

99. 11.08.2023
(M/L) Ct. No.22
Tanmoy

WPA 16422 of 2018

**Suchismita Bag @ Suchismita Das
-Versus-
The State of West Bengal & Ors.**

Mr. Ekramul Bari, Adv.,
Mr. Sidhartha Shakar Mondal, Adv.,
Mrs. Tanuja Basak, Adv.,
Mr. Sk. Imtiazuddin, Adv.

...for the petitioner.

Mr. Dr. Sutanu Kr. Patra, Adv.,
Mr. Kanak Kiran Bandyopadhyay, Adv.

...for the respondent nos. 3 & 4.

On the prayer of Mr. Ekramul Bari, learned Advocate for the petitioner, the names of the respondent nos. 1 and 2 stand deleted and are expunged from the array of the respondents. Mr. Bari submits that the entire allegations in this writ petition are against respondent nos. 3 and 4, hence the State is neither a necessary, nor a proper party and accordingly, no relief can be claimed against them in this writ petition.

Pursuant to the direction of this Court, an affidavit-in-opposition affirmed on July 20, 2023 (hereinafter referred to as the 'said affidavit'), filed today in Court on behalf of the respondent nos. 3 and 4, is taken on record.

Mr. Bari further submits that the petitioner shall not use any affidavit-in-reply thereto.

The writ petitioner was an aspirant and participated in the **First State Level Selection Test-2016** (for short 'SLST-2016') for appointment of Assistant Teachers for the Upper-Primary Level of Schools. The candidature of the petitioner was rejected with the remark **"OVERAGE"**, **Annexure P/5 at page 30** to the writ petition. The application of the petitioner appearing for the relevant SLST would show that the **date of birth** was mentioned by the petitioner as **September 25, 1973, Annexure P/3 at page 22** to the writ petition. Apart from this, there was no conclusive evidence annexed to the writ petition to establish the date of birth of the petitioner. Claiming a relaxation of the age-bar, the petitioner filed the instant writ petition with the following reliefs:-

"a) A writ in the nature of Mandamus commanding the respondents, their agents, servants, subordinates, employees and/or assignees particularly the respondent no.4 to declare the petitioner as successful candidate in 1st SLST, 2016 as the petitioner applied for the post of TET, 2013 within the age limit as specified by the respondent no.4 in the "Information Brochure" for TET, 2013 AND 13th RLST (A.T.) as well as specified in clause 10(2) of the notification dated 23.09.2016 upon withdrawing the result status "rejected as overaged" forthwith and immediately without any hindrance from any quarters.

b) A writ in the nature of Mandamus commanding the respondents, their agents, servants, subordinates, employees and/or assignees to act in accordance with law.

c) A writ in the nature of Certiorari calling upon the respondents and each of them to certify and transmit the original records of the case before this Hon'ble Court so that conscionable justice may be rendered to the petitioner;

d) A writ in the nature of Prohibition do issue prohibiting upon the respondents and each of them either by themselves

or through their men, agents assigns, subordinates from exercising further not warranted under the statute.

e) Rule of N I S I in terms of prayers (a) to (d) as above;

f) If no cause or insufficient causes are shown Rule be made absolute;

g) Ad-interim order of injunction directing the respondent no.4 to declare the petitioner as successful candidate in 1st SLST, 2016 as the petitioner applied for the post of TET, 2013 within the age limit as specified by the respondent no.4 in the "Information Brochure" for TET, 2013 AND 13th RLST (A.T.) as well as specified in clause 10(2) of the notification dated 23.09.2016 upon withdrawing the result status "rejected as overaged".

h) And pass such other further order or orders as to Your Lordship may seems fit and proper."

Mr. Bari, learned Counsel for the writ petitioner submitted that subsequently, by a judgment of a co-ordinate Bench dated December 11, 2020, the entire selection process was set aside and was directed to be held afresh but on the basis of the candidatures already submitted at the threshold lying with the record of the respondent nos. 3 and 4. From the said affidavit filed on behalf of the respondent nos. 3 and 4, referring to the document being the Reasoned Order Sheet, **Annexure R/2** thereto, learned Counsel for the petitioner submitted that the plea for rejection of the candidature of the petitioner in the selection process held pursuant to the judgment of the co-ordinate Bench dated **December 11, 2020**, was that the petitioner got **69.20** in aggregate out of 90, as per the merit list of the respondent no.3, whereas the cutoff marks for the interview for the category of vacancy

stood at **78.80**. Thus, the petitioner could not come within the zone of consideration for interview.

Learned Counsel for the petitioner submitted that for the first time, the rejection of the candidature of the petitioner was on the ground for being **over aged** but in the subsequent selection process held pursuant to the judgment of the co-ordinate Bench dated December 11, 2020, the ground of rejection was **on merit**. He submitted that the stand of the respondent nos. 3 and 4 are totally shifting in nature and inconsistent with each other. The respondent nos. 3 and 4 being statutory Authority, cannot act in such an arbitrary and illegal fashion. He submitted that, the selection process which was initially held and then was set aside by the co-ordinate Bench and further held on the basis of direction of the Court, is a continuing process and, therefore, the decision of the respondent nos. 3 and 4 is required to be interfered with by this Court by allowing the reliefs claimed in the writ petition. He further submitted that, from the said reasoned order, **Annexure R/2** to the said affidavit, it would not be evident on what basis the petitioner got 69.20 in aggregate and also on what basis the cutoff marks stood as 78.80, as disclosed through the said affidavit by the Examining Authority. He submitted that, it is totally illegal and arbitrary act on the part of the respondent nos. 3 and 4 for which this Court is with

ample jurisdiction to intervene with the said selection process and allow the writ petition.

