

S/L 25
28.07.2023
Court. No. 29
Sourav
SKB

WPA 14211 of 2009

Jyotsna Satpati (Satpathi)
Vs.
The State of West Bengal & Ors.

Mr. Tapash Kumar Sinha
Mr. Arunava Pati

...for the petitioner.

Mr. Susanta Pal
Mr. Pradip Patra

...for the respondent no. 5.

1. Affidavit-of-service as filed today on behalf of the writ petitioner be taken on record.
2. Both the writ petitioner and the private respondent no. 5 are represented by their respective learned advocates. In spite of service, none appears on behalf of the State respondent nos. 1 to 4.
3. By filing the instant writ petition, the writ petitioner has prayed for issuance of writ of mandamus commanding the State respondents to cancel and/or set aside the panel for the post of Auxiliary Nurse and Midwife (ANM) in the Puipal Health Sub-Centre under Simlapal Block in District of Bankura.
4. In support of the instant writ petition, the learned advocate for the writ petitioner at the very outset draws attention of this Court to paragraph 4 of the instant writ petition. It is contended by him that while inviting the application for the aforementioned post, the respondent authorities have set up some criteria out of which one criterion was that the selection would be strictly on the

basis of carrying marks in the Madhyamik or equivalent examination. Drawing attention to Annexure P-3 at Page 20 of the instant writ petition, it is contended that marks of the private respondent no. 5, Jhuma Mandal (Dangar) in the merit list has been placed in Sl. No. 1 while the name of the present petitioner has been placed in Sl. No. 2 on the basis of the percentage of marks but from the aggregate marks column, it would reveal that the private respondent no. 5 obtained aggregate marks of 435 while the present petitioner obtained aggregate marks of 477. It is thus, contended that in view of the excess aggregate marks of the present petitioner, the respondent State authorities ought to have placed the petitioner in Sl. No. 1 instead of the private respondent no. 5.

5. Learned advocate for the writ petitioner thus submits that it is a fit case for allowing the instant writ petition by setting aside the panel as prepared by the State respondents.
6. While opposing the prayer of the writ petitioner, learned advocate for the private respondent no. 5 has handed over a copy of the mark-sheet in the name of the private respondent no. 5. It is contended by learned advocate for the private respondent no. 5 that though the petitioner obtained much marks than private respondent no. 5 but as a matter of fact, the petitioner obtained 477 marks out of 900 whereas the private respondent no. 5 obtained 435 marks out of 800 marks and both those two marks have been calculated after deducting the excess marks

obtained by the petitioner and the private respondent no. 5 in the additional subjects as per Rules.

7. It reveals to this Court that by virtue of a previous order dated 28.03.2012 as passed in this writ petition, the then Deputy Magistrate and Deputy Collector of Bankura Sub-Division has submitted an affidavit annexing the report regarding the recruitment, which is the subject matter of challenge in the instant writ petition.
8. From Annexure R-1 of the said affidavit, being the report bearing Memo No. 1620/G dated 19.04.2012, it reveals that the relevant portion of the said report of the Sub-Divisional Officer, Khatra, Bankura is as under:

“.... the order of merit was decided on the basis of aggregate marks obtained in the compulsory subjects of Madhyamik Examination (i.e. excluding the number of additional subject from total marks) of the candidates.....”

9. From the aforementioned report, it reveals that order of merit in the aforementioned recruitment was made on the basis of the aggregate marks obtained by the candidate in the compulsory subjects of Madhyamik Examination i.e. excluding the number of additional subject from the total marks.
10. If the aforementioned formula is applied in the case in hand, there is no doubt that the present petitioner obtained 477 marks in total in compulsory nine subjects and, therefore, such marks of 477 is to be divided by the number of subjects i.e., 9 and thus, the aggregate marks of the present petitioner comes to $477/9=53\%$ whereas

the aggregate marks of the private respondent no. 5 comes to 436-1 (being the additional marks obtained in the additional subject)= $435/8=54.38\%$ which is higher in aggregate than the petitioner as rightly claimed by the learned advocate for the private respondent no. 5 as well as by the State respondents in their report as mentioned above.

11. In view of the discussion made hereinabove, this Court thus finds no merit in the instant writ petition and since this Court finds no illegality and/or irregularity in the panel which is the subject matter of challenge in the instant writ petition, the instant writ petition being **WPA 14211 of 2009** is hereby dismissed, however, considering the facts and circumstances of the instant case, there without any order as to costs.
12. The authenticated photocopy of the mark-sheet as filed in the course of hearing by the learned advocate appearing on behalf of the private respondent no. 5 be made part of the records.
13. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)