

S/L 5
23.06.2023
Court. No. 29
Sourav

WPA 26215 of 2018

**Lalchand Biswas
Vs.
The Union of India & Ors.**

*Mr. Shahan Shah
Mr. Soumen Barman*

...for the petitioner.

Mr. Anirban Mitra

...for the Union of India.

1. Learned advocate for the writ petitioner and learned advocate for the respondent/Union of India are present.
2. The instant writ petition is taken up for hearing.
3. Perused the entire materials as placed before this Court.
4. Considered the submissions of the learned advocates for the contending parties.
5. The present writ petition is now taken up for passing appropriate order.
6. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner has prayed for issuance of writ of mandamus upon the respondent/Union of India to appoint the writ petitioner as a constable in the process of recruitment of Constable (GD) in CAPFs, NIA & SSF and Rifleman (GD) in Assam Rifles Examination, 2015.
7. At the very outset learned advocate for the writ petitioner draws attention of this Court to the Pages 28 and 29 of the writ petition. It is contended that though one Subhajit Pramanick and the present writ petitioner both under the category of OBC obtained same marks i.e., 48 but for no

reason whatsoever the respondents/Union of India had given employment to said Subhajit Pramanick but deprived the present writ petitioner.

8. It is argued further that on account of such deprivation, the writ petitioner made representation before the respondent/Union of India but by issuing an letter dated October 23, 2017 the respondent/Union of India has declined to consider the case of the writ petitioner favourably on some flimsy ground. It is argued further on behalf of the writ petitioner that the present writ petitioner has obtained much marks than the cut off marks as fixed for the State of West Bengal by the Staff Selection Commission which would reveal from the Page Nos. 45 and 46 of the instant writ petition and in spite of the same, the case of the present petitioner was not considered favourably.
9. Drawing attention to the affidavit-in-reply, learned advocate for the writ petitioner placed his reliance upon an unreported decision as passed in **WP No. 787 (W) of 2018 (Sumit Kumar Vs. Union of India)** as passed by the High Court of Uttarakhand, Nainital. It is contended on behalf of the writ petitioner that the case of the **Sumit Kumar (Supra)** is almost similar to the case of the present writ petitioner and thus, the principles of law as discussed by the Hon'ble High Court, Uttarakhand be adopted in this case for giving appropriate relief to the writ petitioner.
10. *Per contra*, Mr. Mitra, learned advocate for the respondent/Union of India draws attention of this Court

to the page nos. 7 and 8 of his affidavit-in-opposition. Mr. Mitra, learned advocate also places his reliance upon Annexure P-10 of the writ petition vis-à-vis upon the notice of the Staff Selection Commission for the aforementioned examination. Mr. Mitra further submits before this Court that Clause 11 of the said notice clearly depicts that in case of a tie how a candidate is to be selected and that such condition was very much mentioned in the notice itself containing the advertisement of the said examination.

11. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the parties at length, this Court considers that for effective adjudication of the instant writ petition the Clause 11 of the said notice is to be looked into and the same reads as under:

“11. RESOLUTION OF TIE CASES

- (a) The tie is resolved by the Commission by referring to the total marks in the written examination i.e. a candidate having more marks in the written examination gets preference over the candidate(s) with less marks.***
- (b) If the tie still persists then the marks in Part A are referred to i.e. a candidate having more marks in Part A is given preference.***
- (c) If the tie still persists, the candidate older in age gets preference.***
- (d) If the tie still persists, it is finally resolved by referring to the alphabetical order of names i.e. a candidate whose name begins with the alphabet which comes first in the alphabetical order gets preference.”***

12. On perusal of the aforesaid Clause 11, it reveals that in the event of tie, a candidate having more marks in Part A would be given preference. Sufficient materials have been placed before this Court that though the said Subhajit Pramanick (who has been recruited) and the present petitioner obtained self-same marks in total but the aforementioned qualified candidate got more marks than the present writ petitioner in 'Part A' examination and thus the present respondent/Union of India is absolutely justified in giving preference to Subhajit Pramanick than the present unfortunate writ petitioner. As rightly pointed out by Mr. Mitra, learned advocate for the respondent/Union of India that the page nos. 45 and 46 of the writ petition containing the alleged cut off marks for different States have got no value at all since those papers do not bear any seal and signature of any competent authority.
13. In further considered view of this Court, the case of ***Sumit Kumar (Supra)*** as disposed of by the Uttarakhand High Court, Nainital is of no help to the present writ petitioner since the facts and circumstances as involved in the said case do not tally with the case of the present writ petitioner. In the said case of ***Sumit Kumar (Supra)*** the grievance of the writ petitioner was though 62,390 vacancies have been advertised but the competent authority appointed 57,014 candidates keeping 5376 posts vacant for which the writ petitioners of the said writ petition being successful candidates approached the High Court, Uttarakhand for their

absorption. On the aforesaid score, the present case differs from the said reported decision since under no stretch of imagination, it can be said that the present unfortunate writ petitioner is a successful candidate in the aforementioned examination and in spite of the same he has been deprived of his employment violating the Article 14 of the Constitution of India.

14. In view of the discussion made hereinabove, this Court thus finds no merit in the instant writ petition.
15. Accordingly, the instant writ petition being **WPA 26215 of 2018** is dismissed.
16. There shall be no order as to costs.
17. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)