

**IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
Appellate Side**

**Present:**

**The Hon'ble Justice Jay Sengupta**

**WPA 26657 of 2014**

**CAN 2 of 2022**

**Priyanka Dam**

**Versus**

**West Bengal State Electricity Distribution Company Limited & Ors.**

**For the petitioner** : Mr. Pradip Kumar Tarafder  
Mr. Sambuddha Dutta  
.....Advocates

**For the Respondent Nos. 1 to 6** : Mr. Sumit Kr. Panja  
Mr. S. S. Koley  
.....Advocates

**For the Respondent Nos. 9 & 10** : Mr. Subrata Banerjee  
Ms. Sumana Sinha  
.....Advocates

**Heard lastly on** : 15.07.2022

**Judgment on** : 07.09.2022

**Jay Sengupta, J.:**

1. This is an application praying for a direction upon the respondents, more particularly, the respondents 2 and 3, to give appointment to the

petitioner in the post of Assistant Manager, HR & A forthwith under the West Bengal State Electricity Distribution Company Limited (WBSEDCL, for short) pursuant to the Memo dated 04.04.2013.

**2.** The writ petitioner, while pursuing her post graduation in Human Resources Management at the Indian Institute of Social Welfare and Business Management (IISWBM, for short), participated in a campus recruitment process conducted by the WBSEDCL on 05.03.2013 and 06.03.2013. The final result of the campus recruitment from IISWBM was communicated vide a Memo dated 04.04.2013, *inter alia*, provisionally selecting the petitioner and others to the aforesaid post. Yet, only five candidates including the respondent nos. 9 to 10 were called for medical tests and for consequential procedures. Thereafter, the petitioner made several representations before the concerned authorities. Yet, she was not allowed to join the WBSEDCL at the said post.

**3.** Mr. Tarafder, learned senior counsel appearing on behalf of the petitioner, submitted as follows. The criteria for campus recruitment were clear from the very inception. Pursuant to a decision taken in the meeting of selection committee of the WBSEDCL, a letter dated 13.02.2013 was communicated to IISWBM and other institutes setting out the procedure for selection of candidates. It was quite evident that the process of selection would comprise of a written test, a proficiency test in Bengali/Nepali, group discussions and personal interview. A psychometric test could also be held in the process. Therefore, it could fairly be inferred that candidates would be selected on the basis of total marks they would obtain in these tests. Such

portrayal of the process would get vindicated from the chart of gross total marks dated 05.03.2013 and 06.03.2013 prepared on behalf of the WBSEDCL enumerating the marks obtained by the candidates in the tests except for the one in proficiency in vernacular language. There the candidates were ranked in terms of such total scores. This chart was disclosed in the report dated 10.04.2015 submitted by the respondents before this Court. If the total scores were taken into consideration, the petitioner was well ahead of the present respondent nos. 9 and 10. Yet, afterwards a different explanation was given about the procedure. The respondents unreasonably contended that the process of selection was done in layers; it was only after candidates passed in written test that they competed at the next stage; therefore, the final selection would be done on the basis of marks obtained in interviews. This was not in keeping with the settled principle of law. Ideally, the marks allotted to oral tests or viva voce or group discussions should not exceed a small percentage of total marks. Secondly, it was impermissible for the respondents to deviate from and subsequently modify the objective criteria on which the candidates were made to participate in the process of campus recruitment. From the first communication made to the IISWBM, it was made clear to the candidates that selection would be on the basis of the different types of tests and upon addition of the different marks. Yet, in the opposition for the first time, the respondents tried to make out a case that the selection process was designed in different layers. The respondents could not be permitted to alter or modify the objective criteria for selection at a subsequent stage. On this,

reliance was placed on Hemani Malhotra versus High Court of Delhi, (2008) 7 SCC 11 and Praveen Singh versus The State of Punjab & Ors., (2000) 8 SCC 632. The principles of restitution and equity operated in favour of the petitioner. Therefore, the petitioner should be appointed in the post instead of respondent nos. 9 and 10 who had been illegally selected and appointed in the said post. The doctrine of proportionality would very well apply in such a case. On this, reliance was placed on the decision of the Hon'ble Apex Court in Union of India & Ors. vs. Rajesh P.U., Puthuvalnikathu & Anr., (2003) 7 SCC 285. In fact, the memo dated 04.04.2013 should be treated as an appointment letter. Besides, the opposition filed by the respondents 1 to 6 was bad in law as bulk of the averments could not have been true to the executant's knowledge.

