

02. 20.03.2023
bd. Ct.15

WPA 23637 of 2013
IA NO. CAN 2 of 2014 (Old No. CAN 5970/2014)

Bandana Baidya (Bar)

-vs-

The State of West Bengal & Ors.

Mr. Shyamal Chakraborty

Mr. Prabir Kumar Misra

Mr. Shibendra Nath Chattopadhyay

Ms. Sananda Das

... for the Petitioner.

Mr. Tapan Kumar Mukherjee

Ms. Tuli Sinha

... for the State

Mr. Shamik Bagchi

Ms. Ankita De

... for the respondent no. 7

Mr. Abhijit Sarkar

... for the respondent nos. 4 and 5

In the writ petition selection of respondent no. 7 for appointment in the post of Assistant Teacher in Morapai Loreto Girls' Junior High School (for short 'said school'), District- South 24 Parganas is under question.

The learned advocate for the petitioner who participated in the selection process has relied upon a Procedure For Recruitment of Teaching and Non-teaching Staff in all Government aided Christian Minority Junior High/High/Higher Secondary Schools (hereinafter referred to as "said procedure") and has submitted that in breach of relevant provisions as contained under the said procedure selection has been made in favour of the respondent

no. 7 for appointment in the post of Assistant Teacher in History in the school in question. The following points have been agitated on behalf of the petitioner in order to demonstrate before this Court that selection process which was initiated by the said school authority was erroneous:

- (a) Upon placing reliance on Clause B I (c) of the said Procedure it has been stated that the selection process was vitiated since one of the members of the selection committee was influenced at the instance of the respondent no. 7 through head of the institution of another school.
- (b) In terms of Clause (II) (b)(ii) (c) of the said procedure preference need to be given to the Christian candidates over others as the school in question is a minority institution. Placing reliance on this clause it has been submitted that the petitioner belongs to Christian minority community but the preference which has been contemplated under the aforesaid procedure which has not been given to the petitioner and ignoring such provisions respondent no. 7 who is not a candidate belongs to Christian minority community has been selected for the post in question.
- (c) Notice has been drawn to the advertisement published in the news paper dated 18th July, 2012 at page 30 of the writ petition, whereby the said school authority

sought application from eligible candidates for appointment in the post of History under pass category but in the said advertisement it has been stipulated that preference would be given to trained candidates.

It has been alleged on behalf of the petitioner that she being a trained candidate was not allotted any marks against her B.Ed. qualification and the respondent no. 7 being an untrained candidate has been selected for the post of Assistant Teacher in History which violates the conditions as contained in the advertisement published by the school authority for filling up the post of Assistant Teacher in History.

(d) Lastly, it has been submitted that the petitioner was working in the said school and has gained experience which was not taken into consideration while preparing the panel for appointment in the post of assistant teacher in history.

Learned advocate representing the respondent no. 7 has opposed the prayer made on behalf of the petitioner and submits that following the said Procedure a panel was prepared by the selection committee of the said school and the same panel was forwarded by the managing committee of the school vide letter dated 7th September, 2012 issued by the then Secretary to the District

Inspector of Schools (SE), South 24 Parganas, seeking approval. On receipt of papers relating to the panel in question the concerned District Inspector of Schools granted approval to the panel and accordingly the respondent no. 7 was appointed in the post of assistant teacher in history and who has been working in the school from the year 2012 till date and there is no irregularity in selecting the respondent no. 7 for the post of assistant teacher in history. In support of such contention reliance has been placed on page 26 of the affidavit in opposition used by the respondent no. 7 which is final score sheet prepared by the selection committee of the said school for preparation of panel for the post of assistant teacher in history. It has been demonstrated on behalf of the respondent no. 7 that respondent no. 7 stood first in the panel in terms of merit and she was awarded highest marks i.e., 19.6 whereas petitioner did not feature in the panel was awarded 11.98 marks.

State respondents are represented by Mr. Mukherjee, learned Additional Government Pleader. However, in spite of giving opportunity to upon the State respondents to file affidavit-in-opposition on extension State respondents have not used any affidavit.

Having considered the relevant submissions made on behalf of respective parties this Court finds that the selection process was initiated by the said school authority by publishing an advertisement dated 18th July, 2012 in the daily news paper wherein it has been specifically stipulated that

“Need preferably trained teacher”.

It further appears that interview for the said post of assistant teacher in history was held on 1st September, 2012 whereas writ petitioner obtained B.Ed. qualification from Calcutta University in the year 1996 and the certificate in support of B.Ed. qualification of the petitioner has been annexed to the Affidavit in reply used by the petitioner at page 26. Considering the stipulations as contained in the advertisement published by the said school authority dated 18th July, 2012 it appears that there is requirement to give credence to the B.Ed. qualification of the candidates who participated in the selection process. A specific case has been made out on behalf of the petitioner that petitioner was having B.Ed. qualification whereas the respondent no. 7 being a selected candidate was not possessing B.Ed. qualification at the material point of time when the selection process was initiated by the said school authority. On consideration of the final score sheet which is at page 26 of the affidavit in opposition used by the respondent no. 7 it appears that the selection committee did not allot any marks for B.Ed. qualification to the candidates who participated in the selection process though there was a column included in the score sheet for awarding marks for having B.Ed. qualification. Since it has been contended on behalf of the petitioner that had the marks against B.Ed. qualification would have been awarded to the petitioner she would have come within the zone of consideration this Court finds it apt to relegate the matter to the Commissioner of School Education,

West Bengal, for consideration whether the panel was prepared by the said school authority in terms of the said procedure or not.

Accordingly, the Commissioner of School Education, West Bengal is directed to take a decision on the validity of the panel prepared by the said school authority so far it relates to appointment for the post of Assistant Teacher in History pursuant to the advertisement dated 18th July, 2012, within a period of 12 weeks from the date of communication of this order. Before taking such decision the Commissioner shall grant opportunity of hearing to the petitioner, respondent no. 7 and the said school authority or their representatives. The decision to be taken by the Commissioner of School Education shall be communicated to the parties within two weeks thereafter.

However, it is made clear that if Commissioner finds that the selection process was conducted by the said school not in accordance with law and extant rules Commissioner shall be at liberty to set aside the selection process and to issue consequential direction for initiation of the selection process afresh for filling up the said post of assistant teacher in history of the said school.

In the event the selection process is conducted afresh the candidates who participated in the interview shall be granted opportunity to participate in the selection process, if necessary, by condoning the age bar.

With the aforesaid direction the writ petition stands disposed of. Application, if any pending, also stands disposed of. However, there shall be no order as to costs.

Affidavit in reply filed on behalf of writ petitioner today is taken on record.

Learned advocate for the petitioner is granted leave to amend the cause title and add the Commissioner of School Education, West Bengal, as additional respondent in course of this day.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)