

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 352 of 2022

with

IA No. CAN 2 of 2022

with

IA No. CAN 3 of 2022

Madhusudan Pramanik & Ors.

-Vs-

Chief Executive Officer (Administration & Finance)

Indian Statistical Institute & Ors.

For the Appellant : Mr. Raghunath Chakraborty

Ms. Amrita De

For the State : Mr. Debapriya Gupta

Mr. Sourav Mondal

Heard On : 12.12.2022

Judgement Delivered On : 05.04.2023

THE COURT:- This instant appeal has been preferred by the appellants/writ petitioners assailing the Judgement and Order dated the 17th day of January 2022 passed by the Hon'ble Single Bench in the writ petition being WPA 15068 of 2021.

The petitioners to the writ petition are the appellants in the instant appeal in the same sequence.

The prayer before the Hon'ble Single Bench was a direction commanding the respondent authorities to cancel or withdraw the Memo. dated 03-08-2019, declaring the petitioners barred on the ground of age and further commanding the respondents to allow the petitioners to participate in the selection process for appointment as Assistant Cooks in the Indian Statistical Institute (hereinafter referred to as ISI).

By the impugned Judgement and Order, the Hon'ble Single Bench was pleased not to accede to the prayer of the writ petitioners.

The Learned Counsel appearing on behalf of the appellants/writ petitioners has submitted that the ISI advertised in the newspaper for the recruitment to the posts of Cooks and Assistant Cooks on contractual basis and they had applied for the said post. He has further submitted that the respondent authorities, i.e. the ISI, after scrutinizing and being satisfied with all the criteria as per the advertisement issued call letters for interview-cum-trade test for the post of Assistant Cook. It has further been submitted that the respondent authorities selected the petitioners for the respective posts and

issued appointment letters mentioning that the appointee is offered appointment for temporary position as Assistant Cook on contractual basis for a period of 12 months. It has also been submitted that the said tenure was extended from time to time.

The Learned Counsel has further submitted that an advertisement published by the ISI for filling up the posts including Cook 'A' was made on 03-08-2019 through which the age limit was 35 years along with higher secondary (10 + 2) or equivalent trade certificate/diploma in cooking from a recognized institute. It has further been submitted that in response to the aforementioned advertisement, the petitioners approached the respondent authority for issuing no objection certificate to which the respondent authority issued no objection certificate and the petitioners submitted all the relevant papers justifying their candidature for the post. It has further been submitted that the announcement of the recruitment process for the post was issued on 16-08-2021 through which instead of allowing the petitioners to participate in the selection process, the petitioners were intimated that the petitioners either do not have the trade certificate or their age does not match.

On the aforesaid grounds the applications of the petitioners were rejected. It has further been submitted that the writ petitioners had filed appeals for consideration of their candidature after the list was published in the ISI website and the appeals have not been considered till date. Instead the process of recruitment continued.

The Learned Counsel further submitted that the writ petitioners challenged the reasons for non consideration of their candidature. He has further submitted that within the stipulated period objection was raised before the respondent authority. He has also submitted that on earlier occasion a candidate was appointed after having his age relaxed by the authority. Banking on the aforesaid submissions, Learned Counsel prayed for allowing the instant appeal.

The Learned Counsel appearing on behalf of the respondent/ ISI submitted that the advertisement for the said post was issued on the 3rd day of August, 2019. He has further submitted that the appellants/writ petitioners filed their applications but the same have been rejected on several grounds. In respect of the petitioner Nos. 1, 2 and 5 the applications were rejected being beyond age limit while in respect of applicant Nos. 3 and 4 the applications have been rejected on the ground of no trade certificate/ diploma. It has been further alleged that the respondents are not entitled to produce any additional evidence now which was never produced before the Hon'ble Single Bench, in spite of those being available to the writ petitioners.

The Learned Counsel has further submitted that there being no challenge to the reasons for rejection, so the appellants/writ petitioners are not entitled to have the instant appeal allowed. On the contrary, the appeal has no legs to stand upon and as such the instant appeal is liable to be rejected *in limine*.

The moot points in the instant appeal are that as to whether the prayer for additional evidence can be allowed or not and whether the grounds for rejection of the applications are correct or not.

As regards to allowing the writ petitioners for producing additional evidence it is evident that the documents which the writ petitioners intend to rely upon were available to them petitioners at the time of hearing before the Hon'ble Single Bench. So the appellants/writ petitioners ought to have produced all the relevant documents at the time of hearing before the Hon'ble Single Bench.

However, for the ends of complete, effective and just adjudication, the appellants/writ petitioners are allowed to adduce additional evidence and as such the contentions of the appellants/writ petitioners are taken into consideration.

Now, in respect of the appellant Nos. 1, 2 and 5 the ground for rejection was 'age does not match'. In this aspect on behalf of the appellants it has been submitted that on earlier occasion, relaxation in respect of age was given which the appellants have sought to be reinforced.

A report dated 04-05-2022 has been filed by the officiating Chief Executive (A & F) of the Indian Statistical Institute, wherein it has been mentioned that the Chairman of the Selection Committee for recruitment of Cook 'A' in the year 2017 has stated that age relaxation was granted to the said applicants by the Committee considering them as *internal candidates* on the

basis of their no objection certificates and they were consequently shortlisted. So it is evident from the report that on earlier occasion, i.e. during the recruitment of Cook 'A' in the year 2017 relaxation in respect of age was given. Admittedly, a similar procedure has been followed by the Indian Statistical Institute *qua* the present recruitment exercise by granting the writ petitioners, who are already working with the Institute as Cooks 'no-objection' certificates. Accordingly the Indian Statistical Institute is directed to revisit the candidatures of the appellant Nos. 1,2 and 5 whose names have been left out on the ground of 'mismatch of age'.

As regards to the appellants no. 3 and 4, their candidature has not been considered on the ground of 'No Trade Certificate/Diploma' which, this Court is of the view that the same cannot be reconsidered as because trade certificate/Diploma is an essential criteria which can not at all be compromised.

Considering the aforesaid discussion, this Court is of the view that the Indian Statistical Institute, that is the appointing authority, be directed to reconsider the candidature of the appellant No. 1 namely, Madhusudan Pramanik, appellant No. 2 namely, Murali Dhar Behara and appellant No. 5 namely, Pradesh Kumar Das and to pass a reasoned order in this regard. As regards to the appellant Nos. 3 and 4 namely, Purna Chandra Panda and Rabindra Kumar Panda respectively, this Court is of the view that their candidature has not been considered as because the candidates are not possessing the trade certificate so, their candidature cannot be reconsidered.

In view of the above, **MAT 352 of 2022** with **IA No. CAN 2 of 2022** with **IA No. CAN 3 of 2022** stands **partly allowed** to the extent that the candidature of the appellant No. 1 namely, Madhusudan Pramanik, appellant No. 2 namely, Murali Dhar Behara and appellant No. 5 namely, Pradesh Kr. Das be reconsidered by the Indian Statistical Institute by passing a reasoned order.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)