

ML 66  
22.03.2023  
Court. No. 19  
GB

WPA 3980 of 2023

Lopamudra Panda Dakuya  
Vs  
The State of West Bengal & Ors.

*Mr. Dibyendu Chatterjee,  
Mr. Pritam Majumdar,  
Mr. R.D. Goenka*

*...for the Petitioner.*

*Mr. Rezaul Hossain*

*...for the State.*

*Mr. Soumik Ganguli,  
Mr. Supriyo Shasmal*

*...for the respondent No.6.*

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner is aggrieved by the order dated December 21, 2022 issued by the Sub-Divisional Officer, Contai, inter alia, finding that the respondent no.6 had been rightly appointed to the post of ASHA for Shyampur village. According to the authority, in order to fulfil the criteria of residential status, the only consideration would be whether the candidates belong to the village in which the sub-centre is to be filled up.

The petitioner had filed a writ petition on an earlier occasion alleging that the respondent no.6 had been wrongly appointed as an ASHA in a sub-centre which was situated at Shyampur Dakshin, although the mailing address of the respondent no.6 was Shyampur Uttar.

Mr. Ganguly, learned advocate appearing on behalf of the respondent no.6 submits that the Sub-Divisional Officer

had categorically held that as long as the participants hailed from Shyampur village, the residential status would be met.

The first point of the petitioner that the residential status was not met by the selected candidate is no longer germane as the advertisement clearly indicated that the candidates applying for the post should belong to the concerned village, in which the Asha Sub-Centre was situated. The Regulations of 2012 state that eligibility criteria as regards the residential status is that the candidates must be residents of the village in respect of which the ASHA selection process has been initiated. The authority has found that both the candidates, namely, the petitioner and the selected candidate were residents of Shyampur village and hence eligible to participate.

The other issue which has fallen for determination is when the advertisement did not specify that the post had been reserved for a SC candidate, the authorities after completing the interview process and empanelling the candidates could decide to change the eligibility criteria by appointing an SC candidate on the ground that the locality had plenty of reserved category residents.

The Sub-Divisional Officer has relied on two circulars and notifications which apparently deal with preferential treatment to SC candidate for appointment as ASHA in areas dominated by SC population.

Although the authority has discussed that the respondent no.6 was given a preference in view of certain notifications of the government dealing with engagement of

reserved category candidates in areas where majority of the population belonged to the reserved category, the Court does not need to go into such discussion at all, as admittedly the marks of the selection process which have been annexed to the writ petition by the petitioner, indicate that Soma Paul had got higher marks than the petitioner.

With regard to Mr. Chatterjee's contention that the marks at the interview were unjustified or unfair, this Court refers to the decision of the Hon'ble Apex Court. In the matter of ***Ashok Kumar Yadav v. State of Haryana*** reported in ***AIR 1987 SC 454***, the Hon'ble Apex Court held as follows: -

“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.”

Assessment of the performance of a candidate at the interview, cannot be made by the writ Court as the Court is not in a position to understand how the candidates had responded to the questions which were asked at the interview. The domain knowledge, the skill, the promptness, etc., of the candidates at the interview were best judged by the interview board and the writ Court cannot interfere with their allocation of marks.

There are no allegations of bias against the members of the interview board. It is not the petitioner's case that the respondent no.6 had been preferred as she was either known to any of the members of the interview board or that the result was vitiated due to illegal constitution of the board.

A bald statement that the marks allotted at the interview were erroneous or biased, without any supporting documents or reasons, cannot be accepted by the Court.

Thus, nothing further remains to be decided in the writ petition.

Accordingly, the writ petition is disposed of without any orders.

However, there will be no order as to costs.

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

**(Shampa Sarkar, J.)**