**4.** Mr. Panja, learned senior counsel appearing on behalf of the respondent WBSEDCL, submitted as follows. From the very inception, it was clear and was made clear to the institutes that the selection was to take place in layers. Therefore, there was no question of altering or modifying the objective criteria for selection. The purported gross total chart was mistakenly prepared by the outsourcing agency which was deputed to assist in the selection process. That is why the chart did not contain signature of any respondent authority. Subsequently, a proper chart was prepared, signed by the selection committee members and was published. The gross total chart was not a part of the documents made available to IISWBM or to the candidates. It only mistakenly came up at the time of filing of reports. The candidates were all aware of the modalities. A careful perusal of the

wordings would make it clear that only after the written test, for which a pass marks was given, would the candidates be eligible for the next stage, so on and so forth. Moreover, the petitioner challenged the process after a considerable delay. In the instant case, the selection of other candidates was completed in 2013. Yet, the present petitioners waited till 2014 to approach this Court. Therefore, the same should not be entertained. On this, reliance was placed on *Ashok Kumar Yadav vs. State of Haryana*, (1985) 4 SCC 417.

**5.** Mr. Banerjee, learned counsel appearing on behalf of the respondent nos. 9 and 10, submitted as follows. The arguments advanced on behalf of the WBSEDCL were adopted. It was quite interesting that no bias or mala fide was alleged. Moreover, candidates should not be permitted to challenge a selection process after becoming unsuccessful in it. Reliance was placed on *Pradeep Kumar Rai & Ors. vs. Dinesh Kumar Pandey & Ors.*, (2015) 11 SCC 493. Besides, here candidates had been appointed after due process and some were promoted to higher posts. The fate of these candidates ought not to be jeopardised at such belated stage and on such superfluous grounds as agitated on behalf of the petitioner.

**6.** In reply, learned senior counsel representing the petitioner submitted that the little delay in moving this application was due to the fact that the petitioner waited for some time as the authorities had assured her of looking into the grievance.

**7.** I heard the learned counsels appearing on behalf of the parties and perused the writ petition, the affidavits, the reports and the written notes filed.

### **Defect in affirming opposition?**

8. The executant of the opposition filed on behalf of the respondent nos. 1 to 6 affirmed the affidavit stating that some statements made were true to his knowledge. One would have had to waste more effort in nitpicking about which part of those statements could not have been true to executant's knowledge. Fortunately, there is no need for the same as the executant had clarified that only parts of some such statements contained in those paragraphs were true to his knowledge. This is evident from the use of expression 'in part' after the portion where the paragraphs were mentioned. This Court does not find any impropriety in the way the said opposition was affirmed.

### **Appointment Letter?**

9. The letter which was sent by the respondent authorities to the petitioner quite clearly was not an appointment letter. This was a communication made to the prospective candidates who were successful in earlier stages of selection. It does not have the necessary characteristics of an appointment letter like mention of getting appointed at the post, the salary, the date of appointment and the like.

### **Nature of the test conducted by the respondents for appointment to the post of Assistant Manager, H R & A:**

10. If a single test comprises of different parts or even an examination comprises of different tests, it is elementary that the result of the test would be a summation of the marks scored in those tests. But, the tests may

involve not just written test, but also viva voce or group discussion or interview. It is settled law that the marks meant for viva voce cannot exceed a certain percentage of the gross total marks to be taken into consideration for any selection. However, when a test or an examination is conducted in the multi-layered format as for instance, if one is to qualify a preliminary examination and then sit for a final test, the authorities may decide that the preliminary test would only take place for the purpose of screening and the marks obtained in the final test would actually decide about who gets selected among all those who had sat for such final examination after qualifying in the preliminary test. In the instant case, it is the contention of the respondents that the tests in question were supposed to take place and in fact, took place in a layered format. First, a written test was organised. Those candidates who passed the written tests sat for the next test and so on. The final layer was personal interview. Therefore, the selection took place on the basis of marks obtained in it. It is further contended by the respondents that in such layered format, the question of the viva voce or group discussions or personal interview not exceeding a certain percentage of total marks would not be applicable. What is more important here is whether the modalities of the tests was properly communicated to the candidates. It may be germane to mention here that the petitioner is not challenging the tests per se, perhaps lest her claim goes. She only seeks to have her own interpretation of the tests vindicated that the marks of all the tests should be added to get a rank.

**11.** For a proper exposition of the question involved, it is necessary to quote relevant portions of the Memo dated 13.02.2013 sent by the WBSEDCL to the placement Manager of the IISWBM, Kolkata, among others-

“The process of selection will comprise of the following stages:

1. There shall be a Multiple Choice Questions of 60 marks for Written Test on professional subject and current affair. Pass marks for General candidates will be 30 marks and for SC & ST candidates same will be 20 marks.
2. There shall be a Proficiency Test in Bengali/Nepali Test of total 10 marks. Pass marks being 3 for General candidates and 2.5 for SC & ST candidates.
3. There shall be Group Discussion, for successful candidates in the Written Test, with allotted marks of 30. Pass marks for General Candidates will be 21 and for SC/ST, it will be 18.
4. Psychometric Test may be held in course of selection process.
5. The personal interview shall be held for candidates successful in the Group Discussion round. The marks allotted for personal interview is 100. Qualifying Marks is 60 for General candidates & 50 for SC/ST candidates.
6. The interview shall be held on 06.03.2013.”

