

Court No. 22
04.7.2022
(Item No. 2)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 20632 of 2015

Subhra Ghosh
VS
The State of West Bengal & Ors.

Mr. Phatick Chandra Das
..... for the petitioner

Pursuant to a notification published by the respondent authority on September 2, 2008 the petitioner applied for the post of **Assistant Teacher (Physical Education) (Pass)**. The panel was for the year 2009 and was completed in 2009 itself.

After qualifying in the written examination the petitioner was called for the Personality Test, which is commonly known as interview, held on June 28, 2009 as it would be evident from **Annexure P-6** to the writ petition.

After appearing in the Personality Test the petitioner was declared as a successful candidate in the same and accordingly a merit list was published by the School Service Commission in its official website when the petitioner was found her combined rank was 63 under the **OBC** category. The petitioner stated that, the School Service Commission also published a tentative vacancy position on its website for the post of **Assistant Teacher (Physical Education) (Pass)** in the Secondary Schools for about 93 candidates under the Heading - OBC, CO-ED-05,

Girls – 2 and total OBC category vacancy for the post was 7. Such facts would be evident from **Annexures P-7 and P-8** to the writ petition.

Despite securing her rank being 63 in the merit list published by the School Service Commission, she was refused for any appointment or recommendation by the School Service Commission.

The petitioner then applied under the Right to Information Act, 2005 (in short RTI) before the relevant School Service Commission seeking necessary information with regard to the reason in detail as to why she was refused to get appointment. Such application was made by the petitioner on July 26, 2011. In terms of the said application made by the petitioner, by a written communication dated November 1, 2011 the School Service Commission called upon the petitioner to visit the office of the relevant School Service Commission at Burdwan, when despite request made by her she was not provided with the necessary and specific answers to her queries. Being aggrieved by such inaction under the RTI Act the petitioner applied on October 5, 2011 before the Chief Information Commission, New Delhi. The School Service Commission thereafter on April 5, 2012 intimated the detailed particulars to the petitioner wherein it was disclosed, as contended by the petitioner, that she did well in the written examination as well as in the Personality

Test and she had secured the total marks 57.67 and her combined rank was serial No. 63. The petitioner contends that the candidates who secured lower marks than the petitioner received recommendation/appointment order, whereas the petitioner was deprived. The copy of the merit list which was supplied by the School Service Commission to the petitioner is annexed as **Annexure P-12** to the writ petition.

Being aggrieved by the impugned action as stated above the petitioner filed the instant writ petition on or about August 18, 2015.

The writ petition thereafter appeared on several occasions. Pursuant to the directions made by a coordinate Bench the parties had filed and exchanged their respective affidavits. By an order dated July 1, 2022 the matter was directed to appear today and it was made clear that in the event the respondents are not represented today the matter may be proceeded in their absence. Despite the said order, today none appears for the respondents nor any accommodation has been sought for.

Photo copies of the affidavit-in-opposition and affidavit-in-reply are kept on record.

In course of the argument, Mr. Phatick Chandra Das, learned counsel appearing for the petitioner submits that, the total vacancy was announced by the relevant School Service Commission to be 93 in the **OBC** category

for the post of **Assistant Teacher**. The petitioner applied for the post of **Assistant Teacher in Physical Education (Pass) (OBC)** where the total seat was available seven as announced by the School Service Commission. He submitted that through out in the examination process the petitioner's secured very well and her performance was also recommended to be as such and she had secured the rank as 63 in the merit list. He submitted that, though the vacancy was declared to be 93 but ultimately the School Service Commission issued recommendation or appointment for a lesser number of candidates which was not permissible in law and the same was arbitrary. He submits that, in the event the entire 93 seats were filled up, then of course, the petitioner would have a chance to secure a job by receiving an appointment and by not doing so there was a clear violation of Article 14 of the Constitution of India and a gross injustice was done in an arbitrary manner towards the petitioner. In course of the hearing Mr. Das referred to the averments made in paragraphs 4(b), 4(c) and 5 from the affidavit-in-opposition filed by the respondent Nos. 2, 3 and 4, which was affirmed on December 7, 2021 and submitted that there was a specific admission made by the relevant School Service Commission as to the position secured by the petitioner and her excellent performance in the examination. He then relied upon a document dated

December 24, 2019, **Annexure R-1** to the affidavit-in-reply filed by the petitioner and submitted that in course of the hearing took place under the RTI Act several misguiding and spurious informations were conveyed to the petitioner and the hearing had taken place without giving any opportunity of hearing to the petitioner. He had also pointed out the discrepancies in the stand taken by the School Service Commission regarding filling up the vacancy. In their affidavit-in-opposition it was three for the post where the petitioner was an intending candidate and from the information received under the RTI Act it was disclosed to be seven, as it would be evident from **Annexure P-8** to the writ petition.

Learned counsel then submitted that, for filing a writ petition under Article 226 of Constitution of India no specific period of limitation is prescribed. The remedy under Article 226 is to uphold the fair play and legality by removing the arbitrary and wrongful action on the part of the State.

After considering the submissions made on behalf of the writ petitioner and after considering the materials on record it appears, to this Court that, the panel was for the year 2009 and the writ petition was filed in 2015. Even if the petitioner could have a grievance arising out of the said RTI Act process, then also the cause of action alleged to have occurred in 2011 as would be evident from **Annexure**

P-11 to the writ petition. The writ petitioner chose not to ventilate her grievance for about four years prior to the said writ petition being filed. The information was received from the letter of the School Service Commission dated April 5, 2012, **Annexure P-12** to the writ petition, if it is taken to be considered, then also after more than three years the writ petition was filed, but there was no explanation for delay. The document being **Annexure R-1** to the affidavit-in-reply was of 2019 which had come into existence after filing of the writ petition.

It is the policy decision of the State as to how many number of candidates they would ultimately appoint at the end of the interview process. Accordingly, as contended by the writ petitioner that instead of 93 announced candidates, the vacancy were filled up by a lesser number, is of no assistance to the writ petitioner.

Inasmuch as, the panel was completed in 2009 which, in view of this Court, cannot be a subject matter of challenge or reopening after about 13 years keeping in mind that in 2015 the writ petition was filed.

While adjudicating a writ petition the constitutional Court in exercise of its writ jurisdiction, exercises an equitable jurisdiction. Delay defects equity. The delay in approaching the writ Court as stated above would not entitle the writ petitioner in the facts of this case to obtain any relief from this writ Court.

In view of the above, this Court is of the firm view, that 2009 panel which stood already finalized and was set in motion, should not and cannot be interfered with in this writ petition in any manner whatsoever.

In view of the foregoing discussions and reasons, the writ petition **WPA 20632 of 2015** stands dismissed. All connected applications are also disposed of accordingly.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)