

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 66 of 2017

Tamasi Konar

Vs.

The State of West Bengal & Anr.

With

WP.ST 42 of 2017

IA No.: CAN 1 of 2017 (old No.: CAN 3649 of 2017)

Saptarshi Kundu

Vs.

The State of West Bengal & Ors.

With

WP.ST 59 of 2017

IA No.: CAN 1 of 2017 (Old No.: CAN 3647 of 2017)

CAN 2 of 2018 (Old NO.: CAN 716 of 2018)

Amit Sankar Bagchi

Vs.

The State of West Bengal & Anr.

with

WP.ST 60 of 2017

IA No.: CAN 1 of 2017 (Old No.: CAN 3656 of 2017)

Sri Sayontan Chowdhury

Vs.

The State of West Bengal & Ors.

With

WP.ST 61 of 2017
IA No.: CAN 1 of 2017 (old No.: CAN 3650 of 2017)

Joy Banerjee
Vs.
The State of West Bengal & Anr.

With
WP.ST 62 of 2017

Md. Munirul Islam
Vs.
The State of West Bengal & Ors.

For the Petitioner
in WP.ST 66 of 2017

: Mr. Madhu Jana
Mrs. Tanushree Roy
Ms. Palima Bhadra

For the Petitioner
in WP.ST 42 of 2017,
in WP.ST 59 of 2017,
in WP.ST 60 of 2017 &
in WP.ST 62 of 2017.

: Mr. Probal Kumar Mukherjee,
Ld. Sr. Advocate
Mr. Anindya Halder

For the Respondent nos.
6,7,8,10,11, 13, 15 16,17,18,20,
21,22,23,24,25,26,29,30,31,32,
33,34,35,36,37,38,39,40,41,42
44,45,46,47,48,49,50,51 in
WP.ST. 66 of 2017

: Mr. Pratik Dhar, Ld. Sr. Advocate
Ms. Deblina Lahiri
Mr. Mirinmay Chatterjee
Ms. Cardina Roy

For the State in
WP.ST 66 of 2017,

: Mr. Tapan Kumar Mukherjee,
Ld. Sr. Advocate & Ld. AGP

WP.ST 59 of 2017,
WP.ST 61 of 2017 &
WP.ST 62 of 2017

Mr. Pinaki Dhole
Mr. Somnath Naskar

For the PSC, West Bengal

: Ms. Shraboni Sarkar

Heard on : August 29, 2023

Judgment on : August 29, 2023

DEBANGSU BASAK, J.:-

1. Six writ petitions are taken up for analogous hearing as they emanate out of the same judgment of the West Bengal Administrative Tribunal rendered in OA-931 of 2016, OA-683 of 2016, OA-940 of 2016, OA-952 of 2016, OA-1105 of 2016, OA-1129 of 2016 and OA-1130 of 2016.
2. By the impugned order, the Tribunal negated the challenge of the writ petitioners to the selection process completed by the Public Service Commission for the post of Assistant Public Prosecutor.
3. All the writ petitioners were unsuccessful in the selection process to the post of Assistant Public Prosecutor.
4. Learned Senior Advocate appearing for the writ petitioners in WP.ST 42 of 2017, WP.ST 59 of 2017, WP.ST 60 of 2017 and WP.ST 62 of 2017 submits that, his clients secured superior

aggregate marks than the successful candidates in the selection process. His clients were unfairly shown to be unsuccessful in the selection process despite his clients securing higher marks than the successful candidates.

5. Learned Senior Advocate appearing for such writ petitioners submits that, the selection process was initiated by the Public Service Commission through an advertisement bearing No.4 of 2015. He draws the attention of the Court to the scheme and syllabus of the selection process. In particular, he draws the attention of the Court to Part-II of the scheme and syllabus of the selection which speaks about the personality test. He submits that, the advertisement prescribed that the final merit list will be prepared on the basis of the total marks obtained in the written examination and in the personality test.
6. Learned Senior Advocate appearing for such writ petitioners submits that, the examination was divided into two successive parts, namely, written examination followed by a personality test. He refers to the advertisement concerned and submits that, for the written examination test, a cut-off

mark was prescribed. However, no cut-off mark was prescribed for personality test. At least his clients were not made aware of any prescription of cut-off marks in respect of the personality test.

