

07.04.2022
Court No. 19
Item no.03
CP

W.P.A. No. 746 of 2022

Rashida Banu & ors.

Versus

The State of West Bengal & Ors.

(CIRCUIT BENCH AT JALPAIGURI)

Mr. Kamalesh Bhattacharya

Mr. G. Thakur

Ms. Anandamayi Ghosh

...for the petitioners.

Mr. Rajat Dutta

Mr. H. Barman

....for the State respondents.

Mr. Momenur Rahman

....for the respondent nos. 11 to 13.

The petitioners have alleged that despite their names having appeared in the list of candidates who had qualified at the written test for recruitment as anganwadi workers, the petitioners were not called for the viva voce test which was held sometime in 2022.

The petitioners as also the respondent nos. 11 to 13 amongst others, had participated in a selection process for being appointed as anganwadi workers, within Sitalkuchi Block.

The allegations are as follows:

- a) The petitioners qualified in the written examination, but were not called for the viva voce test.
- b) That the selection committee was suddenly changed for political reasons.
- c) That severe irregularities had taken place in the process of selection of the candidates after the viva voce test and during publication of the final list.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioners, refers to the Memorandum dated January 25, 2006 which prescribes the mode of selection of anganwadi workers. He submits that the panel could be prepared only after completion of the viva voce test and all candidates who had secured a minimum of 25 marks should be called for the viva voce test.

In this case, it is categorically stated that the petitioners qualified at the written examination, but they were not called for the viva voce test. He next submits that despite orders of stay of this court, the interview process was held, in violation of such orders.

Mr. Dutta along with Mr. Barman, learned advocates appearing on behalf of the State respondents, submit that a coordinate bench of this court in WPA 780 of 2019 held that any action taken

in respect of the panel, shall abide by the result of the writ petition. As such, there was no bar on the part of the respondents to complete the recruitment process. It is further submitted that WPA 820 of 2019 had been dismissed by a coordinate bench of this court and the interim order of stay dated January 28, 2020 passed in the said matter, stood vacated with the dismissal of the writ petition.

The State respondents categorically state that the petitioners who qualified at the written examination, were called for the viva voce test, but they were not selected as the persons whose names had been published in the final list had ranked higher than the petitioners.

Mr. Rahman, learned advocate appearing on behalf of the respondent nos. 11 to 13, that is, the selected candidates submits that the petitioners were called for the interview, but they were not successful. According to him, unsuccessful candidates cannot turn around and challenge a selection process.

Heard the learned advocates for the respective parties.

The petitioners have submitted that the viva voce test was held and the final list was prepared during the subsistence of a stay order passed in WPA 820 of 2019. The order passed by a co-ordinate

bench, dismissing the said writ petition being WPA 820 of 2019 is as follows:-

“In that view of the matter, this Court is of the clear and considered view that the writ petition is not maintainable at the instance of Rajjak Haque Sarkar and may otherwise have become infructuous.

Hence, the writ petition shall stand dismissed.

All interim orders particularly the one dated 28th January, 2020 shall stand vacated.”

Thus, the contention of Mr. Bhattacharya that in view of stay of the selection process passed in WPA 820 of 2019, the viva voce test could not be held is not accepted.

The next contention that despite an order of a coordinate bench of this court on February 18, 2020, passed in WPA 780 of 2019, the viva voce test as also the selection could not be held is also not accepted as the coordinate bench had categorically directed that any steps taken in the meantime, in respect of the panel shall abide by the result of the writ petition.

Thus this writ petition is based on incorrect facts and on surmise and conjecture.

In a writ petition filed by some other candidates who wanted to participate in the viva voce test, this court had held that if the authorities took any steps with regard to the panel in question, the result of the same shall abide by the result of the writ

petition. WPA 780 of 2019 has not yet been disposed of.

In view of the categorical submissions made by the learned advocate for the State respondents that all the candidates who qualified in the written examination were called for the viva voce test, but they were unsuccessful and as the contentions of the writ petitioner are not factually correct, no interference is called for at this stage.

Mr. Bhattacharya submits that the petitioners at least have a right to know what marks they had secured at the interview, although the other challenges may have failed.

The Rules provide that the selection process involves two steps. First, a written examination followed by a viva voce test. A candidate was required to secure minimum 25 marks to qualify for the viva voce test.

The petitioners are entitled to approach the Child Development Project Officer, Sitalkuchi Integrated Child Development Services (I.C.D.S.), respondent no. 7 herein, seeking disclosure of their marks at the viva voce test so that they get to know the fate of their performance.

The petitioners will be informed about the marks obtained by the last selected candidate and if it is found that all the petitioners or any of the

petitioners have secured higher marks or were wrongly denied participation in the viva voce test, the petitioners will be at liberty to challenge such proceedings and renew their prayers which they have made in this writ petition.

The petitioners shall apply separately, and such information shall be given to the petitioners within three weeks from such application.

The petitioners have a right to know the fate of their performance and also whether the viva voce test was held upon calling each of them.

The writ petition is, thus, disposed of. There shall be no order as to costs.

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

(Shampa Sarkar, J.)