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WPA 1953 of 2019
Riya Das
Vs.
State of West Bengal & Ors.
with
WPA 11574 of 2019
Sajal Guchhait
Vs.
State of West Bengal & Ors.
with
WPA 14041 of 2019
Tapan Kumar Bag
Vs.
State of West Bengal & Ors.
with
WPA 14674 of 2019
Tapan Kumar Bag
Vs.
State of West Bengal & Ors.
with
WPA 15719 of 2019
Rajesh Das
Vs.
State of West Bengal & Ors.
with
WPA 2064 of 2019
IA No. CAN 3/2022 and CAN 5/2022
Sambhu Nath Payra
Vs.
State of West Bengal & Ors.
with
WPA 2065 of 2019
Jitendra Nath Bera
Vs.
State of West Bengal & Ors.
with
WPA 21729 of 2019
Amay Sardar
Vs.
State of West Bengal & Ors.
with
WPA 2494 of 2019
Nayan Pramanik
Vs.
State of West Bengal & Ors.
with
WPA 2769 of 2019
Siddhartha Saha
Vs.
State of West Bengal & Ors.
with
WPA 3315 of 2019

Mithu Rani Das
Vs.
State of West Bengal & Ors.
with
WPA 3316 of 2019
Nayan Pramanik
Vs.
State of West Bengal & Ors.
with
WPA 3317 of 2019
Mithu Rani Das
Vs.
State of West Bengal & Ors.

Mr. Soumen Kr. Dutta,
Mr. Partha Sarathi Basu

...for the Petitioners.

Mr. Amitava Chaudhuri,
Mr. N. Roy

...for the College in
WPA 15719 of 2019 &
WPA 1953 of 2019

Mr. Amitava Chaudhuri
Mr. M. Ray

...for the University
in WPA 2494 of 2019

Mr. N. C. Bihani
Mr. Soumyajit Ghosh
Mr. Soumya Mukherjee

...for the College
in WPA 11574 of 2019

Mr. Subhrangsu Panda
Ms. Mithu Singha Mahapatra

...for the College
in
WPA 14674 of 2019

Ms. Debjani Sengupta
Ms. Koyel Bag
Mr. Abhijit Chatterjee
Ms. Shahima Haque

... for Vidyasagar
University in
WPA 14674 of 2019
WPA 14041 of 2019
WPA 15719 of 2019
WPA 2494 of 2019
WPA 2769 of 2019
WPA 3317 of 2019
WPA 3315 of 2019
WPA 3316 of 2019

Ms. Nandini Mitra

...for the University
in WPA 1953 of 2019
WPA 14674 of 2019
WPA 15719 of 2019
WPA 21729 of 2019
WPA 3317 of 2019

Mr. Tapas Kumar Dey

... For the State in
WPA 21729 of 2019

Mr. Shamim ul Bari

... For the State in
WPA 1316 of 2019

Mr. Tapan Kr. Mukherjee, Sr. Advocate,
Ms. Tuli Sinha

... For the State in
WPA 11574 of 2019

Mr. D. Mukherjee,
Ms. Rupsha Chakraborty

...for the State in
WPA 3317 of 2019.

Mr. Indranil Roy, Sr. Advocate,
Mr. Tapas Kumar Mandal

...for the State in
WPA 15719 of 2019

Ms. Tuli Sinha

... for the State in
WPA 2065 of 2019

Mr. Tapas Kumar Mandal

... for the State in
WPA 14674 of 2019

Mr. Pawan Kr. Gupta
Mr. Abhimanyu Banerjee
Ms. Sofia Nesar

...for respondent nos. 3 & 4
in WPA 2064 of 2019

Mr. Tapan Kumar Mukherjee, AGP,
Mr. Somnath Naskar

... for the State in
WPA 1953 of 2019
WPA 2064 of 2019
WPA 3315 of 2019
WPA 3316 of 2019
WPA 3317 of 2019

Ms. Munmun Tiwari
Mr. Sanatan Panja

... for the State in
WPA 2494 of 2019

Ms. Mitali Mukherjee

... for the State in
WPA 1953 of 2019.

In view of the confluence of pertinent facts and legal issues, the present writ petitions are collectively adjudicated upon in this consolidated judgment.

The petitioners, who seek appointment to Group – D or Clerical posts in different colleges of the State, challenge the impugned notification dated August 25, 2017 issued by the Department of Higher Education, Science and Technology and Biotechnology, Government of West Bengal.

By the said notification, the State has framed guidelines for conducting the selection process by college authorities for recruitment of non-teaching employees in Government aided colleges.

Mr. Soumen Kumar Dutta, learned advocate appearing for the petitioners, has challenged the said notification on the following grounds:

Firstly, it has been submitted by Mr. Dutta that the guidelines stipulate the awarding of an additional five marks for work experience in the selection of the candidates already engaged on a contractual or temporary basis at the concerned colleges as opposed to other candidates.

