

06 14.03.22

Ct. No. 04

Akd

M.A.T. 1309 of 2019

With

CAN 1 of 2020 (Old No. CAN 1884 of 2020)

Ajmail Hoque

Vs.

State of West Bengal & Ors.

Mr. Kamalesh Bhattacharjee,

Mr. Md. Yusuf Ali.

... for the appellant.

Mr. Bhaskar Prasad Vaisya,

Mr. Sk. Md. Majud.

... for the State.

Mr. L. K. Gupta,

Mr. Dwarika Nath Mukherjee,

Mr. Ratul Biswas.

... for the Board.

The writ petition filed by the appellant/petitioner was rejected solely on the ground that he could not do well in the interview and, therefore, no offer was made for his appointment.

The dispute pertains to appointment to the post of Assistant Teacher in primary schools in the District of Malda ensued in the year 2014. The appellant/petitioner offered his candidature and was issued Admit Card to appear in the written examination. The list of the successful candidates in the written examination showed the name of the petitioner. The petitioner was called for an interview, but the name of the petitioner was not shown in the list/panel of the successful candidates. Subsequently it appears that the persons, who have secured lesser marks in aggregate, have been included in the exempted category, which was advertised for filling up of 533 posts. All such candidates have been brought from the general category, which would be evident from serial no. 34 of the panel prepared under such category.

It is undisputed that the petitioner also offered

his candidature as general category candidate and did not claim special status, i.e. the reserved category or exempted category. The moment the petitioner found that the aggregate marks obtained by a general category candidate who has been transposed in the exempted category panel received lesser aggregate marks than the petitioner, the approach was made to the Court.

In course of hearing we directed the West Bengal Board of Primary Education to produce the relevant records pertaining to the marks obtained by the petitioner. Such disclosure would reveal that the petitioner, namely Ajmail Haque obtained 14.375 and the other candidate namely Milton Islam obtained 14.438. We do not perceive any reason for disclosure of the aggregate marks obtained by Milton Islam, who neither filed the writ petition nor arraigned as party to the instant writ petition.

Mr. Gupta, learned Senior Advocate appearing on behalf of the Board explained the reasons for such disclosure, which according to him was disclosed because of the allegation having made by the appellant/petitioner that he having secured lesser marks was given appointment.

Be that as it may, we do not intend to go much deep in to the fact but the consideration is restricted to the panel of 533 candidates under the exempted category which includes the candidates brought from the general category, as suitable number of candidates could not be found out thereunder.

Our attention is drawn to West Bengal Primary School Teachers Recruitment Rules, 2016. According to Mr. Gupta learned Senior Advocate, Rule 8(6) of the said Rules clearly indicates an additional panel of 5% of General, Scheduled Castes, Scheduled Tribes, OBC Category-A and OBC Category-B, Exempted

Category, Ex-servicemen and Physically Handicapped candidates be prepared in the same manner as referred to in Sub-rule (5)(b)(i) of Rule 8. According to Mr. Gupta, the third proviso inserted to the said provision postulates that in case of non-availability of suitable qualified Exempted Category (EC) candidates belonging to General, Scheduled Castes, Scheduled Tribes and OBC Category-A and OBC Category-B, the said vacancy shall be filled up by non Ex-servicemen candidates belonging to General, Scheduled Castes, Scheduled Tribes and Other Backward Classes, as the case may be.

On harmonious reading of the aforesaid Rule, it leaves no doubt that there will be a separate panel for all categories of candidates for whom the vacancy was advertised. Rule 8(5)(b)(i) of the said Rules provides for preparation of the panel for successful candidates in the District in relation to a particular category in a descending order of merit as in existing vacancies advertised on medium wise. Though the Rule provides for preparation of additional panel, but it appears that the panel is prepared transposing general candidates, who could not qualify in such category because of having not obtained requisite marks, having shown in the exempted category. The third proviso appears to have been taken in action by the authorities bringing the unsuccessful candidates of the general category as successful candidates in the list of exempted category.

Since the appellant/petitioner has not questioned such procedure having adopted by the Board, we do not want to go into such aspect. The contention of the appellant/petitioner is all along that he having secured higher aggregate marks than the person shown in the said category, he should not have been spared. As indicated above that the

petitioner obtained 14.357 marks in aggregate whereas the panel of exempted category containing 533 names included the name of the candidates brought from the general category having obtained lesser marks than the appellant/petitioner.

What we noticed the position in between the candidate shown in Serial no. 50 and 51 and having omitted so we find that it is an apparent case of discrimination. However, Mr. Gupta in his usual eloquence submits that the confusion was created when the petitioner offered his candidature as OBC Category-A candidate at the time of interview and in view of the proviso appended to Rule 8(5)(b) of the said Rule his name was not included in the said panel of exempted category for the reason that he could not secure the requisite aggregate marks fixed for OBC Category-A panel candidates. Note 1 appended thereto applies at the time of counselling for posting in different schools of the District. It has got no co-relation with the interview, which would be evident from the language employed therein, which runs thus:

“Note 1. Such an alternative set of panel of selected candidates for each category in a Council shall be prepared for the purpose of providing option to the reserved category candidates during counselling to opt for posting as per position in unreserved category or as per position in the reserved category.”

The provisions contained in the statutory Rules for recruitment has to be read by assigning a meaning to the language used therein and should not be activated taking a whimsical and unreasonable stand which could not be envisioned at the time of framing the same. The Rule was restricted to the stage of counselling for the purpose of posting

and giving option to the candidates either to opt the post earmarked for reserved category or general category. Therefore, such stand is contrary to the provisions of the aforesaid Rule and is not acceptable to us. Since the aggregate marks shown have been secured by the petitioner is well within the zone of the panel prepared for exempted category, we do not find any reason in not treating the appellant/petitioner at par with the others.

The order impugned is thus set aside.

The writ petition is allowed.

The West Bengal Board of Primary Education is directed to give appointment to the appellant/petitioner showing his name between serial no. 50 and 51 in the exempted category within two weeks from date.

Since the petitioner was not offered appointment, nor rendered services, he will not be entitled to actual benefits but will be given notional benefits from the date of appointment of the candidates shown in serial no. 51.

With the above observations, the appeal and application are disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

