

Dd 15-16 06.07.2023

WP.ST 93 of 2022

Santu Joarder
Vs.
The State of West Bengal & Ors.
With

WP.ST 94 of 2022

Debasish Nath & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Debajyoti Basul,
Mr. Subhojit Seal,
Mr. Dibyendu Ghosh, Advocates
... ... For the Petitioner

Mr. Sirsanya Bandopadhyay, JSC
Mr. Arka Kr. Nag, Advocates
... ... For the State

Two writ petitions are taken up for analogous hearing as they emanate out of the same judgment and order dated February 15, 2019 passed by the Administrative Tribunal. By the impugned order, the tribunal negated the claim of the writ petitioners. The tribunal held that the writ petitioners were not entitled to the reliefs as prayed for.

The writ petitioners participated in the selection for the post of constables/lady constables in Kolkata Police undertaken by employment notice no. 01/2022/KPRB dated January 19, 2012.

Learned advocate appearing for the writ petitioners draws the attention of the Court to the contents of such advertisement notice. He submits that, a probable vacancy for post of constable of 2500 and for the post of lady constable of 50 was declared.

He draws the attention of the Court to the reservation prescription in respect of Other Backward Classes (OBC). The break up of OBC into OBC-'A' and OBC-'B' was not prescribed in the advertisement. The authorities subsequently broke up OBC into 'A' and 'B' and, therefore, the writ petitioners were denied a scope for appointment. He contrasts the notice of advertisement issued subsequently by the Kolkata Police with the impugned notice.

Learned advocate appearing for the writ petitioners draws the attention of the Court to the panel. He submits that, although the writ petitioners participated in the selection process and were successful in all the three stages, the respective marks obtained by the writ petitioners were not disclosed. The respective marks obtained by the successful candidates were also not disclosed for the writ petitioners to understand as to whether they were illegally or wrongfully discriminated or not.

Learned advocate for the writ petitioners draws the attention of the Court to the selection process. He submits that, the writ petitioners succeeded at the final measurement test, and thereafter, at the written test also. The interview marks obtained by the writ petitioners were not informed to the writ petitioners.

Learned advocate for the writ petitioners submits that the tribunal was not invited to pass any direction with regard to age bar. The writ petitioners do not seek any relaxation of the age bar.

Learned Junior Standing Counsel of the State draws the attention of the Court to the pleadings in the original application. He submits that neither of the points raised or canvassed in the present writ petition today was raised or canvassed before the tribunal. He draws the attention of the Court to the date of the

advertisement. He submits that the writ petitioners approached the tribunal belatedly. The selection process was of 2012 and approach to the tribunal was made in 2015. He points out that the impugned order is dated February 15, 2019 with the present writ petitions being filed in 2022.

Referring to the reply filed on behalf of the Kolkata Police before the tribunal, he submits that, in its reply Kolkata Police annexed a copy of the minutes of the Recruitment Board dated January 9, 2012 where, the recruitment Board resolved that the preservation registers and mark sheets would be for one year. Since the writ petitioners approached the tribunal after expiry of such period, the records of the selection process are presently not available.

As noted above, the writ petitioners participated in a selection process undertaken by the advertisement dated January 19, 2012.

Such notification provided the following selection procedure:-

" (i) The candidates submitting valid application will be called for physical Measurement Test first. When the candidates will appear for Physical Measurement, Photograph and Finger Print will be taken through wabcam/biometric device. After that Physical Measurement will be taken through Digital Measurement Device. Chest Measurement will be taken of those candidates only, who will qualify the Height and Weight Measurement (for the post of Constable only).

(ii) The candidates, who will qualify in Physical Measurement, will be considered for Physical Efficiency Test. Timing of individual runners may be taken with the help of Radio Frequency Identification Device (RFID).

Qualifying Standard:-

- (a) For the post of Constable:-** 1600 mts. Run to be completed within 06 minutes and 30 seconds.
- (b) For the post of Lady Constable:-** 400 mts. Run to be completed within 02 minutes.
- (iii) The candidates, who will qualify in the physical endurance test, will be considered for 'Written Test'. The Written Test will have objective type questions on Current Affairs, General knowledge, Basic English, Elementary Mathematics and Analytical Aptitude in multiple choice answer system. Full marks of the Written Test will be 90 and allotted time will be 90 minutes, having provision of negative marks against the wrong answers. The answer sheet may be evaluated in Optical Mark Recognition (OMR System).
- (iv) The candidates, who will qualify in the Written Test, will be considered for Interview. After the interview a merit list of qualified candidates will be prepared on the basis of marks obtained in 'Written Test' and 'Interview'.
- (v) Medical Examination (For all Posts)- Provisionally selected candidates will have to undergo a medical examination at the Hospital, designated by Govt. of West Bengal and earmarked by Kolkata Police Recruitment Board.
- (vi) Verification of Character and Antecedents (For all Posts)- Provisionally selected candidates will have to fill up and submit 'Verification Roll' and obtain clearance from the competent authority.
- (vii) Training (For all Posts):- Provisionally appointed candidates will have to undergo Training. After successful completion of the training, final appointment will be given."

Apparently, the writ petitioners succeeded at the stage of physical measurement as well as written examination. They were called for the interview. They could not succeed at the interview.

The Court is informed that the list of successful candidates was published on March 1, 2013. From then,

the writ petitioners became aware that they were not successful in the selection process.

Contemporaneously, the writ petitioners did not raise the issue with regard to the declaration of vacancy.

The advertisement notice dated January 19, 2012 spoke of probability of vacancy. It also specified that the probable vacancy included reservation according to West Bengal Rule being categorized. As a way of an example it proceeded to specify some of the categories such as Scheduled Casts, Scheduled Tribes and Other Backward Classes, ex-serviceman and home guard. Subsequent advertisements of Kolkata Police specify the categories more elaborately. OBC was classified into OBC-'A' and OBC-'B'. Subsequent notification cannot be read to construe the present notification to mean that there was any error vitiating the selection process so far as declaration of probable vacancy is concerned. The impugned advertisement notice speaks about the probable vacancy and also informed the candidates at large that such probable vacancy will include reservation according to West Bengal Rules.

Nothing is placed on record before us to suggest that the panel prepared for appointment was in violation of the reservation rules prevailing in the State of West Bengal.

The panel published by the Kolkata Police does not contain the break up of the numbers obtained by the selected candidates. The list was published on March 1, 2013. The writ petitioners approached the tribunal in 2015. There is a minutes of the recruitment Board dated January 6, 2012 where it resolved that they would be preserving the registers and the marks sheets for a period of one year.

There was delay on the part of the writ petitioners in approaching the tribunal in respect of a selection process initiated by the advertisement dated January 19, 2012 with its panel being published on March 1, 2013. As noted above, the approach was made in 2015 much after a period of one year from the publication of the panel.

Tribunal disposed of the proceeding on February 15, 2019. The writ petitioners approached the High Court after expiry of three years therefrom. It appears from the records that the writ petition was filed on August 25, 2022.

In view of the delay made by the writ petitioners, it would be inappropriate to call upon the authorities to produce the mark sheets and the registers in respect of the impugned selection process.

The writ petitioners were unsuccessful in the selection process. There is no material on record presently available to hold that the writ petitioners were discriminated against in the selection process.

In such circumstances, we find no merit in the present writ petition.

Since the writ petitioners themselves stated in Court that they are not seeking age relaxation, direction to such extent granted by the tribunal in the impugned order is set aside.

WP.ST 93 of 2022 along with WP.ST 94 of 2022 are disposed of accordingly without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