**12.** First, it is quite evident that the process of selection was to take place in the “following stages”. Stages would necessarily connote a layered structure. Even if one goes into the details, it is very clear that for the

multiple choice questions, there will be a pass marks. Thereafter, there shall be a proficiency test in Bengali/Nepali with a particular pass marks. Thereafter, there is a mention of group discussion. A psychometric test was also referred to as an option. However, it was clearly stated that personal interview shall be held for candidates successful in group discussion. Therefore, the fact that the examination would be done in stages was made abundantly clear. True, this could have been made clearer. However, there is great deal of merit in the respondents' argument that the modalities of the tests, as communicated to the institutes who, in turn, informed this to the students/candidates, made the layered process for selection quite apparent.

**Presence of a chart for gross total marks in the records:**

**13.** This Court had earlier asked the concerned respondents to file necessary reports as regards the facts and the procedure involved. In the report dated 10.04.2015 filed by the General Manager (Human Resource and Administration), an unsigned chart of gross total marks for all the tests came up. The petitioner thereafter started strongly relying upon such document. The respondents explained that an agency was appointed to prepare the charts and assist the WBSEDCL to conduct such tests with a view to appointing the best candidates for the post. Due to inadvertence, the agency erroneously prepared a chart containing gross total marks. However, quite significantly, the marks obtained in the test for proficiency for Bengali/Nepali was not added. This might have been made by the agency erroneously or in order to prepare the final charts properly. Since this chart did not have any meaning in the process employed by the respondents, none

of the board members signed on it. On the contrary, the chart of marks obtained by the candidates in the interview was signed by the board members. This, according to the respondents, was not a new explanation given for the first time in their opposition. This had been the consistent stand of the respondent authorities.

**The Chart of gross total marks present in the records, as obtained from the report, was neither published nor communicated to anyone:**

**14.** The chart in question was an internal document that was prepared for whatever purpose. However, the portrayal of marks in the unsigned chart is not commensurate with the process delineated by the respondents in the final communication made by it to the institutes. Therefore, the said chart can fairly be ignored. What is more important here was to see whether the initial communication made to the institutes by the respondents clearly made out a case for multi-layered examination, which issue has been discussed in the foregoing paragraphs.

**Communication about the layered structure of examination to the students:**

**15.** As has already been stated, the respondent authorities set out the selection process in the Memo dated 13.02.2013. There is no doubt that this is the letter that was communicated to the institutes and the students/candidates got to know about this through the institutes. Admittedly, there is no breach in the chain of communication of this letter. Therefore, there is no doubt that the communication was duly made.

**Were the terms of engagement altered after it was communicated to a party?**

**16.** This Court cannot agree with the petitioner's contention that the modalities of the tests or the objective criteria for selection were altered subsequently during the process. The modalities or the procedures were set out in the initial communication dated 13.02.2013 given by the respondents to the institutes. It is not that afterwards the respondents made some changes in it. The whole issue is about the interpretation of the modalities that has been discussed as above.

**Delay in claiming relief:**

**17.** Ordinarily, there is no limitation for claiming relief for the purported violation of a fundamental right. However, when a person sits for a test for seeking an employment, waits till the results are out and again waits for an inordinately long time to take steps for the alleged grievance regarding the process of selection or its outcome, then the delay does assume some significance. Here, the test of the selection process was over by the 2013. But, the petitioner approached this Court much later in 2014. In this regard, one may refer to the decision in Ashok Kumar Yadav (supra).

**Can a candidate challenge a process of selection after becoming unsuccessful?**

**18.** The Hon'ble Apex Court has deprecated these practices of unsuccessful candidates participating in a selection process and challenging the same after becoming the unsuccessful in the final outcome. On this,

reliance was rightly placed on behalf of the respondent nos. 9 and 10 on the ratio laid down in Pradeep Kumar Rai (supra).

**Subsequent facts:**

**19.** The respondents have further contended that the candidates selected by the said procedure had been made permanent, some have even been promoted to higher posts. They submitted that after all these years, their lives and careers cannot be jeopardised on such superfluous grounds that the selection process gave undue weightage to interviews and it was made to look like a layered procedure although actually it was not. It is true that mere delay in taking up the present issues for consideration cannot frustrate the rights of candidates. However, more pertinently it had to be seen whether the candidate was at all able to make out a reasonable case for interference by this Court.

**20.** In view of the above discussions, this Court is of the view that the respondent authorities did employ a multi-layered process for selection of candidates and were able to communicate the process to the institutes and thus, in turn, to the students/candidates. There was no question of altering the objective criteria of selection in the middle of a process. The candidates were, thus, aware of the selection process and they participated in the same. However, the present petitioner could not succeed as her marks obtained in the interview gave her a lower rank. It was not open to her to challenge the whole selection process only after she became unsuccessful in the same.

**21.** Therefore, I do not find any merit in this application.

**22.** Accordingly, the same is dismissed.

**23.** However, there shall be no order as to costs.

**24.** The connected application, accordingly, stands disposed of.

**25.** Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

**(Jay Sengupta, J.)**

**P. Adak**