7. Relying upon *2023 SCC OnLine SC 994 (Sivanandan C.T. and Others vs. High Court of Kerala and Others)* learned Senior Advocate appearing for such writ petitioners submits that, prescription of cut-off marks in the personality test in the manner as sought to be done herein was founded upon by the Supreme Court therein. Such procedure adopted was held to be incorrect. Therefore, the ground on which, his clients were disqualified was not available in law.
8. Learned Senior Advocate appearing for such writ petitioners relies upon *(2008) 3 Supreme Court Cases 512 (K. Manjusree vs. State of Andhra Pradesh and Another)* and submits that, a change in the criteria of minimum marks for the interview done subsequent to the initiation of the process for the selection process was illegal.
9. Learned Senior Advocate appearing for such writ petitioners relies upon an unreported decision of the Coordinate Bench

dated November 3, 2016 passed in WP.ST 67 of 2016 and submits that, fixation of qualifying cut-off marks should be fixed at all stages for all categories in the selection process. In the facts of the present case, the authorities did not do so. Therefore, the entire selection stood vitiated.

10. Learned Advocate appearing for the writ petitioner in WP.ST 66 of 2017 adopts the submissions made on behalf of the four other writ petitioners.
11. None appears for the writ petitioner in WP.ST 61 of 2017.
12. Learned Senior Advocate appearing for the successful candidates submits that, the ratio of *Sivanandan C.T. and Others (supra)* cannot be applied to the facts and circumstances of the present case. The rules governing the selection process in respect of *Sivanandan C.T. and Others (supra)* were different. Moreover, the decision to deploy a cut-off at the viva-voce therein was taken subsequent to the holding of the viva-voce test which is not the case herein.
13. Referring to the facts of the present case, learned Senior Advocate appearing for the successful candidates submits that, the decision to prescribe qualifying marks for the viva-

voce was taken in the meeting of the Full Commission on September 19, 2014 prior to the commencement of the written examination. A public notification was issued by the Public Service Commission in newspapers on July 4, 2015. The written examination was held on July 25, 2015 and July 26, 2015. Personality test was taken subsequent thereto.

14. Learned Senior Advocate appearing for the successful candidates submits that, his clients are now about six years into service. He refers to the attempt by the writ petitioners to obtain an interim order in the present writ petition which was denied by the Coordinate Bench. He submits that, thereafter, a Special Leave Petition was filed which was also rejected. Therefore, referring to *Sivanandan C.T. and Others (supra)*, he submits that, there also the Supreme Court took note of the fact that the Judicial Officers were already engaged and were working for a considerable period of time. Similar is the factual scenario obtaining in the present case.
15. Learned Senior Advocate appearing for the successful candidates submits that, personality test plays an important role considering the nature of the post involved in the

selection process. In support of such contention, he relies upon (2006) 6 Supreme Court Cases 395 (*K.H. Siraj vs. High Court of Kerala and Others*), (2010) 3 Supreme Court Cases 104 (*Ramesh Kumar vs. High Court of Delhi and Another*) and (2017) 4 Supreme Court Cases 357 (*Ashok Kumar and Another vs. State of Bihar and Others*).

16. Learned Senior Advocate appearing for the successful candidates submits that, the recruitment of Law Officers are governed by the West Bengal Legal Service (Recruitment) Rules, 2007 where the prescription of the selection process is different. He submits that, under the Service Rules of 2007 for Law Officers the final merit list was required to be prepared on the basis of total marks obtained in all written papers and in the personality test which is different from that prescribed in the present selection process.
17. Learned Advocate appearing for the Public Service Commission, adopts the submissions made on behalf of the successful candidates. In addition thereto, she relies upon 1995 (3) Supreme Court Cases 486 (*Madan Lal & Ors. vs. The State of Jammu & Kashmir and Others.*) in support of her

contention that, the writ petitioners were aware of the prescription of cut-off marks for the personality test, participated in the entire selection process without any demur and are not entitled to challenge the same.