Dr. Sutanu Kr. Patra, learned Counsel appearing for the respondent nos. 3 and 4, referring to the averments made in the said affidavit, submitted that the original selection process was held, where the petitioner participated and her candidature was rejected on the ground of being **“OVERAGED”**, the said selection process was set aside by the judgment of the co-ordinate Bench dated December 11, 2020. Only thereafter, the further selection process was held in terms of the direction of the co-ordinate Bench but on the basis of the existing candidatures of the candidates, who were originally the applicants for the relevant SLST. In the said further round of selection process, the petitioner lost on merit as would be evident from Annexure R/2 to the said affidavit. Learned Counsel for the respondent nos. 3 and 4 then submitted that the said further selection process was never the subject-matter of challenge in the instant writ petition. He placed reliance upon the reliefs claimed in the writ petition and submitted that the challenge was only the rejection on the ground of over age in the instant writ petition and the rejection on the ground of merit of the writ petitioner is not challenged through the instant writ petition. Hence, this Court shall not entertain this writ petition at all and dismiss the same *in limine*.

Referring to the said reasoned order, Annexure R/2 to the said affidavit, he submitted that the same was passed on September 9, 2021, which was much subsequent to the decision of the co-ordinate Bench dated December 11, 2020, in the further selection process. This cannot come within the scope and ambit of the instant writ petition.

Considering the rival contentions of the parties and upon perusal of the materials on record, this Court first proceeds to peruse the reliefs claimed in the instant writ petition which has been quoted above. From a plain reading of the averments made in the writ petition coupled with the reliefs claimed thereunder, this Court is of the considered view that, **the subject-matter of challenge in this writ petition is the rejection of candidature of the petitioner on the ground of being over aged and not on the ground of merit of the petitioner**, as would be evident from Annexure R/2 to the said affidavit. The petitioner has not disclosed any conclusive evidence on record as to the date of birth of the petitioner. In absence of such conclusive evidence in support of the ascertainment of age of the petitioner, the Court cannot presume anything as to the age of the petitioner. The application, filled up by the petitioner mentioning her date of birth, cannot be a conclusive proof or evidence as to her date of birth.

Inasmuch as, by the judgment of the co-ordinate Bench dated December 11, 2020, the original selection process was set aside and the same was directed to be held afresh but on the basis of the applications already submitted by the candidates originally on record. Pursuant to the said direction of the co-ordinate Bench, the further selection process was held in which the petitioner shown to have been rejected on the basis of her merit as would be evident from Annexure R/2 to the said affidavit. However, the said ground of rejection of the petitioner on her merit in the selection process, Annexure R/2 to the said affidavit, neither is under challenge, nor is questioned through the instant writ petition. In any event, when the said writ petition was filed in 2018 and further selection process was held in terms of the direction made by the co-ordinate Bench dated December 11, 2020, the challenge of the petitioner on the ground of her merit could not have been there in the instant writ petition filed in 2018 and rightly it is not there. Further, when the original selection process was set aside by the co-ordinate Bench, the petitioner cannot sustain its challenge for rejection of his candidature thereunder on the ground of being **over aged** and automatically the instant writ petition would lose its force and effect. The rejection of candidature of the petitioner on her **merit** is a subsequent and an independent cause of action arising

out of the selection process which was held **afresh** after the original selection process was set aside and the same is not the subject-matter of the instant writ petition.

It is the settled law that the Court cannot proceed beyond the pleadings filed by the parties before it to adjudicate upon an issue which is the subject-matter before the Court. The Court cannot make a third case of its own. Neither can it take cognizance of such a third case which is not there at all in the challenge. The instant writ petition has thrown no challenge to the said rejection of the petitioner on her merit as would be evident from Annexure R/2 to the said affidavit. The Court cannot travel beyond the pleadings of the parties.

Inasmuch as, the moment the first selection process is set aside by the judgment of the co-ordinate Bench dated December 11, 2020 and the further selection process was held, the same cannot be said to be or construed to be a continuation of the original selection process. The said further selection process, which was held in terms of the direction of the co-ordinate Bench, is an independent selection process separate from the original one, which was set aside by the co-ordinate Bench. The moment the original selection process has been set aside by the co-ordinate Bench, **prayer (a)** to this writ petition lost its force as

nothing survives for adjudication in terms of prayer (a) to the writ petition.

It is further made clear that this Court has not gone into the merits of the rejection of the petitioner on the ground of her merit in the relevant selection process as would be evident from Annexure R/2 to the said affidavit in any manner.

In view of the foregoing discussions and reasons, this Court is of the firm view that, this writ petition is totally devoid of any merit after the judgment of the co-ordinate Bench dated December 11, 2020 and has lost its force.

Resultantly, this writ petition being **WPA 16422 of 2018 stands dismissed**, without any order as to costs.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all requisite formalities.

(Aniruddha Roy, J.)