

12.10.2023
sayandeep
Sl. No. 09
Ct. No. 12

FMA 3351 of 2016

with
CAN 10 of 2022

Ujjwal Kanti Bandyopadhyay & Ors.

-Versus-

State of West Bengal & Ors.

Mr. Kallol Basu

Mr. Subrata Santra

Mr. Nilanjan Pal

.....for the appellants

The third respondent by notification dated 2nd August, 2012 issued a notification for appointment to fill up 752 post of Medical Officer (School Health). Age limit is 40 years as on 01.01.2012 and relaxation of age was given for higher qualification and long experience and also for SC/ST/OBC candidates. The third respondent received 5000 applications through online. Primary selection list was prepared on 18th October, 2012 and verification of document was done on 19th October, 2012. The scale of scoring and cut-off marks were declared, published final list of selected candidates on 28th December, 2012. The scale of scoring showed weightage was given in the marks obtained by the candidates in their academic, namely, Madhyamik, Graduation and Post-Graduation examination.

Three unsuccessful candidates filed writ petition No. 28368(w) of 2012 challenging the selection on the

ground that weightage marks should not be given for post-graduate qualification as eligibility criteria is only graduate. Secondly, cut-off marks should not be taken into account as the same was mentioned after examination.

This Court accepted the said contention and by the order dated 1st October, 2023 disposed of the writ petition with following direction:

“In those circumstances, I am of the opinion that the standards adopted by the West Bengal State Health and Family Welfare Samiti in preparing the final list were not quite correct. But any how, since the list was finalized and selected candidates have started working, I am not disturbing the list. More so, none is before the Court challenging it except the three writ petitioners. By an interim order passed in this writ, three posts were directed to be kept vacant, which I am told, have been kept vacant. therefore, the case of the writ petitioners needs reconsideration without, in any way, disturbing the fate of the candidates already selected.

In such circumstances, I dispose of the writ application by passing the following directions:-

- (i) The West Bengal State Health and Family Samiti will first of all determine whether the cut off mark was fixed before or after publication of the advertisement. If the cut off mark was fixed before publication of the advertisement, then reliance can be placed on the cut off mark to publish the list of qualifying candidates. If not,***

no reliance can be placed on the cut off marks.

- (ii) The above Samiti will prepare a fresh scale of scoring based on the above observations.***
- (iii) The above Samiti will prepare a fresh list of successful candidates based on the revised scale of scoring and cut off mark, if any.***
- (iv) If the writ petitioners qualify as per this list, OBC-A candidates, they will be selected and appointment letters granted accordingly.***
- (v) The above exercise will in no way affect the already selected candidates, as they are not parties herein.***
- (vi) The three seats kept vacant will be filled up in accordance with the results of the above exercise.***

Compliance is to be effected within three months of communication of this order.”

In the review petition, this Court clarified that marks should not be given for post-graduate and cut-off marks to be ignored. A fresh notional list to be prepared if the three writ petitioners in the writ petition being No. 28368 of 2012, qualified, they must be accommodated in the three seats reserved for by the interim order without disturbing the selected candidates.

The appellants filed the present writ petition No. 25178 of 2012 challenging the list of selected candidates contending that third respondent ought to

have followed de-centralized selection process as per the guidelines of Central Government and not by centralized selection process. Appoint candidates for the district wise post mentioned taking into consideration district wise residence of candidates. The weightage marks should not be given for their post-graduate qualification. The appellant filed supplementary affidavit and submitted that there are 61 vacancies still available. On the other hand the learned senior counsel appearing for the respondents submitted before the learned single Judge that there are 82 vacancies. This Court directed the respondent to prepare the status report and showing the scale of scoring of the appellant not taking into account the weightage marks given for post-graduate qualification and by ignoring cut-off marks. As per the interim direction of this Court, the counsel appearing for the third respondent filed status report in the form of chart. The third respondent in the said chart has given the details of marks obtained by the appellants and other candidates ignoring weightage marks given for post-graduate qualification and removing the cut-off marks. This Court considering the chart found that none of the appellants obtained qualifying marks and marks obtained by the appellants were far below the eligibility of marks. This Court held that the Court cannot act as a selection committee and only if there is any illegality in selection process, if

eligible candidates are not appointed, Court can interfere with the selection process. The learned Judge further held that litigants cannot be favoured in the selection process and dismissed the writ petition.

Against the said order, the appellants have come up with the present appeal.

The learned counsel appearing for appellants submitted that marks awarded by the respondents is not in consonance with the rules. The respondents did not follow the de-centralized panel. The learned single Judge failed to consider the instruction given in the notification dated 2nd August, 2012. The third respondent did not follow the selection process where there is an illegality. The appellants have constitutional right to challenge the same. The learned Single Judge erred in holding that selected candidates worked for sometime and cannot disturb them as it has been ordered that action of the third respondent will be subject to the result of the writ petition which favours the appellants and not the selected candidates. The third respondent committed illegality in following the centralized selection process contrary to the guidelines issued by the Central Government. In the advertisement given by the respondents, it has been mentioned that preference will be given to the local candidates but third respondent failed to follow the instruction given in the notification and appointed

candidates even from other States. The third respondent erred in publishing the another notification dated 09.12.2013 with modified condition only with a view to frustrate the right of the appellants. Had third respondent followed de-centralized selection process, the appellants would have been selected . The learned Single Judge failed to consider all the above and prayed for setting aside the order of the learned Single Judge and allowing the appeal.

None appears on behalf of the respondents.

Heard learned counsel appearing for the appellants and perused the entire materials on record.

From the materials on record, it is seen that the third respondent published a notification dated 2nd August, 2012 for recruitment of 752 Medical Officers (School Health). Third respondent received 5000 applications through online. Considering the applications, third respondent selected candidates giving weightage marks for the persons having post-graduate qualification and also introduced cut-off marks after the publication of notification. In earlier writ petition No. 28368(w) of 2012, this Court held that giving weightage marks to the persons having post-graduate qualification and introduction of cut-off marks after publication of notification are erroneous and directed the third respondent to consider the three writ petitioners therein without disturbing the selected

candidates. The appellants filed present writ petition claiming the same objection. The learned Judge at the time of hearing of the writ petition directed the third respondent to file status report. The third respondent filed status report by way of a chart giving the marks obtained by the appellants. The third respondent also given the ranks of the appellants in the said chart. The learned Judge found that the said chart was prepared without giving weightage of marks to the persons possessing post-graduate qualification and ignoring the cut-off marks. The learned Single Judge found as per the chart filed by third respondent, the rank of the appellants are below the qualifying marks and considering their serial numbers in the selection list held that appellants are not entitled for appointment. The appellants have not challenged in the correctness of the chart filed by the first respondent.

The learned single Judge considered the contention of the counsel appearing for the appellants in the writ petition and by giving cogent and valid reason, rejected the contention of the appellants.

From the above materials, it is seen the appellants are not within the range of selection and other candidates scored more marks than the appellants.

In view of the same, there is no error in the order of the learned single Judge dismissing the writ petition.

For the above reason, appeal fails and dismissed.

There shall be no order as to costs.

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

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)