18. Learned Senior Advocate appearing for the State submits that, the recruitment was held for the post of Assistant Public Prosecutor who is required to discharge functions under the Criminal Procedure Code. In discharging their functions, an Assistant Public Prosecutor is required to assist the Court in considering applications for pre-arrest bail and bail applications. An Assistant Public Prosecutor is required to conduct a criminal trial. Therefore, the personality test of the candidate applying for the post of Assistant Public Prosecutor assumes significance. Moreover, the Public Service Commission laid down the qualifying marks for the personality test in its meeting on September 19, 2014 much prior to the commencement of the written examination. Consequently, he contends that, none of the writ petitioners can be said to be prejudiced. In addition

thereto, he adopts the submissions made on behalf of the successful candidates and the Public Service Commission.

19. All the writ petitioners participated in a selection process undertaken by the Public Service Commission by way of an Advertisement No. 4/2015 for the post of Assistant Public Prosecutor.
20. The Advertisement No. 4/2015 prescribed that the commencement of submission of online application would be from April 13, 2015, closing date of submission of online application as on May 4, 2015 and the closing date of submission of fees is on May 6, 2015.
21. The advertisement bearing No. 4/2015 also prescribed that the selection process will comprise of examination which will be in two successive parts, namely, written examination and personality test. So far as the personality test is concerned, it prescribed that, for such purpose a limited number of candidates selected on the basis of the written examination will be called to appear in the personality test. It went on to prescribe that the final merit list will be prepared on the

basis of the total marks obtained in the written examination and in the personality test.

22. Public Service Commission, made an announcement on July 4, 2015 that, it may fix qualifying cut off marks for all categories of vacancies in each level of the examination, that is, written, interview and in aggregate. The public notification, was published in newspapers on July 4, 2015 as appearing from the affidavit of the successful candidates.
23. The writ petitioners participated in the written examination held on July 25, 2015 and July 26, 2015 without any demur. On February 2, 2016, Public Service Commission declared the result of the 512 candidates who appeared in the written examination. The writ petitioners before us qualified in the written examination.
24. Between March 8, 2016 to April 13, 2016, Public Service Commission held personality test of the candidates who qualified in the written examination. The writ petitioners before us participated in the personality test, again without any demur.

25. On July 8, 2016, Public Service Commission published a list of 55 candidates who were recommended to the post of Assistant Public Prosecutor. None of the petitioners were successful therein.
26. All the writ petitioners before us secured less than qualifying marks prescribed in the personality test. The qualifying marks prescribed in the personality test was 38.
27. It is the contention of the writ petitioners that, the qualifying marks for the personality test therein was not made known to the candidates prior to the commencement of the selection process. We are unable to accept such a contention, in view of the fact that, the Public Service Commission adequately and properly informed all candidates, that there would be prescribed qualifying marks in each test of the examination namely, written, interview as well as in the aggregate. Failure to inform numeral of the minimum qualifying marks to the candidates for the interview will not vitiate the selection process undertaken inasmuch as, the Public Service Commission proceeded on the basis of an pre-informed decision with regard to prescription of a qualifying

mark for the personality text much prior to the commencement of the selection process and on taking a decision with regard to the numeral of the minimum qualifying marks for the personality text went on to apply the same uniformly across the board in respect of each of the candidate. No instance was brought to our notice that despite the prescribed qualifying mark of 38 any candidate obtaining less than that in the personality test was recommended for appointment.

28. *Sivanandan CT & Ors. (supra)* was rendered in the context of the rules prevailing in the High Court of Kerela. Kerela State Higher Judicial Services Rule 1961 was considered therein. Such rules governed the selection process which was made the subject matter of challenge in the Article 32 petition. The Supreme Court noted the provisions of Rule 2(c)(iii) of the Rules of 1961 which prescribed that on the basis of aggregate marks, which such aggregate was obtained by adding the marks in the competitive examination and viva voce conducted by the High Court, 25% of the posts shall be filled up by direct recruitment from the Bar. It noted that,

the tests were held between January 14, 2017 and January 16, 2017 and that the decision to prescribe a cut off mark was taken on January 27, 2017. It is in such context, the Supreme Court held that, the recruitment stood vitiated. Factual scenario obtaining in the present case is different as adumbrated above. Decision to prescribe cut off marks for the personality test was taken prior to the commencement of the examinations.

29. *K. Manjusree (supra)* was also rendered in respect of selection to the post of District and Sessions Judge Grade-II in the Andhra Pradesh State Higher Judicial Service. Rules of appointment to such post namely, Andhra Pradesh Higher Judicial Rules 58 were considered. In the facts of that case, requirement of minimum marks in the interview was introduced in the selection process, after the entire selection process consisting of written examination and interview was completed. In such context, the Supreme Court held that, such a process would amount to changing the Rules of the game after the game was played. It was held to be

impermissible. Again, the factual scenario in the present case is different.

