

WPA 10156 of 2023**Siddhartha Chaudhuri****Vs.****The State of West Bengal & Ors.**

Mr. Prosenjit Mukherjee

Ms. Tiya Ghosh

....for the petitioner

Mr. Arjun Roy Mukherjee

Ms. Tuli Sinha

...for the State

The petitioner applied for recruitment to the post of Homeopathic Pharmacist under the Health & Family Welfare Department, Government of West Bengal pursuant to an advertisement No. R/HP/19/2022.

Mr. Mukherjee, learned counsel appearing on behalf of the petitioner submits that out of a total of 151 vacancies there were 77 vacancies were for unreserved category candidates. He drew the attention of this Court in respect of the distribution and allotment of the marks for the candidates under the heading qualification. As per the calculation of the petitioner, he was eligible to obtain 55.94 marks instead of 55.26 marks that was awarded to him. Therefore, it is the contention of the petitioner that he has been wrongly assessed and such wrong assessment is due to arbitrariness or malafide intention on the part of the respondent authorities.

Furthermore, it is contended on behalf of the petitioner that the merit panel prepared for all the 524 *eligible* candidates suffer from infirmity. A separate merit panel should have been prepared only for the candidates appearing in the unreserved category. The authorities could not have clubbed with the unreserved category candidates with the reserved category candidates.

Mr. Roy Mukherjee, learned counsel appearing on behalf of the respondent authorities submits that even if the petitioner's contention with regard to the wrong assessment of marks is accepted even then the petitioner would not be within the '*zone of consideration*'. Assuming that the petitioner was entitled to get 55.94 marks but still he will not be selected as a candidate obtaining 56.74 marks has not been selected. He also submits that in the event a reserved category candidate obtains more than the cut off marks required for selection of an unreserved category candidate then a reserved category candidate can be treated as an unreserved category candidate for his selection/appointment in UR category. Therefore, there is no infirmity in the preparation of the panel of all the *eligible* candidates.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that even if it is assumed that the petitioner

obtained 55.94 marks still he does not come within the '*zone of consideration*'. Furthermore, it is now well settled by several judgments of the Apex Court that a reserved category candidate securing higher marks than the last selected general category candidate will be entitled to get a seat/post in the general category. A beneficial reference may be made to a judgment passed in Civil Appeal No. 8717 of 2015 (**Bharat Sanchar Nigam Ltd. & Anr vs. Sandeep Choudhury & Ors**).

In the light of the discussion above, the Court finds no merit in the present writ petition.

Accordingly, **WPA 10156 of 2023** is **dismissed**.

Since affidavits have not been invited in the present writ petition, the allegations made in the writ petition are deemed not to have been admitted by the parties.

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

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)