving candidate after explaining the tie breaking procedure, in case of tie, on the post as per vacancy under ST category for the Group 'C' post of MTS (General Administration) for which examinations were held as per notification dated 28th August, 2019.
10. By the impugned order the learned Single Bench negated the prayer made by the appellant.
11. It appears from the impugned order that the challenge was made on the part of the contesting respondents that the writ petition filed against the Indian Association for the Cultivation of Science was not maintainable as this Association was not amenable to writ jurisdiction. The learned Single Bench by referring to a notification dated 8th May, 2018 of the Ministry of Human Resource Development, Department of Higher Education published in the Gazette of India has observed that the Central Government in exercise of power conferred by Section 3 of UGC Act, 1956 declared Indian Association, Jadavpur, Calcutta, West Bengal as an institution 'deemed to be University' under de novo category for a provisional period of five years with effect from disaffiliation of IACS from its affiliating Universities. Placing reliance on a decision in the case of **Janet JeyaPaul –Vs- SRM University and Others** reported in **(2015) 16 SCC 530** has held that the University notified as deemed University by the Central Government under Section 3 of UGC Act is amenable to writ jurisdiction and accordingly the IACS being an authority under Article 12 of the Constitution is amenable to the writ jurisdiction of High Court. Be that as it may, no plea has been taken by the contesting respondents to challenge the writ petition on the point of maintainability as indicated in the impugned order. Therefore, it is not in dispute that the writ petition is maintainable and the respondent no. 5 IACS is amenable to the writ jurisdiction.

12. Learned Counsel for the appellant strenuously submits that before the test conducted by the respondent no. 5 the authority did not declare any cut off marks to be secured by a candidate to succeed in the test. Learned Counsel argues that if the authority introduces cut off marks after the test is over, such action on the part of the authority is not justifiable. Learned Counsel reminds us of a common parlance that Rule of Game cannot be introduced after the Game is over.
13. As to fixation of cut off marks the contesting respondents in their affidavit-in-opposition have clarified. Admittedly, the advertisement was published on 20th August, 2019 inviting applications from the eligible candidates and the examination was conducted in two phases, the first one being written examination which was held on 27th September, 2020 and second one being the trade test which was held on 14th March, 2021. In their affidavit-in-opposition the contesting respondents state that before the written examination was held on 27th September, 2020 the respondent no. 5 declared the cut off marks to be obtained by the candidates belonging to different categories. At paragraph 4 (O) the contesting respondents aver that cut off marks for Un-Reserved candidates was fixed at 90, cut off marks for SC/ST candidates was fixed at 60 and the cut off marks for OBC candidates was fixed at 81. From a document annexed to the affidavit-in-opposition it appears that the authority finalized the cut off marks before the written examination was conducted. In such factual scenario, we are unable to accept the submissions advanced by the learned Counsel for the appellant that no cut off marks were fixed before the test was conducted.
14. As the cut off marks for different categories of candidates indicate, the appellant who secured 58 marks has failed to qualify the aforesaid test. Similarly, the another candidate belonging to the category Scheduled Tribe who also secured 58 marks has also been

unsuccessful. That being so, no question arises as to breaking tie between two unsuccessful candidates.

15. The learned Single Bench in the impugned order has observed that in the absence of any extant Rule and in the absence of allegations of malafide it is not open for an unsuccessful candidate to challenge the selection process or pray for evaluation of answer script. We do not find any infirmity in the observations recorded by the learned Single Judge.
16. In view of the above, we do not find any illegality or infirmity in the impugned order which warrants interference of the order by this Court.
17. Therefore the appeal is dismissed on contest. The application being CAN 1 of 2021 also stands dismissed.
18. No order as to costs.
19. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)

I agree,

(Harish Tandon,J.)