

13.12.2022
Sl. No.21(ML)
srm

W.P.A. No. 22536 of 2022

Basudeb Chakraborty

Versus

The State of West Bengal & Ors.

Mr. Golam Mastafa,
Mr. Subir Sabud,
Mr. Samirul Sardar

....for the Petitioner.

Mr. Dilip Kumar Sinha

...for the Respondent No.8.

Affidavit-of-service is taken on record.

The writ petition has been filed by an unsuccessful candidate who claims to have been deprived of being selected as a Homoeopathy Medical Officer in the Satbankura Gram Panchayat, on contractual basis. The allegation is that the selection committee intentionally awarded low marks to the petitioner.

The entire score sheet was supplied to the petitioner by the competent authority under the Right to Information Act. It appears from the score sheet that the petitioner stood second and the respondent No.8 stood first. As there was only one vacancy, the respondent No.8 was engaged. The respondent No.8 and the petitioner both participated in the interview. It appears that each of the members of the

selection committee awarded the marks at the interview. There does not seem to be much discrepancy in the marks allotted to the petitioner and the selected candidate at the *viva voce* test. The marks allotted to the petitioner by the selection committee members varied from 4 to 6 out of 10. While the petitioner scored an average of 5.25 in the *viva voce* test, the respondent No.8 scored 6.50. The marks awarded to the selected candidate does not seem to be either abnormal or biased in anyway. The difference in marks between the petitioner and the selected candidate is 1.25 marks. The writ petition also does not indicate any ground which has led the petitioner to believe that he had been wrongly left out. No specific material has been annexed to the writ petition which would indicate that the petitioner had been marked arbitrarily. There are no allegations of bias or deviation from the selection procedure.

Assessment of the performance of the petitioner and the respondent No.8 at the *viva voce* test, was within the domain of the experts. Each expert may test the candidate on the basis of certain parameters and domain knowledge. In the absence of allegations of *mala fide*, bias or corruption, the writ court cannot interfere with the selection process.

In the case of *Praloy Naskar v. State of West Bengal*, reported in (2019) 1 CNH 470., the Calcutta High Court held

that a candidate could challenge a selection process only if he was able to show malafide and/or arbitrariness.

In the case of Jasvinder Singh & Ors. v. State of J & K & Ors, reported in (2003) 2 SCC 132., The Hon'ble Apex Court held as follows: -

“There is no guarantee that a person who fared well in the written test will or should be presumed to have fared well in the viva voce test also and the expert opinion about as well as experience in viva voce does not lend credence to any such general assumptions, in all circumstances and for all eventualities. That apart, the variation of written test marks of those who were found to have been awarded higher marks in viva voce vis-à-vis those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case. There was no specific allegation of any mala fides or bias against the Board constituted for selection or anyone in the Board nor any such plea could be said to have been substantiated in this case.”

In the case of Madan Lal & Ors. v. State of J&K & Ors, reported in (1995) 3 SCC 486., the Hon'ble Apex Court held as follows: -

“Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.”

This Court does not find any reason to interfere with the selection of the respondent No.8 in the absence of blatant illegality and/or irregularity in the selection process. There are no allegations of either bias or arbitrariness.

The writ petition is, therefore, dismissed.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)