30. Coordinate Bench in *Abdul Haque (supra)* considered a selection process to the post in the West Bengal Legal Service. In the facts of that case, the coordinate Bench found that the prescription of qualifying marks was done subsequent to the commencement of the selection process. It observed that fixation of cut off marks by Public Service Commission in personality test and upon the aggregate marks, arrived at upon adding the marks obtained by the candidate in the written test and the interview is not sustainable in law. Again, the factual scenario in the fact and circumstances of the present case is different.
31. *K. H. Siraj (supra)* is of the view that, interview is the best mode of assessing the suitability of a candidate for a particular position. It noted that while the written examination will testify the candidate's academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion,

ability to take decisions, qualities of leadership etc. which are essential for judicial officers.

32. *Ramesh Kumar (supra)* noted *K. H. Siraj (supra)* and observed as follows : -

11. In State of U.P. v. Rafiquddin, Krushna Chandra Sahu (Dr.) v. State of Orissa, Manjeet Singh v. ESI Corpn. And K.H. Siraj v. High Court of Kerala, this Court held that the Commission/Board has to satisfy itself that a candidate had obtained such aggregate marks in the written test as to qualify for interview and obtained "sufficient marks in viva voce" which would show his suitability for service. Such a course is permissible for adjudging the qualities/capacities of the candidates. It may be necessary in view of the fact that it is imperative that only persons with a prescribed minimum of said qualities/capacities should be selected as otherwise the standard of judiciary would get diluted and substandard stuff may get selected. Interview may also be the best mode of assessing the suitability of a candidate for a particular position as it brings out the overall intellectual qualities of the candidates. While the written test will testify the candidate's academic knowledge, the oral test can bring out or disclose overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership, etc. which are also essential for a Judicial Officer."

33. In *Ashok Kumar (supra)*, the candidates participating in the selection process participated without any demur. After participating in the selection process, they turned around to question the result once they were declared to be unsuccessful. In such context, it was held, it was not open to such unsuccessful candidates to question the selection process.

34. *Madan Lal (supra)* noted a previous authority of the Supreme Court and held that, once an unsuccessful candidate participated in the selection process without demur, after participating the written examination and is sent up with the interview after obtaining qualifying marks and does not secure the qualifying marks in the interview, should not be allowed to turn around to challenge the selection process.
35. In the facts of the present case, all the petitioners participated in the selection process for the post of Assistant Public Prosecutor. It is rightly pointed out on behalf of the State that by and large the job portfolio of an Assistant Public Prosecutor is to assist the Court in conducting all criminal cases both at the trial as also on other judicial matters including bail petitions. The ability to address the Court is required. Personality of the candidates, their alertness, resourcefulness, dependability, capacity for discussion, ability to take decision, qualities of leadership, overall intellectual and personal qualities are aspects which are relevant, can and should be assessed in an interview. An Assistant Public Prosecutor needs to possess not only

academic knowledge but also requisite personality. An ideal amalgamation of the two would result in an appropriate choice.

36. That there would be a cut off marks prescribed for the personality test in the selection process was made known to the candidates through public announcement by the Public Service Commission which the Public Service Commission in its wisdom, apart from issuing necessary advertisements in the newspapers hosted it in its website, well before the commencement of the first stage of the selection process namely the written examination. The candidates were aware that, there would be prescription for cut off marks both at the written examination stage as also at the personality test. The writ petitioners participated in the selection process without demur and with the knowledge that there would be prescription of a cut off mark both at the written examination as also in the personality test. Rules of the game were not changed subsequent to its commencement. Grievances ventilated are without any substance.

37. All the writ petitioners were unsuccessful at the personality test.
38. In such circumstances, we find no merit in the present writ petitions.
39. WP.ST 66 of 2017, WP.ST 42 of 2017, WP.ST 59 of 2017, WP.ST 60 of 2017, WP.ST 61 of 2017, WP.ST 62 of 2017 are **dismissed**. All connected applications thereto are disposed of.

(Debangsu Basak,J.)

40. I Agree.

(Md. Shabbar Rashidi, J.)