He argues that awarding additional five marks in the recruitment process may indulge in backdoor entry as the additional five marks effectively ensure the selection of a candidate already engaged on a contractual or temporary basis.

Furthermore, Mr. Dutta asserts that for all non-teaching posts, including promotional posts, except Group – D posts, knowledge in computer science, has been designated a desirable qualification. Nevertheless, in the selection process, a candidate having knowledge of computer operation has been given an additional five marks as compared to other candidates.

Mr. Dutta contends that if computer knowledge is not deemed essential for a Group – D post, there cannot be any justification to award additional five marks to a candidate possessing computer knowledge.

He further argues that the impugned notification dated August 25, 2017, is issued pursuant to the powers conferred under Section 20 read with Section 19 of the West Bengal Universities and Colleges (Administration and Regulations) Act, 2017 (in short, the Act of 2017). The object behind enacting the said Act of 2017 is to bring about uniformity and standardisation in rules and to bring in greater responsibility, transparency, and accountability amongst the management and employees of publicly funded Higher Education Institutions.

Mr. Dutta has submitted that by way of issuing the impugned notification dated August 25, 2017, the very object of the Act of 2017 has been defeated as it encourages backdoor entry in the recruitment process.

The notification should not be upheld by this Court since it was issued with an oblique motive.

Mr. Dutta argues that the State lacks the authority to exercise the power of relaxation for an oblique purpose. Sections 19 and 20 of the Act of 2017 do not authorise the State to issue a general notification for giving a general relaxation. The use of the word ‘any’ in Section 20 of the Act of 2017 clearly indicates that the Government has the power to grant relaxation for a specific college only. Therefore, by issuance of the impugned notification dated August 25, 2017, the State has travelled beyond the scope of Sections 19 and 20 of the Act, 2017. In support of such submission, Mr. Dutta has relied upon a judgment reported at **(1990) 2 SCC 189 (J.C. Yadav v. State of Haryana)**.

To argue that a relaxation cannot be exercised arbitrarily by the State to frustrate the object of an Act, Mr. Dutta has relied upon the following Judgments:

- i) **(2011) 3 SCC 436 (State of Orissa v. Mamata Mohanty)**
- ii) **(2009) 4 SCC 170 (Union of India v. Dharam Pal)** and
- iii) **(2005) 3 SCC 618 (Food Corpn. of India v. Bhanu Lodh)**.

Representing the State, Mr. Indranil Roy, learned advocate, has argued that the composition of the selection committee as delineated by the impugned

notification dated August 25, 2017, makes it clear that out of five members of the selection committee, only two members from a college, including the Principal/ Vice-Principal/Teacher-in-Charge, have been included. Therefore, the prospect of any arbitrary or illegal appointment at the behest of the college is precluded.

Mr. Roy has further argued that the use of the word 'any' in Section 20 of the said Act of 2017 cannot be read in a restrictive manner. The word 'any' possesses a broad connotation, encompassing either a specific or all the colleges of the State.

Mr. Roy has placed reliance upon the following paragraph nos.4 (g) and (h) of the affidavit filed by the State to justify the impugned notification.

“ 4.

...

g) In response to para 10 (f) and (g) it may be stated that para 5 and 6 (ii) of the notification dated 25.08.2017 does not encourage back door entry at all rather tried to address a real problem from a humanitarian view-point. Generally, it is observed that there is a demand from casual/temporary employees working in the Government and all such persons are required to go through the prescribed process of recruitment and compete with other fresh candidates. However, on humanitarian ground this provision of an additional 5 marks for such employees (who have work experience of more than 2 years) has been provided so that the persons working on contractual/temporary basis in an establishment may have a fair chance of being recruited.

h) Similarly, knowledge of computer is neither an essential nor a mandatory qualification for recruitment in Group-D posts as it might rule out the candidature of a very large proportion of otherwise eligible applicants. The provision has been inserted in order to give preference only, in keeping parity with the present policy of the Government pertaining to computerization and digitization of various activities at University/college level, there is a small weightage given to a candidate with knowledge of Computers. It is needless to mention, such candidates will be in a better position to assist the College authority in various activities related to computerization and digitization.”

He further relied upon a judgment reported at **(2021) 16 SCC 71 (University of Delhi v. Delhi University Contract Employees Union)** to argue that there is no illegality in awarding additional marks in the selection process to the candidates engaged for a considerable duration in the institution.

I do not see any justification to interfere with the impugned notification dated August 25, 2017, issued by the State.

The circumstances leading to the issuance of aforesaid notification have to be noticed first.

The State of West Bengal College Service Commission Act, 2012 came into effect on and from November 29, 2012, except for the provisions of Chapter IV of the Act as stipulated in Section 1 (3) of the said Act, 2012.

Chapter IV contains the provisions regarding the appointment of non-teaching employees of Government-aided colleges in the State.

