

2.3.2023
Ct.19/sl.430
sn

W.P.A. 20369 of 2022

Kabita Shit

Vs.

The State of West Bengal & Ors.

Mr. Soumik Ganguly

Mr. S. Nandi

...for the Petitioner

Mr. Rezaul Hossain

..for the State

Despite several opportunities, exceptions to the report of the respondent no.5, that is, Deputy Magistrate and Deputy Collector under the control of the District Magistrate, Bankura, has not been filed.

The petitioner prays for appointment to the post of ASHA at Pratappur Sub-Health Centre within Palashdanga village.

The petitioner's only contention is that, although the petitioner obtained higher marks than the respondent no.9 in the Madhyamik examination, the respondent no.9 was irregularly selected. Proper weightage to the marks obtained in the Madhyamik examination was not given. It is prayed that the authorities be directed to cancel the appointment of the respondent no.9 and appoint the petitioner, in her place.

A report in the form of affidavit has been filed.

The petitioner was allowed to participate in the selection process pursuant to the order of the High

Court. The selection committee comprised of four members. The petitioner appeared at the interview on May 17, 2022 before the selection committee, namely, the Sub-Divisional Officer, District Public Health Nurse Officer, District Programme Officer(ICDS), Bankura and the Block Medical Officer of Health, Kanchanpara. Three eligible persons including the petitioner were called for interview. One of such candidates remained absent. The petitioner and the respondent no.9 participated at the interview. 90% weightage to the marks secured in the Madhyamik examination was awarded to both. The petitioner secured 37.45, whereas, the respondent no.9 secured 32.85. 10% weightage was given to the interview. The selected candidate got 9.67 out of 10 and the petitioner got 3. The total marks obtained by the petitioner was 40.45. The respondent no.9 obtained 42.52.

Learned advocate for the petitioner submits that the disparity in the marks awarded at the interview was not justified and the same give rise to a suspicion of unfairness.

Learned advocate for the selection committee submits that an unsuccessful candidate cannot challenge the selection process. The better candidate was appointed. There are no allegations of violation

of the rules or regulations or mala fide, against the respondents.

Under such circumstances, in the absence of any challenge either to the constitution of the selection committee or in the procedure of selection as also in the absence of allegation of bias, mala fide and arbitrariness against the members of the selection committee, the Writ Court must not interfere. The respondent no.9 had secured higher marks in total and was selected. She has also joined.

The marks allotted at the interview by individual members of the interview board or members of the selection committee are not open for judicial scrutiny.

The Court is not aware of the questions that were posed to the candidates by each of the members of the interview board. How the participants tackled the questions is unknown. The marks allotted at the interview were based on the subjective satisfaction of the interviewers and this Court is not in a position to either ascertain or adjudicate the performance of the candidates before the interview board. The board comprised of experts who had knowledge in the field and were entitled to employ their own terms and conditions of service.

The Hon'ble Supreme Court of India in **Ashok Kumar Yadav v. State of Haryana** reported in **AIR 1987 SC 454**, has laid down as under: -

“25.There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts.....”

In **Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan** reported in **AIR 1990 SC 434**, it was held as under: -

“9.It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc.....”

The Hon'ble Supreme Court of India in **Madan Lal v. State of Jammu and Kashmir** reported in **AIR 1995 SC 1088**, it was observed as under: -

“9. Therefore, the result of interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a

court of appeal and try to reassess the relative merit of the concerned candidate who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the interview committee which amongst other consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.”

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)