

10.04.2023
DL-75
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6992 of 2020

Abhijit Roy
Vs.
The State of West Bengal & Ors.

Mr. Piyush Chaturvedi,
Mr. Chittapriya Ghosh,
Mr. Somesh Ghosh

....for the petitioner.

Mr. Sirsanya Bandopadhyay,
Mr. Subhendu Sengupta

....for the State.

Pursuant to an order dated June 22, 2020, the representation of the petitioner was considered and disposed of by a reasoned order dated August 31, 2020 passed by the Chief Medical Officer of Health (CMOH), Jhargram. By the order dated June 22, 2020, the Hon'ble Division Bench was of the view that the disposal of the writ petition was not in accordance with the order dated July 15, 2019 passed by an Hon'ble Coordinate Bench of this Court. Therefore, the impugned order dated February 7, 2020 was set aside and the representation of the petitioner was directed to be considered strictly in accordance with the order dated July 15, 2019.

Pursuant to a notification published by CMOH on November 10, 2017, the petitioner participated in the process of recruitment to the post of Senior DOTC

plus TB-HIV Supervisor on contractual basis. The petitioner was the second candidate in the merit list.

It is the grievance of the petitioner that since the ineligibility of the first candidate was brought to the notice of the authorities, the entire panel was cancelled and a fresh advertisement was published by the Member Secretary, District Health and Family Welfare Samity and CMOH on December 30, 2019.

By the order dated July 15, 2019, the Hon'ble Coordinate Bench directed the CMOH to consider the eligibility of the petitioner to the post-in-question by giving an opportunity of *hearing* to the petitioner and pass a reasoned order in accordance with the relevant circulars/guidelines governing the field. Since the Hon'ble Division Bench was of the view that the reasoned order passed on February 7, 2020 by the concerned authorities was not in conformity with the order dated July 15, 2019, a fresh hearing was directed to be given in accordance with the order dated July 15, 2019.

Mr. Chaturvedi, learned counsel, appearing on behalf of the petitioner submits that no opportunity of hearing was given to the petitioner. Therefore, the petitioner was prejudiced since he was not being able to represent/plead his case as to whether the post of a Counselor (ICTC) was a supervisory post or not.

The reasoned order proceeded on the basis that the petitioner does not have 5 years' experience in any public health programme in a *supervisory* capacity.

Mr. Sengupta, learned counsel appearing on behalf of the State-respondents submits that a reasoned order has been passed and since the petitioner was found to be ineligible, the entire panel was cancelled.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the order dated July 15, 2019 had to be strictly complied with in accordance with the order of the Division Bench dated June 22, 2020. The respondent authorities/CMOH was under an obligation to give a personal hearing to the writ petitioner. By not giving a personal hearing to the petitioner, the directions passed by the Division Bench of this Hon'ble Court have not been complied with.

In such view of the matter, the impugned order dated August 31, 2020 is set aside and/or quashed.

The representation of the petitioner dated February 14, 2018 has to be considered by the CMOH within 8 weeks from date and strictly in accordance with the order dated July 15, 2019 passed by the Hon'ble Coordinate Bench upon giving a personal

hearing to the writ petitioner. A reasoned order be passed within 8 weeks from date and be communicated to the writ petitioner within 2 weeks of passing thereof.

It is expected that one post of Senior DOTC plus TB-HIV Supervisor shall be kept vacant till such time the representation is considered and disposed of by the respondent authorities.

With the directions aforesaid, **WPA 6992 of 2020** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)