

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA 4693 of 2020

Santanu Basu

...Petitioner

Vs

The West Bengal College Service Commission and Others ... Respondents

Mr. Subrata Mukhopadhyay, Adv.
Ms. Kakali Dutta, Adv.

... for the Petitioner

Mr. Kishore Datta, Sr., Adv.
Mr. Subhrangsu Panda, Adv.
Ms. Ina Bhattacharyya, Adv.
Ms. Mithu Singh Mahapatra, Adv.

... for the Respondents,
The West Bengal College Service
Commission.

Heard On : 05.04.2023

Judgment on : 17.05.2023

Rabindranath Samanta, J:-

1. Challenging the panel prepared by the West Bengal College Service Commission selecting the candidates for appointment to the posts of Assistant Librarian, the petitioner has approached this Court by preferring this writ petition.

2. The background facts giving rise to this writ petition may be adumbrated as under:

The petitioner Santanu Basu has a brilliant academic career. He obtained Bachelor's Degree in Library and Information Science as well as Master's Degree in Library and Information Science. He also cleared M. Phil in Library and Information Science in 2018 from the University of Calcutta. In response to an advertisement dated 4th February, 2019 issued by the West Bengal College Service Commission vide advertisement No. 1/2019, the petitioner applied for the post of Assistant Librarian. In the advertisement it was stated that calculation of vacancies would be done in accordance with the terms laid down in the West Bengal College Service Commission (manner of selection of persons for appointment to the post of Assistant Professor, Principal and Librarian and recommendation of Assistant Professor) Regulations, 2012. The vacancy, cut-off date and the exact number of all vacancies (category-wise and college-wise) would be notified before publication of the merit panel. But the commission would not be responsible for absence of vacancy under any category for non-receipt of requisition from any Government Aided College. In the advertisement it was spelt that minimum eligibility criteria contained in the advertisement would be governed by the provisions of the West Bengal Government notification No. 1448-EDN (CS)/8R-01/10 dated 19th December, 2018. The Commission however, could introduce additional parameters to select candidates of high calibre.

As regards educational qualification, it was stated in the advertisement that a candidate must possess Master's Degree in Library Science/Information Science/Documentary Science or an equivalent professional degree with at least 55 % marks (or an equivalent grade or grade point wherever grading system is followed) from a recognized University/Institute. It was also stated in the

advertisement that a candidate qualifying Library Science at the National Eligibility Test conducted by the UGC or any other test like SET/SLET accredited by the UGC would also be eligible for recruitment in West Bengal. The petitioner submits that in the year 2015, following were the score pattern for Librarian:

Items	Assistant Professor	Librarian
M.P./Eqv.	05	05
H.S./Eqv.	10	10
UG (General)/(Hons.)	15/20	10 (B. LIS.) + (B.A./B.Sc./B.Com.)/10 (with Hons. In B.A./B.Sc./B.Com.)
PG	20	15 (M. LIS.) + 10 (M.Sc./M.Com.)
NET/SET	04	04
M.Phil./Ph.D.	03/06	03/06
Research & Publications	04	04
Experience	06	06
Interview & Teaching Demonstration	20 05	20
Total	100 (Maximum)	100 (Maximum)

Such score pattern for Librarian published in the year 2015 remains unaltered. After the applications were submitted by the eligible candidates, the West Bengal College Service Commission conducted interview for the post of Librarian on 29th August, 2019.

Thereafter, the West Bengal College Service Commission published the merit list on 29th November, 2019. In the merit list as published, the name of the petitioner does not figure. The petitioner states that the candidates having lesser qualification have been empanelled in

the merit list. The petitioner complains that the candidates namely, Sudipta Pradhan under Roll No. 3000000545, Ranita Das under Roll No. 3000000699, Amir Kr. Das under Roll No. 3000000903, Arijit Ganguli under Roll No. 3000001022, Gopinath Das under Roll No. 3000000734, Ankit Das under Roll No. 3000001100, Priyanka Khuntia under Roll No. 3000000784, Payel Shee under Roll No. 3000000853, Trishna Bhui under Roll No. 3000000789 and Deep Kr. Kritniya under Roll No. 3000000665, who have been empanelled in the merit list have lesser academic score than that of him. The petitioner alleges that the West Bengal College Service Commission did not prepare the merit list as per the advertisement and the result of interview. The petitioner also alleges that the aforesaid merit list has been prepared in such a manner so that some favoured candidates can be appointed for the post of Librarian.

