

4.1.2023
Sl.No.87/sn

WPA 451 of 2018

Kabita Karmakar
Vs.
The State of West Bengal & Ors.

Mr. S.M. Ismail
Sk. Aktar Hossain
..for the petitioner
Mr. Jahar Lal Dey
Mr. Abdus Salam ..for the State

The petitioner is aggrieved by the decision of Asha Selection Committee in not granting appointment to her. According to the petitioner, the guidelines with regard to the weightage to be given the marks obtained by the candidates at the Madhyamik Examination or its equivalent examination, had not been followed.

Upon recording the submissions of the petitioner, the Court had directed the authorities to file an affidavit in opposition. The matter has come up before this Court, after exchange of affidavits.

The dispute is with regard to the recruitment process of ASHA at Gobindapur Sub Centre. The petitioner and one Rinku Hait applied for the post. 90% weightage was given to the marks obtained in the Madhyamik Examination and 10% weightage was given to the marks obtained in the interview. Such calculation was on the basis of the guidelines published by the authorities on June 27, 2012.

The petitioner obtained 337 out of 800 in the Madhyamik Examination. 337 out of 800 came to 42.13%. 90% of which was 37.91. Rinku Hait obtained 402 out of 900 (with additional subject) which came 44.67. 90% of the same, was 40.20. In the interview, the petitioner obtained 3.2 in the interview and Rinku Hait obtained 6.4. The total marks obtained by the petitioner is the selection was 41.11 whereas Rinku Hait secured 46.06.

The panel was prepared and duly approved by the appropriate authority. Rinku Hait was appointed as an Asha against the single unreserved vacancy. The panel was approved on June 2, 2016. The status report with regard to calculation and the marks obtained which was prepared by the Member Secretary, Asha Selection Committee, Howrah Sadar, has been annexed to the affidavit-in-opposition. The petitioner has not been able to controvert the marking system in the affidavit-in-reply. Contrary arguments have not been advanced.

Having failed in her earlier challenge to the marking system, the petitioner invites the attention of this Court to decide whether the selected candidate satisfied the eligibility criteria with regard to residential status.

It is a settled principle of law that the scope of judicial review in matters of appointments and

selections are limited. The decision of the Selection Committee can be interfered with, only on limited grounds such as illegality or patent material irregularity in the constitution of the Selection Committee or in the procedure adopted by the Selection Committee or if mala fide is proved. The Court cannot sit in appeal over the decision of the Selection Committee.

The Hon'ble Supreme Court of India in ***Ashok Kumar Yadav v. State of Haryana*** reported in ***AIR 1987 SC 454***, has laid down as under: -

“25.There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts.....”

In *Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan* reported in *AIR 1990 SC 434*, it was held as under: -

“9.It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the

selection, or proved malafides affecting the selection etc.....”

The Hon'ble Supreme Court of India in ***Madan Lal v. State of Jammu and Kashmir*** reported in ***AIR 1995 SC 1088***, it was observed as under: -

“9. Therefore, the result of 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 merit of the concerned candidate 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 other 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.”

A third case has been made out by the petitioner in the Affidavit in Reply. Moreover, the selected candidate was found to be eligible to appear at the interview after verification of all the eligibility criteria. The petitioner has not been able to point out that the advertisement which formed the basis of the recruitment process had specifically provided any other eligibility criteria with regard to the residential

status of the applicants, apart from the usual criteria that the applicants must be residents of the village in which the sub-centre existed. The records do not specifically indicate that the selected candidate did not hail from the village in respect of which, she was appointed. Moreover, the selected candidate is not a party to this proceeding. It appears that the petitioner and Rinku Hait both are residents of Gobindapur village and the sub-centre is situated at Gobindapur.

With the above observations, this writ petition is dismissed without any order as to costs.

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

(Shampa Sarkar, J.)