

Item No.7
30.03.2023
Court. No. 19
GB

WPA 6627 of 2023

Jibonnesha Khatun
Vs
The State of West Bengal & Ors.

Mr. Dyutiman Banerjee,
Mr. F. Ahmed

...for the Petitioner.

Mr. Naba Kumar Das,
Mr. Subhabrata Das

...for the State.

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

Despite service upon the respondent no.7 and several information given to the learned advocate who claimed to have instruction to appear on behalf of the respondent no.7, none appears to contest the application. The writ petition is taken up in the absence of the said respondent.

The petitioner is aggrieved by the selection of the respondent no.7 as an ASHA. According to the petitioner, the weightage to the marks allotted at the Class-X level and at the interview, were not proper. The petitioner refers to the mark sheet of the High Madrasah Examination, 2003 and submits that although she had obtained 510 out of 850, the authority had calculated the weightage as 473 out of 850. Whereas, in case of the selected candidate, the weightage for the Class-X level examination was given on the basis of 439 out of 800.

Next, learned Advocate submits that the marks allotted at the interview to the respondent no.7 was

abnormally high as all the members of the interview board had given her 8 out of 10, whereas, the petitioner was given 6, 6, 5 and 8.

The rules with regard to weightage of marks for selection to the post of ASHA clearly indicates that 90% weightage should be given to the Madhyamaik examination or its equivalent examination. The petitioner passed the High Madrasah Examination. She obtained a total of 510 out of 850 which included 68 marks in the additional paper. The authority did not take into account the additional marks as it is a constant policy of the authorities to calculate the 90% weightage by excluding the marks obtained by any candidate under any board in the additional subject. The said provision of excluding the additional marks has been specifically mentioned in the application form to be submitted by the candidates when they apply for the recruitment process.

Thus, the authorities calculated 90% weightage by taking into account the marks obtained by the petitioner in the Language Group, Social Science Group, Science Group and compulsory paper. The full marks allotted for these groups was 850 and the petitioner obtained 473 in these groups. 68 out of 100 in the additional paper was not taken into account. Similarly, the respondent no.7 got 439 out of 800 by excluding the additional paper. The petitioner got 50.1 and the respondent no.7 got 49.4, being 90% weightage to the Madhyamik and/or equivalent examination. In the interview, the respondent no.7 was allotted 8 marks by all the members of the board whereas, the petitioner did not get

the same marks. The petitioner got 6.3 out of 10 at the interview and the respondent no.7 got 8 out of 10.

The correctness of the marks allotted at the interview by the members of the interview board sometime in May 2022, is not open to judicial review. This is not a case of bias or discrimination. Neither is there any pleading to the effect that the members of the interview board were either related to the respondent no.6 in any way or were not eligible to be a part of the board.

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.”

Under such circumstances, the writ petition is disposed of without any interference with the selection of the respondent no.7.

The report filed by the Sub-Divisional Officer, Domkal, Murshidabad explaining the distribution of marks is taken on record.

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.)