

27.06.2023
DL-9
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13939 of 2023

Sushil Shikary & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Sayantan Adhya
...for the petitioners.
Mr. Arjun Ray Mukherjee,
Ms. Tuli Sinha
....for the State.
Mr. Gopal Chandra Das,
Ms. Tanusree Dasgupta
....for KMC.

An undertaking is given to pay the deficit court fees by tomorrow, i.e. June 28, 2023.

The petitioners claim to be working as Enumerator/Census Operators with Census of India, 1991 West Bengal. The certificate issued by the Census of India would have entitled the petitioners to claim the benefit of exempted category candidates *eligible* for consideration in terms of 30% quota set apart for them. The said quota was maintained in terms of Section 3(a) of the West Bengal (Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 (in short "Act of 1999"). The petitioners claim benefits of the certificate issued in terms of 1999 Act. Such benefits were not given to the petitioners. Some identically placed candidates, who

were not given the benefits of 1999 Act, approached the Hon'ble High Court in WP 12011 (W) of 2013. The said writ petition was disposed of by directing the respondent concerned/the Director of Employment to pass a reasoned order. The Director of Employment, vide order dated May 7, 2013 rejected the candidature of the petitioners. The documents, which were produced by the petitioners, were doubted by the authorities concerned. The writ petitioners once again approached the High Court by filing WP 5551 (W) of 2015. The Hon'ble Coordinate Bench allowed the writ petition by an order dated August 13, 2015. The Coordinate Bench was of the opinion that the doubts expressed by the adjudicating authority in relation to the documents produced by the petitioners were of no relevance being meritless grounds. The State respondents approached the Hon'ble Division Bench. The State relied on an information received from Kolkata Municipal Corporation (KMC) regarding the certificates which were in dispute. The Certificates which were produced in support of the contentions of the writ petitioners were claimed to be manufactured documents by the State. Criminal proceedings were initiated in respect of such Certificates by the State.

The Hon'ble Division Bench upheld the order of the Coordinate Bench. The order of the Hon'ble Division Bench was assailed before the Supreme Court of India in Civil

Appeal No. 7327 of 2016. The said order was passed by the Hon'ble Division Bench was stayed until further orders on August 1, 2016.

Upon consideration of the submissions of the parties, the Hon'ble Supreme Court was of the view that the doubt entertained by the State/appellant with regard to the genuineness of the Certificates had some force. The Supreme Court was of the view that the High Court fell into error by accepting the respondents/writ petitioners' argument and directing the acceptance of the aforesaid Certificates. Therefore, the judgment and order passed by the Hon'ble Division Bench as well as the Single Bench were set aside and the appeal was allowed. The appeal was disposed of by a judgment and order dated September 1, 2021.

Attention of this Court is drawn to an order passed by the Director of Employment, West Bengal dated October 24, 2017. As per the said order, the prayer of the writ petitioners to be appointed as Ex-Census Workers was kept in abeyance till the disposal of the Civil Appeal by the Supreme Court of India.

It is submitted on behalf of the writ petitioners that since the said appeal has been disposed of, there is no impediment to the consideration of the petitioners'

candidatures as Ex-Census Workers by the authorities concerned.

Mr. Roy Mukherjee, learned counsel represents the respondent nos. 1 to 4.

Ms. Dasgupta, learned counsel represents the respondent nos. 5 and 6.

Considering the submissions of the parties and material placed on record, this Court directs the representations of the writ petitioners to be considered by the Directorate of Employment/respondent no. 4 or any other authority delegated by him within a period of 10 weeks from date upon giving a personal hearing to the writ petitioners. Any reasoned order passed by the respondent no. 4/his delegate will be communicated to the writ petitioners within two weeks of passing thereof.

With the directions aforesaid, **W.P.A. 13939 of 2023 is disposed of.**

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the petition are deemed not to have been admitted by the parties.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

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

(Lapita Banerji, J.)