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01.08.2023
D.Hira
Court No. 12

**In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side**

FMA 1938 of 2015

**Bikash Gayen & Anr.
Versus
Union of India & Ors.**

**Mr. Joyjit Roy Chowdhury,
Mr. Subhendu Bhattacharya.
... for the appellants**

**Mr. S. Bera,
Ms. Soma Chowdhury.
... for the UOI**

The appellants have come out with the present appeal challenging the order dated 09.02.2015 dismissing the writ petition being W.P. 3254 (W) of 2015 filed by the appellants.

The appellants participated in the selection for the post of Constable in Railway Protection Force.

According to the appellants, in every stage of selection, they obtained qualifying marks. In spite of the same they were not selected.

In such circumstances, they filed a writ petition being W.P. 3254 (W) of 2015.

According to the respondents, the last selected scheduled caste candidates obtained 47.38% marks.

The appellants have obtained only 47.18% and 47.20% respectively.

In view of the same, the appellants were not selected.

Learned Judge considering the above submissions and the fact that the appellants have not challenged the selection process dismissed the writ petition.

Against the said order of dismissal the present W.P. is filed.

Mr. Roy Chowdhury, learned counsel appearing for the appellants contended that learned Judge considered the submissions made by the respondents and did not consider the case of the appellants. They have sought for information under Right to Information Act, 2005 for non-considering the cases for appointment and/or selecting the post of Constable in Railway Protection Force. The respondents did not answer. The Division Bench of this Court directed the counsel for Railways to file a report. The notification issued for appointment to the post of Constable was revised and the vacancy has also been increased by the revised notification issued in the year 2011. In spite of the same, the appellants are not given any appointment and prayed for allowing the appeal.

Mr. S. Bera, learned counsel for the respondents submitted that as per the Division Bench's direction of this Court, the respondents filed a report and submitted that the cut of marks

fixed it for the scheduled caste candidates is 47.38% and the persons who obtained 47.38% and above were selected. The appellants have obtained only 47.18% and 47.20%. In view of the same, they were not selected. Learned Judge considering the same dismissed the writ petition and there is no reason to interfere with the order of the learned Judge and prayed for dismissal of the appeal.

Heard Mr. Joyjit Roy Chowdhury, learned Counsel appearing for the appellants and Mr. S. Bera, learned counsel appearing for the respondents and perused the entire materials on record.

From the materials on record it is seen that the appellants have not challenged the selection process. It is the case of the respondents that cut of marks for selecting of the candidates to the post of Constable in Railway Protection Force is 47.38%.

The appellants have obtained less than the cut of marks that is 47.38% and less than the marks obtained by the last selected candidates.

The appellants have not disputed the said marks as furnished by the respondents. In respect of the case of the appellants that respondents did not answer the queries raised by the appellants and the Right to Information Act, 2005 is concerned, they ought to have proceeded further as per the Right to Information Act, 2005.

The respondents have furnished the reason for non-selection of the appellants, which is proper.

In view of the undisputed facts that the appellants have obtained less than the cut of marks fixed by the respondents and less than the marks obtained by the last selected candidates, there is no reason to interfere with the order of the learned Judge.

The appeal fails and dismissed.

Report filed by the Union of India be kept with the record.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)