

Item No.2.

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

HEARD ON: 20.02.2023

DELIVERED ON: 20.02.2023

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**WPST 47 of 2022
With
I.A. No.CAN 1 of 2022**

**Shukdeb Maiti.
Vs.
The State of West Bengal & ors.**

Appearance:-

**Mr. Uday Narayan Betal,
Mr. Partha Sarathi Mondal**

.... for the petitioner.

**Mr. S. N. Mookherjee, Id. A. G.,
Mr. Tapan Kr. Mukherjee, Id. A.G.P.,
Mr. Sanjay Basu,
Mr. Piyush Agarwal,
Ms. Shrivalli Kajaria,
Ms. Debdooti Dutta**

..... for the respondents.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. The writ petition had been filed by one Shukdeb Maiti praying for issuance of a writ of mandamus to show cause as to why the order dated 15th February, 2022 passed by the learned Tribunal in O.A. No. 606 of 2021 shall not be set aside and / or quashed and thereby direct the respondent authorities to appoint the applicant to the post of Medical Technologist (Lab) Grade - III by allowing full marks for possessing the qualification of M.Sc. MLT as essential qualification as well as marks for experience as per the notification / advertisement issued by the respondents / department.

2. The writ petition was heard by the Division Bench on various dates, it would suffice to note that during the course of hearing, the Division Bench was of the prima facie opinion that there were glaring errors in the selection process. It may not be necessary for us to advert into the various orders passed by the Division Bench from time to time. Suffice to note the order dated 13th July, 2022.

3. Before we go into the said order, one other order passed by the Division Bench, which needs to be referred is the order

dated 6th July, 2022. On going through the order, we find that certain strong observations had been made, though prima facie in nature about the selection process. The respondents have filed I.A. No.CAN 1 of 2022 to recall/modify/clarify the order dated 6th July, 2022 primarily on the ground that incomplete records were placed before this Court, which led to certain adverse observations being made by the Division Bench in its order dated 6th July, 2022.

4. In the latter part of this order, we shall deal with I.A. No.CAN 1 of 2022. Reverting back to the order dated 13th July, 2022, from which we find that the petitioner was directed to point out the discrepancies in the manner in which the selection was conducted with a request to the learned Advocate General to take necessary instructions on the errors and / or discrepancies disclosed by the petitioner through his learned counsel.

5. The learned counsel for the petitioner has disclosed such errors and the learned Advocate General has personally examined the same and the outcome of such exercise has been brought on record in the form of a supplementary affidavit filed by the appropriate authority of the respondents / department. From the discrepancies, which were pointed out by the petitioner and upon thorough verification by the learned Advocate General, it is

found that the case of the writ petitioner has to be accepted and he is to be awarded 15 marks for possessing the M.Sc. qualification. Similar exercise was done in respect of the other candidates as well and it is found that 8 candidates in the "Unreserved" category and 1 candidate in the "ST" category are also qualified for being appointed. In such circumstances, it is to be seen as to what is the nature of order and direction that has to be issued in this writ petition.

6. We are conscious of the fact that the present proceeding is not in the nature of a public interest litigation as there is a bar in entertaining a public interest litigation in service matters. The writ petition challenges an order passed by the learned Tribunal before whom the writ petitioner was the applicant projecting his individual grievance. Earlier, a set of 7 candidates had approached this Court by filing an application in I.A. No.CAN 2 of 2022 by which they sought for addition of parties to the writ petition and claimed that they also should be declared as successful in the selection process.

7. The Division Bench by order dated 5th August, 2022 dismissed I.A. No.CAN 2 of 2022 on the ground that in the writ petition, the applicants cannot be added as parties nor their cases can be considered as they have to file an independent application

before the learned Tribunal. In the given facts and circumstances, a workable solution needs to be found so that the selection process is completed by rectifying the defects and discrepancies so that all the candidates, who are rightful entitled to be selected are appointed to the said post.

8. In our view, the order dated 5th August, 2022 dismissing I.A. No.CAN 2 of 2022 will not strictly be a bar for this Court to take a holistic view in the matter, more particularly, in the light of the order passed by the Division Bench dated 13th July, 2022 and the exercise that was done by the learned Advocate General, which has yielded certain results.

9. Therefore, in our view, ends of justice would be met if a comprehensive order is passed in this writ petition so as to cover the discrepancies of all candidates, though it is the writ petitioner, who was the only candidate, who had only approached the learned Tribunal by way of an application.

10. The discrepancies, which have been now ascertained and agreed to be rectified by the respondents cannot be strictly construed to be a case of any nepotism or any cherry picking but appears to be mistakes committed by the selecting authorities either due to improper verification or conducting an exercise without due application of mind.

11. In any event, the selection authority is bound to take utmost care to ensure that the rights of the candidates, who are entitled to be selected are in no manner jeopardised by their inaction or their failure to take note of the relevant facts or on account of non-application of mind.

12. Be that as it may, now that the discrepancies have been found out and it is admitted by the respondents that not only the petitioner, but 8 candidates of the "Unreserved" category and 1 candidate of the "ST" category are all qualified to be appointed to the said post. Therefore, we are inclined to issued the following orders / directions.

13. As observed earlier, the order dated 5th August, 2022 dismissing I.A.No.CAN 2 of 2022 will not strictly come in the way of this Court issuing general directions so as to cover all the candidates as this order will not only be comprehensive but would meet the ends of justice.

14. In the light of the admitted facts as placed before this Court in the form of a supplementary affidavit, there will be a direction to the respondents to select and appoint the petitioner and other 8 candidates in the "Unreserved" category and 1 candidate in the "ST" category, whose names have been disclosed in the supplementary affidavit. Their appointments

shall take effect from 10th July, 2020 and for the purpose of calculating their length of service, the said date shall be reckoned. However, for the purposes of monetary benefits, it shall be only with effect from the date on which they are appointed and joined the respective post.

15. It is submitted by the learned Advocate for the petitioner that since the entire process has taken thus long and the candidates on being appointed and after having joined the post since notional benefit has been given with effect from 10th July, 2020, they will be entitled for two increments. This position needs no clarification as our order clearly states that the appointments shall take notional effect from 10th July, 2020, i.e. the length of service of the respective candidates including the petitioner shall be reckoned from 10th July, 2020 for all purposes except for pay and allowances as the petitioner and the other candidates are not entitled for any salary for the period for which they have not worked.

16. In the light of the above orders, I.A. No.CAN 1 of 2022 is allowed and the prima facie observations made by the Division Bench in the said order shall stand vacated.

17. The above direction shall be complied with by the respondents / department as expeditiously as possible but

preferably within a period of three weeks from the date of the receipt of the server copy of this judgment and order.

18. There shall be no order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)