

M/L 846
19.01.2023
Court. No. 19
GB

W.P.A. 24133 of 2022

Most Begum Bahar
VS
The State of West Bengal & Ors.

*Mr. Himadri Sekhar Barua,
Md. Abdur Rakib*

...for the Petitioner.

Mr. Rezaul Hossain

...for the State.

The writ petition has been filed by an unsuccessful candidate who appeared at a selection process for recruitment as ASHA. The petitioner alleges that the respondent nos.9 and 10 who obtained lower marks were appointed.

The Court directed the State respondents to file a report. Such report has been filed today by the Sub-Divisional Officer, Malda Sadar.

It appears that the selection process commenced vide Notification No.2147-XVI dated December 23, 2021. As per the guidelines, 90% weightage to the marks obtained in the Madhyamik examination and 10% weightage to the marks scored at the interview, had been totalled.

The petitioner obtained 41.63 and the respondent no.10 obtained 41.60 as their scores upon being granted 90% weightage to their result in the Madhyamik examination. There is no controversy with the calculation because both the candidates were given 90% weightage to their respective score. It appears that the petitioner obtained 4.43 at the

interview and Tanushri Mandal, the respondent no.10 obtained 6.57. The petitioner was the second empanelled candidate. As there was only a single vacancy, the respondent no.10 was selected. The allegation against the respondent no.9 is not significant as the said respondent was not given appointment. The schedule of marks obtained by the candidates as per the report is quoted hereinbelow:-

Name of the Applicant	% of marks in Madhyamik without Addl.	90% weightage	Marks obtain in Interview	Total
Tanushri Mandal	46.25	41.63	6.57	48.20
Most Begum Bahar	46.22	41.60	4.43	46.03
Jayanti Rabidas	35.25	31.73	5.00	36.73

It is settled law that an unsuccessful candidate cannot challenge a selection process unless there are allegations of violation of the rules or regulation, bias or malice.

In ***Jasvinder Singh v. State of J&K*** reported in **(2003) 2 SCC 132** it was held as follows:-

“8. There is no guarantee that a person who fared well in the written test will or should be presumed to have fared well in the viva voce test also and the expert opinion about as well as experience in viva voce does not lend credence to any such general assumptions, in all circumstances and for all eventualities. That apart, the variation of written test marks of those who were found to have been awarded higher marks in viva voce vis-à-vis those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case. There was no specific allegation of any mala fides or bias against the Board constituted for selection or anyone in the Board nor any such plea could be said to have been substantiated in this case.....”

In ***Madan Lal v. State of J&K*** reported in **(1995) 3 SCC** it was held as follows:-

“10. Therefore, the result of the 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 merits of the candidates concerned 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 others 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.”

The writ Court sitting in judicial review cannot adjudicate whether the petitioner was intentionally given lower marks by the interview board. The interview board consists of experts who had marked the candidates on the basis of their performance, domain knowledge, smartness, etc. There are no allegations of bias. There is also no allegation that any of the members in the interview board were either related to Tanushri Mandal or had favoured Tanushri Mandal in any way.

Thus, the scope of interference of the Court in the present case is limited. The court has no knowledge about the questions asked, the manner in which the candidates answered such question or whether the respondent No.10 was given escalated marks.

The writ petition is disposed of without any orders.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)