

WPA 6880 of 2023

Dipanjay Dutta
vs.
The District Legal Services Authority & Ors.

Mr. Ayan Banerjee
Mr. Dhiman Banerjee
...for the petitioner

Mr. Partha sarathi Bhattacharya
Mr. Arindam Sen
Ms. Rinku Sen
Mr. Sagnik Bhattacharya
...for the SLSA

Mr. Jayanta Samanta
Mr. Manas Kumar Sadhu
...for the State

The petitioner participated in a recruitment process, pursuant to a recruitment notification dated August 25, 2022 for being engaged as a Deputy Chief Legal Aid Defense Counsel for the district North 24 Parganas.

Mr. Banerjee, learned counsel appearing on behalf of the petitioner relied on a judgment reported in (2008)3 SCC 512 (**K. Manjusree vs. State of Andhra Pradesh and another**) in support of his contention that once the recruitment process has started, the selection criteria cannot be changed for the same. No fresh benchmark requiring the candidate to obtain 50%

in aggregate could be introduced by the authorities concerned.

Mr. Bhattacharya, learned senior counsel appears on behalf of the respondents/State Legal Services Authority (SLSA), West Bengal. He submits that the engagement of Deputy Chief Legal Aid Defense Counsel was only a contractual appointment and the rules for a permanent appointment of an employee cannot strictly apply for engagement of a contractual employee. The selection process was purely based on merit, taking into account the knowledge, skills, practice and experience of the candidate.

The qualifications for engagement of a Deputy Chief Legal Aid Defense Counsel are enumerated hereinbelow:-

“a) Qualifications for Deputy Chief Legal Aid Defense Counsel:

- Practice in Criminal law for at least 7 years,
- Excellent understanding of criminal law,
- Excellent Oral and written communication skills,
- Skill in legal research,
- Thorough understanding of ethical duties of a defense counsel,
- Ability to work effectively and efficiently with others,

- Must have handled at least 20 criminal trials in Sessions Courts, may be relaxed in exceptional circumstances, by Hon'ble executive Chairman, SLSA,
- IT Knowledge with proficiency in work."

He submits that it had to be assessed by the Selection Committee whether the candidate had excellent oral and written communication skills, excellent understanding of criminal law, thorough understanding of ethical duties. Further it had to be assessed whether the candidate could work effectively and efficiently. All such criteria were subjective in nature and therefore judicial intervention cannot be called for in assessing such criteria.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that whether it is a permanent appointment or a contractual engagement, the selection procedure as stipulated in the recruitment notification has to be followed. In the present case the issue whether the Selection Committee applied its mind to the candidature of the petitioner, as a Deputy Chief Legal Aid Defense Counsel has not been addressed at all.

The petitioner's candidature had to be assessed in terms of the recruitment notification which the authorities failed to show that they have done. Without the Selection Committee coming to the finding that the petitioner was not a suitable candidate, the Chairman of the SLSA could not take a decision that the candidate was unsuitable for such appointment.

Despite a Report-on-Affidavit being called for, no document was placed on record to corroborate the fact that the Selection Committee applied its mind and came to the finding that the candidate was **unsuitable** one in view of the subjective criteria of assessment.

In the light of the discussions hereinabove, the new recruitment notification which is impugned herein dated March 1, 2023 is set aside and/or quashed as far as the recruitment of Deputy Chief Legal Aid Counsel is concerned. The Selection Committee shall take a decision with regard to the suitability of the petitioner to be engaged as a Deputy Chief Legal Aid Defense Counsel pursuant to the Selection process stipulated in the Memo dated August 25, 2022. The Selection Committee will take a reasoned decision after evaluating each and every subjective criteria as stipulated in the said

notification and upload the reasoned order in the official website within a period of one month from date. If required, the petitioner will be called for an interview for assessing all the criteria as stipulated in the selection process of August 2022.

With the directions aforesaid, **WPA 6880 of 2023** is **disposed of**.

All parties are to act on a server copy of this order downloaded from the official website of this Hon'ble Court.

(Lapita Banerji, J)