

WPA 4502 of 2023
Tushar Kanti Mondal
Vs.
The State of West Bengal & Ors.

Mr. Siddhartha Banerjee,
Ms. Reshmi Ghosh,
Ms. Jyoti Routh

...For the Petitioner

Dr. Chapales Bandyopadhyay,
Ms. Gargy Basu,
Ms. Anandamoyee Dutta

...for N.S.O.U.

Mr. Swpan Kr. Datta,
Mr. Rajat Dutta

...For the State

The petitioner was an aspirant for the post of Junior Assistant-Cum-Typist at Netaji Subhas Open University. The relevant advertisement prescribed the eligibility criteria as follows :-

“Qualifications, Experience & Other Requirements:

(A) Essential :

1. H. S. (10+2).
2. Diploma/Certificate in Computer of at least 6-month duration.

(B) Desirable :

1. Honours Graduate from a recognised University.
2. Whole time working experience of not less than one year in Institute of Open Distance mode of learning (ODL).”

The said post was reserved for a Scheduled Caste (Exempted Category) candidate. It appears that though some other Scheduled Caste candidates had applied, the

petitioner was the only candidate, who belonged to Scheduled Caste (Exempted Category).

The selectors, however, did not recommend the petitioner's appointment. The selection committee opined as follows :

“Not Found Suitable as the marks in interview was less than 40%.”

Mr. Siddhartha Banerjee, learned advocate appearing for the petitioner submits that the advertisement did not specify any requirement that a candidate must secure 40% marks in the interview for appointment to the relevant post. He submits that the introduction of a new criterion after the commencement of the selection process is illegal, as the selectors cannot change the rules of the game once it has commenced.

Mr. Banerjee also submits that the petitioner was the sole candidate, who met the eligibility criteria prescribed in the advertisement. His right to appointment to the post in question could not have been denied by introducing a new criterion during the selection which was not present at the outset. In support of his submission, Mr. Banerjee has relied upon two decisions of the Hon'ble Supreme Court, reported at **(2019) 12 SCC 798 (Dinesh Kumar Kashyap Vs. South East Central Railway)** and **(2008) 3 SCC 512 (K. Manjusree Vs. State of Andhra Pradesh)**.

Mr. Chapales Bandyopadhyay, learned advocate appearing for the university, on the other hand, submits

that the writ petition is not maintainable since the writ petitioner has challenged the appointment of respondent no. 6, who is not connected with the relevant selection process. He further submits that the petitioner being an unsuccessful candidate cannot challenge the selection process. With regard to the introduction of selection criteria, it is the submission of Mr. Banerjee that no new selection criteria were introduced by the selection committee. The selectors were required to assess the suitability of the petitioner and this suitability could be ascertained only by awarding marks. As there were no other eligible candidates, it cannot be said that the petitioner was discriminated against. The selectors simply did not find him to be suitable for the appointment, that is why his name was not recommended.

I am of the view that the decision of the selectors that the petitioner was not suitable for the post in question, should not be interfered with. There is no dispute that the petitioner fulfilled all the eligibility criteria as prescribed in the advertisement. However, fulfilling the eligibility criteria only brings a candidate within the zone of consideration. After passing this threshold test, a candidate requires to cross the second hurdle and be found meritorious among the other candidates to be appointed to the post in question.

In the present case no doubt, the petitioner was eligible to come within the zone of consideration. The assessment of his suitability was based on his

performance in the interview. The selectors found him not suitable since he could not secure 40% marks in the interview. There were no recruitment rules and it was the discretion of the selectors to evolve a criterion to assess the suitability of the candidate and in this case, they decided to fix 40% marks in the interview.

In my view, in the absence of any specific recruitment rules, it cannot be said that the selectors have altered the rules.

The judgment in **Dinesh Kumar Kashyap (supra)** deals with the right of the empanelled candidates in a selection process. In this case, the petitioner was found not suitable.

Paragraph 27 of the judgment in **K. Manjusree (supra)** is quoted below :-

“27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier Resolutions dated 24-7-2001 and 21-2-2002 and held that what was adopted on 30-11-2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after

the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them — *P.K. Ramachandra Iyer v. Union of India*, *Umesh Chandra Shukla v. Union of India* and *Durgacharan Misra v. State of Orissa*.”

It is apparent that the selection committee in that aforesaid case deviated from the practice followed in the earlier years by the introduction of minimum marks for the interview after the selection process was completed. In the present case, as mentioned earlier, there was no recruitment rule to be followed, and hence the question of deviation did not arise.

In any event, in the absence of any specific rules, the selectors were required and perhaps obligated to assess the suitability of a candidate by evolving a criterion. Unless the criterion itself is found to be unreasonable or it has been demonstrated that the same has not been applied in a just manner, there is no scope to interfere with the same.

With the aforesaid observations, **WPA 4502 of 2023** is dismissed.

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

(Kausik Chanda, J.)