Under the aforesaid circumstances, the petitioner, *inter alia*, seeks the following reliefs:

“a) A writ of or in the nature of Mandamus commanding the respondents, their men, agents and subordinates to disclose all qualification of the enlisted candidates and the result of interview for the post of Librarian;

b) A writ of or in the nature of Mandamus commanding the respondents, their men, agents and subordinates not to give any appointment letter to the candidates appearing in the merit list for the post of Librarian and/or not to give any approval to the appointment of the said candidates;

c) A writ of or in the nature of Mandamus commanding the respondents, their men, agents and subordinates to investigate the entire matter by appointing an expert body and to submit the report before this Hon’ble Court within a particular period;

- d) A writ of or in the nature of Certiorari commanding the respondents, their men, agents and subordinates to produce the entire case record before this Hon'ble Court, so that conscionable justice can be rendered upon considering the same within a particular period to be fixed by this Hon'ble Court."
3. On 23rd June, 2022, while the writ application was moved, a coordinate Bench, after hearing the learned counsels appearing for the parties, directed the respondents to file a report in the form of affidavit dealing with the core issues raised in the writ petition as also by providing the following particulars to dispel any criticism:
 - i. When was the interview of these 10 candidates held, when and where was the merit list published?
 - ii. The address and other details of the successful candidates,
 - iii. Whether the panel of successful candidates has been exhausted and whether all the vacancies under the special advertisement have been filled up?
 - iv. The marks obtained by the successful candidates in the interview,
 - v. The educational qualification and the break-up of marks allotted for such qualification in support of the successful candidates considered at the interview,
 - vi. The marks obtained by the petitioner in the interview with break-up for his educational qualification.
 4. Challenging the aforesaid order by which report in the form of affidavit was invited from the respondents, the respondents preferred a mandamus appeal being MAT 1053 of 2022 before a Division Bench. By order dated 3rd November, 2022, the Hon'ble Division Bench disposed of the mandamus appeal by passing the following order:
 "In the considered view of this Court, irrespective of any lack of compulsion to disclose under the RTI Act *qua* a private party, as

legally provided, the Hon'ble Court does not suffer from the same limitations in exercise of its plenary jurisdiction.

Accordingly, the Report on Affidavit shall be produced before the Hon'ble Single Bench initially in sealed cover. The Hon'ble Single Bench shall then decide on the issue of circulation of the said Report keeping in view the ends of complete adjudication."

5. In compliance of this order, the respondents filed the report in the form of affidavit in a sealed cover disclosing the particulars as directed by the learned Single Bench.
6. Learned counsel appearing for the petitioner submits that the petitioner in the writ application has averred at paragraph 13 that compared to the academic qualifications of the 10 candidates as particularised at paragraph 15, his client's academic qualifications are the best, but the authority concerned, i.e., the West Bengal College Commission favouring the aforesaid candidates, deprived the petitioner to be empanelled as a successful candidate. According to learned counsel, the facts as stated at paragraphs 13, 15 and 16 challenging the legality of the panel are true to the knowledge of his client. In such factual matrix, the learned counsel by citing a decision in the case of **Rambhotla Ramanna by Power of vs. Government of Andhra Pradesh and Another** reported in **AIR 1971 AP 196** submits that where a Court on narration of facts as stated in the writ petition is *prima facie* satisfied that illegalities have been committed by the respondent authority, the Court in exercise of its extraordinary power under Article 226 of the Constitution and by issuing writ of Certiorari may call for the relevant documents from the State authority for proper adjudication of the matter. In such context, learned counsel argues that the report submitted by the respondents disclosing therein the relevant documents may be circulated to his client.

7. Per contra, learned counsel appearing for the respondents submits that perusal of the averments as made in the writ application demonstrates that the petitioner has failed to aver with sufficient particulars as to how he is better circumstanced on academic score than that of the 10 candidates as named at paragraph 15 of the writ application. According to the learned counsel, the writ application should be dismissed at the threshold due to lack of sufficient particulars to make out a case that the panel is vitiated with favouritism and illegality. In support of his contention, learned counsel has cited a catena of decisions in the case of **Markio Tado vs. Takam Sorang and Others** reported in **(2012) 3 SCC 236**, in the case of **Dhampur Sugar (Kashipur) Ltd. vs. State of Uttaranchal and Others** reported in **(2007) 8 SCC 418** and in the case of **Bharat Singh and Others vs. State of Haryana and Others** reported in **(1988) 4 SCC 534**.
8. In the decision in **Markio Tado vs. Takam Sorang and Others** reported in **(2012) 3 SCC 236**, the Hon'ble Apex Court at paragraph 27 has held as under:

“It is thus obvious that having failed to place any material with respect to either booth-capturing or impersonation, the first respondent was trying to make fishing and roving inquiry to improve his case by calling for the record of the voters’ register from Itanagar Constituency, in support of his grievance of double voting. In the absence of any evidence with respect to the persons who at the instance of the appellant allegedly captured the booths or made double voting or impersonation in Tali Constituency, no such inference could have been drawn against the appellant. The learned Single Judge, therefore, was clearly

in error in allowing the second application made by the first respondent.”

