

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi**

WP.ST 9 of 2021

**THE PUBLIC SERVICE COMMISSION,
WEST BENGAL & ORS.
VS.
PRITAM GHOSAL & ANR.**

For the Petitioners: Ms. Shraboni Sarkar, Advocate

*For the Private : Mr. Saktipada Jana,
Respondent : Mr. Subhajyoti Das, Advocates*

Heard & Judgement on: June 19, 2023

DEBANGSU BASAK, J.:-

1. Public Service Commission is aggrieved by an order dated December 14, 2020 passed by the West Bengal Administrative Tribunal in OA no. 940 of 2019. By the impugned order, the learned tribunal, directed the Public Service Commission, West Bengal and its Secretary to recommend the name of the private respondent for the post of Krishi Prayukti Shayak to the Secretary Department of Agriculture, Government of West Bengal within eight weeks from the date of the presentation of the order. The

State of West Bengal was directed to appoint the private respondent within eight weeks.

2. Learned advocate appearing for the writ petitioners submits that, the issue as to whether, rules of the game can be changed midstream is pending consideration of the Larger Bench. The Larger Bench is yet to pronounce on such issue finally. She submits that, such issue was referred to by the Hon'ble Supreme Court in **(2013) 4 SCC 540 [Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors.]**.

3. Relying on **1995 SCC(3) 486 [Madan Lal & Ors. Vs. The State of Jammu & Kashmir & Ors.]**, **(2018) 12 SCC 635 [Karnati Ravi vs. Commissioner, Survey Settlements & Land Records & Ors.]** and **(2020) 2 SCC 173 [Anupal Singh & Ors. Vs. State of Uttar Pradesh through Principal Secretary, Personnel Department & Ors.]**, learned advocate appearing for the writ petitioners submits that, a higher cut off marks can be prescribed through the selection process. She contends that, the private respondent participated in the selection process knowing fully well the parameter of the selection process. The private respondent participated in the interview without any objection. The cut off mark was prescribed for the purpose of interview. The fact that, the petitioners would be prescribing a cut off mark of the interview was notified to all the persons participating in the interview including the private respondent, prior to the private respondent participating in the interview. Information with regard thereto was published in the Website of the writ petitioners on April 9, 2018. Advertisement to such effect was published in the newspaper on April 12, 2018. The interview of the writ petitioners was held subsequently. Therefore, the private respondent was not prejudiced.

4. Learned advocate appearing for the private respondent submits that, the private respondent was never informed by the petitioners that, there

would be a cut off mark in the interview. No cut off mark was prescribed for the interview at the commencement of the selection process or even midstream. A list of persons who qualified in the written examination was published on April 9, 2018 where the private respondent figured. He refers to the advertisement published in the newspaper and submits that, therein, the writ petitioners claimed that they would be specifying a cut off mark without actually specifying a cut off mark for the interview. In such circumstances, according to him, the learned tribunal was right in directing the private respondent to be recommended and appointed.

5. On a query from the Court, learned advocate appearing for the writ petitioners submits that, the cut off mark of the written interview was prescribed subsequent to the conclusion of the interview.

6. In the facts of the present case, an advertisement was published in the year 2016 for the purpose of considering candidature for appointment to the post of Krishi Prayukti Shayak. The private respondent participated therein. The selection process consisted of two parts. One part was the written examination and the other part was the interview. The selection process provided that the final merit list would be prepared on the basis of the total marks obtained by the candidate - in written examination of 150 marks and interview 15 marks. The written examination was held on December 18, 2016.

7. Attention of the Court was not drawn to any qualifying marks being prescribed by the Public Service Commission for the interview but attention of the Court was drawn to an advertisement published in the newspaper on April 12, 2014 issued by the writ petitioners that, the petitioners may fix qualifying cut off marks for all the categories of the vacancy in each level of examination, that is, part-II interview, and aggregate.

8. The qualifying mark in respect of those three stages was, however, never prescribed prior to each stage being held. It did not come to the public domain.

9. The private respondent was called for the interview which presupposes that the private respondent qualified in the written examination and was good to take the interview.

10. The private respondent was disqualified on the basis of marks obtained at the interview. It is the claim of the writ petitioners that, the private respondent did not obtain the qualifying mark at the interview.

11. The interview was for an aggregate of 15 marks. The private respondent secured 5 marks therein. The private respondent obtained 79.25 marks in Part-I, 13 marks in part-II and 5 marks at the interview. The aggregate that the private respondent, therefore, rustled up in the selection process was 97.25.

12. The records placed before us suggest that, the last candidate who was given an appointment secured 95.50 marks. Obviously, the private respondent secured a higher mark than the last appointed candidate.

13. Tej Prakash Pathak (supra) referred the issue as to whether, Rules of game can be changed midstream or not. Such reference is pending.

14. In **Madan Lal (supra)**, the Supreme Court held that a candidate in a selection process cannot be allowed the turn around to challenge the selection process when the result is not palatable to such candidate.

15. In the facts of the present case, the private respondent secured higher marks in aggregate than the last person who was granted an appointment. It is not a question of the result not being palatable to the private respondent. The private respondent secured better marks than the last appointed candidate. It is a case where, a person who received lesser

marks in the aggregate was given an appointment in the selection process in preference to a candidate who received higher marks in aggregate.

16. In **Karnati Ravi (supra)** the Supreme Court held that, where the rules are silent, they can be provided for by the administration so long such rules are not contrary. In the facts of the present case, there were rules governing the selection process in which, no cut off marks was prescribed for the interview before its commencement.

17. In **Anupal Singh (supra)** Supreme Court held that, a person who unconditionally participated in the selection process cannot turn around and challenge the same. In the facts of that case, the candidate participated in the interview and on failing the same, challenged the selection process. In the facts of the present case, the private respondent is aggrieved by an action of the authorities in giving an appointment to a person who received lesser marks on aggregate in preference to the private respondent who received higher marks.

18. As noted above, the writ petitioners did not prescribe any qualifying marks to the interview prior to the commencement of the interview. Therefore, it cannot be said that, the private respondent participated at the interview knowing fully well the parameters of the interview. Apparently, a cut off mark was prescribed after conclusion of the interview. This prescription of the cut off mark subsequent to the interview obviously was not communicated to the candidates participating in the interview prior to the commencement of the interview.

19. In such circumstances, we find not reason to interfere with the impugned order of the tribunal.

20. We, however, extend the time period to comply with such order correspondingly with the period prescribed in the impugned order from the date of this order.

21. WP.ST 9 of 2021 is **disposed of** accordingly.

22. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

23. I agree.

(Md. Shabbar Rashidi, J.)

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