The impugned notification was issued by the State in the exercise of powers conferred under section 20 read with section 19 of the said Act of 2017.

The preamble of the notification elucidates that, following contemplation of the protracted recruitment process for non-teaching employees in Government-aided colleges and a consideration of restructuring the West Bengal College Service Commission to manage the substantial responsibility of conducting recruitment procedures, the State decided to temporarily relax the recruitment provisions outlined in Sub-section (1) of Section 10 of the West Bengal College Service Commission Act, 2012.

This relaxation is effective until the development of the infrastructure and resources of the West Bengal College Service Commission to facilitate the recruitment of non-teaching staff in the Government-aided Colleges of the State.

I am unable to accept the submissions of Mr. Dutta that there was any oblique motive of the State in issuing the impugned notification dated August 25, 2017. The relevant segment of the said notification is quoted below:

“For all non-teaching posts including promotional posts, except Group-D posts, knowledge in computer application will be a desirable qualification and the candidate having knowledge in computer application shall have preference against others.

For selection in non-teaching posts, every college authority shall conduct selection process in the following manner: -

For Group-D posts – through Walk-in-Interview mode: -

- i) Interview for 30 marks.
- ii) Candidates engaged on contractual or temporary mode in the concerned college for a period more than two years shall get additional five marks for work experience in the interview as compared to others candidates provided that the candidate is within the prescribed age limit.
- iii) Candidates having knowledge in computer operation in MS Office will also get additional five marks as compared to others candidates provided that the candidate is within the prescribed age limit.

For Group-C posts –

- i) Written Examination for 150 marks, comprising of Mathematics, English and Mental aptitude.
- ii) Computer application test for 50 marks.
- iii) Interview for 20 marks
- iv) Candidate engaged on contractual or temporary mode in the concerned college for a period more than two years shall get additional five marks for work experience in interview as compared to other candidates provided that the candidate is within the prescribed age limit.”

The constitution of the Recruitment Committee has been outlined in the notification dated February 15, 2018, issued by the State as follows: -

“In continuation of the Department’s Notification No. 940-Edn (CS) dated 25.08.2017, the Governor is hereby pleased to direct the constitution of Selection Committee as specified in paragraph 3 of the said Notification is now partially modified and shall comprise the following members: -

- 1) *A Nominee of the State Government,*
- 2) *A Nominee of the affiliating University,*
- 3) *A Nominee of the Governing Body/Administrator, as the case may be,*
- 4) *The Principal/the Vice-principal/the Teacher-in-Charge, as the case may be, of the concerned College,*
- 5) *An Expert, to be nominated by the West Bengal College Service Commission.”*

In my view, the State has disclosed adequate justification in its affidavit for awarding an additional five marks to the candidates engaged on a temporary basis or to the candidates with computer knowledge.

Mr. Roy, learned advocate appearing for the State has rightly placed reliance upon the judgment reported at ***University of Delhi (supra)***, where the Supreme Court upheld a similar provision for giving extra marks for the candidates engaged on a contractual or temporary basis.

I am also of the view that the notification dated August 25, 2017, cannot be perceived as extending

beyond the scope of Sections 19 and 20 of the Act of 2017.

In fact, the judgment cited by Mr. Dutta in **J.C. Yadav (supra)**, highlights that the expression ‘any’ in a particular case does not singularly refer to an individual case but includes cases of a group or class of individuals to address a specific situation in a just and equitable manner. The Government by a general order can relax rules prescribing minimum qualifications for promotion in the event of the non-availability of any qualified person for promotion.

In the present case, the notification does not pertain to a specific situation of a college; rather, it is a general notification providing a uniform selection procedure for all government-aided colleges. Therefore, it cannot be argued that the said notification has been issued beyond the scope of Sections 19 and 20 of the said Act of 2017.

The impugned notification dated August 25, 2017, does not call for any interference. I have already indicated that the said notification prescribes for transitional appointments pending full-fledged regular appointments by the College Service Commission. Neither the recruitment rules nor the composition of the selection committee provides any scope for interference based on arbitrariness or oblique motive as suggested by the petitioners.

Accordingly, the W.P.A. No.1953 of 2019, W.P.A. No.11574 of 2019, W.P.A. No.14041 of 2019, W.P.A. No.14674 of 2019, W.P.A. No.15719 of 2019, W.P.A. No.2064 of 2019, W.P.A. No.2065 of 2019, W.P.A. No.21729 of 2019, W.P.A. No.2494 of 2019, W.P.A. No.2769 of 2019, W.P.A. No.3315 of 2019, W.P.A. No.3316 of 2019 and W.P.A. No.3317 of 2019 are dismissed and the I.A. No.C.A.N.3 of 2022 and C.A.N. 5 of 2022 are disposed of.

However, interim orders granted earlier in these writ petitions are extended for a further period of thirty days from date. Thereafter the interim orders, needless to mention, shall stand automatically vacated.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)