9. In the decision in the case of ***Dhampur Sugar (Kashipur) Ltd. vs. State of Uttaranchal and Others*** reported in (2007) 8 SCC 418, the Hon’ble Apex Court at paragraph 83 has postulated as under:

“Allegations of mala fide are serious in nature and they essentially raise a question of fact. It is, therefore, necessary for the person making such allegations to supply full particulars in the petition. If sufficient averments and requisite materials are not on record, the court would not make ‘fishing’ or roving inquiry. Mere assertion, vague averment or bald statement is not enough to hold the action to be mala fide. It must be demonstrated by facts. Moreover, the burden of proving mala fide is on the person levelling such allegations and the burden is ‘very heavy’ (vide E.P. Royappa v. State of Tamil Nadu). The charge of mala fide is more easily made than made out. As stated by Krishna Iyer, J. in Gulam Mustafa v. State of Maharashtra it is the last refuge of a losing litigant (see also Ajit Kumar v. Indian Oil Corporation). In the case on hand, except alleging that the policy was altered by the Government, to extend the benefit to Respondent No. 4, no material whatsoever has been placed on record by the appellant. We are, therefore, unable to uphold the contention of the learned counsel that the impugned action is mala fide or malicious.”

10. In the decision in the case of ***Bharat Singh and Others vs. State of Haryana and Others*** reported in (1988) 4 SCC 534, the Hon’ble Apex Court at paragraph 13 has observed as under:

“As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions

before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.”

11. As observed by the Hon’ble Apex Court in the decisions (supra), the petitioner, in order to substantiate the allegations that the merit list/panel as prepared by the College Service Commission was vitiated

with illegality and favouritism, he must state the facts or allegations with sufficient particulars/documents in the writ application. A careful reading of the writ application shows that necessary averments with sufficient particulars to make out a case of preparing the merit list with favouritism and illegality are lacking in the writ application. The petitioner's case is that he possesses better qualification than that of the 10 candidates as stated at paragraph 15. But, as regards this he has failed to aver the required facts and furnish the required documents. That being the factual matrix, this Bench finds that the petitioner has failed to fulfil the guidelines or requirements as postulated by the Hon'ble Apex Court in the decisions (supra). To speak in legal parlance, the petitioner's case is liable to be dismissed at the threshold.

12. Be that as it may, the Hon'ble Division Bench by order dated 3rd November, 2022 in the aforesaid mandamus appeal has been pleased to observe that in exercise of its extraordinary power under Article 226 of the Constitution, the Court may call for the required documents from the respondent authorities through a report in the form of affidavit. As stated above, in compliance of this order of the Hon'ble Division Bench, the State respondents by filing the report in the form of affidavit has disclosed some documents. However, as to circulation of the report to the petitioner, the Hon'ble Division Bench has directed that the Court may do it if it finds that it should be done to do a complete justice.
13. Now, the limited point which begs for consideration is as to whether a copy of the report may be served upon the petitioner or the matter may be disposed of on consideration of the report.
14. Perusal of the report, after opening the sealed cover, shows that the respondents in the report have disclosed the academic score of the eligible candidates as well as the petitioner and the marks obtained by

them in interview. In such context, for disposal of the writ petition, some relevant portions of the report relating to the aforesaid 10 candidates as stated at paragraph 15 may be excerpted which is as under:

Sl. No.	Name	Total Marks (Academic + Interview)
1.	Sudipta Pradhan	60.91
2.	Ranita Das	57.17
3.	Amit Kr. Das	56.32
4.	Arijit Ganguli	54.32
5.	Gopinath Das	53.07
6.	Ankit Das	52.25
7.	Priyanka Khutia	51.35
8.	Payel Shee	50.42
9.	Trishna Bhui	50.42
10.	Deep Kr. Kirtaniya	49.58
11.	Santanu Basu (Petitioner)	45.87

15. In view of the marks as disclosed in the report, the petitioner in order of merit, has acquired lesser marks than that of the marks secured by the aforesaid 10 candidates. Having regard to the factual scenario as displayed above, I feel that it will not be wise to serve a copy of the report submitted by the respondents in sealed cover upon the petitioner.
16. Ordinarily, Court should be slow to interfere with the observation/opinion of the Selection Committee comprising experts in this field unless mala fides are impleaded and proved by evidence.
17. As noted above, the petitioner has failed to plead with sufficient particulars that the merit list/panel was prepared with mala fide intention by the Selection Committee and with favouritism.

18. Therefore, in view of the above and on consideration of the report this Bench finds that the writ petition having no merit should be dismissed.
19. The point as raised above is answered accordingly.
20. The writ petition is dismissed on contest.
21. No order as to costs.
22. Parties may act on the Server Copy of this judgment and order duly downloaded from the Official Website of this Court.
23. Urgent Photostat/ certified copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)