

Ct. 30.03
No. 14
2023

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W.P.A. 27566 of 2022

Shyamali Das

-Versus-

The State of West Bengal & Ors.

With

W.P.A. 2109 of 2023

Mr. Kaushik Chandra Gupta

Syed Mansur Ali

**...For the Petitioner
in W.P.A. 27566 of 2022 &
W.P.A 2109 of 2023**

Mr. Shambhunath Ray

Ms. Amrita Tewari

**...For the Respondent No. 5,6 & 8
in WPA 2109 of 2023**

**Selection Committee
in W.P.A 2109 of 2023**

Ms. Paromita Pal

**...For the State Respondents
in W.P.A. 27566 of 2022**

Mr. S. Banerjee

Mr. A.K. Nag

**...For the State Respondents
in W.P.A. 2109 of 2023**

Mr. Soumo Chaudhury

**...For the Respondent No. 7
in W.P.A 2109 of 2023**

The writ petition being WPA 27566 of 2022 has been preferred by the petitioner seeking direction upon the respondents to allow her to participate in the selection process / interview to be held on 21st December 2022.

The petitioner states that she was working as ‘cook-cum-helper’ under the Midday Meal Scheme of Louis Braille Memorial School for the Sightless at Birla Road, P.O. Makhla, Hooghly. She came to know that for the purpose of recruitment of a post of sweeper (Group-D unskilled labour) an advertisement was published by the School Authority on 9th October, 2022 in a Bengali Daily. She applied for the post within the time as stipulated in the advertisement. On 12th November, 2022 the Teacher-in-Charge of the School verbally informed her that the application made by her was cancelled after scrutiny. Under

such circumstances, the petitioner by approaching this Court sought for the direction as above.

This Bench after having heard the learned Counsels appearing for the parties and on consideration of the documents on record was satisfied that a prima facie case was established by the petitioner. Accordingly, by an order dated 16th December, 2022, the petitioner was allowed to participate in the selection process / interview to be held on 21st December, 2022 or on any subsequent date. However, this Bench made it clear that the appearance of the petitioner before the Selection Committee or Board and the result of the selection should abide by the final result of the writ petition.

It is submitted on behalf of the School Authority that the documents furnished by the petitioner as per instruction of the School Authority do not substantiate the claim of her age. But, from the curriculum vita submitted by the petitioner it appears that the date of birth of the petitioner as mentioned therein was 15th February, 1983.

The Admit Card issued by the West Bengal Board of Secondary Education to the petitioner shows that her date of birth as noted therein is 15th February, 1983. However, from a copy of an AADHAAR Card submitted by the petitioner it appears that her age differs from the age as noted in the admit card.

It is the law that the age of a person which is mentioned in the School leaving certificate or Admit Card of a Board should be given preference and such document shall prevail over the other documents. As the Admit Card of the West Bengal Board of Secondary Education furnished by the petitioner shows, her date of birth shall be held to be of 15th

February, 1983.

The advertisement by which the application was invited shows that a candidate who was in the age group of 18 to 40 years as on 1st October, 2022 was eligible to apply for the post. If the Admit Card as furnished by the petitioner is taken into consideration, she was within the age group of 18 to 40 years as on 1st October, 2022. After being satisfied with the relevant document filed by the petitioner, this Court allowed the petitioner to participate in interview scheduled to be held on 21st December, 2022. Therefore, I do not find any reason to depart from the order dated 16th December, 2022 by which the petitioner was allowed to participate in the interview on 21st December, 2022.

Accordingly, the order dated 10th December, 2022 is made absolute.

In view of the above the writ petition being WPA 27566 of 2022 stands disposed of.

Admittedly, in compliance with the Court's order dated 16.12.2022 the School Authority allowed the petitioner to participate in the interview held on 21st December, 2022. By the second round of litigation i.e. the another writ petition being WPA 2109 of 2023, the petitioner challenges the selection process and seeks inter alia, the following reliefs :-

“a) Dispensation of service in terms of Rule 26 of the Appellate Side Rules of this Hon’ble Court.

b) A writ of or in the nature of Mandamus do issue directing the respondents, their agents, servants to allow the petitioner to participate in the selection process for filling up the post of sweeper in the said interview.

c) A writ of or in the nature of Certiorari do issue calling upon the respondents and each of them to certify and transmit to this court the original records of the case before this Hon'ble Court so that conscionable justice may rendered to the petitioner and by granting other relief as prayed for herein above.

d) Rule of N I S I in terms of prayers (b) and (c) as above."

The petitioner complains that a candidate, namely, Tahidur Rahaman, the private respondent No. 7, has been given highest marks by the members of the selection committee. Though the petitioner performed well, she has been given lesser marks by the committee. The petitioner alleges that as the private respondent No. 7 is an ex-student of the School, he has been chosen for the post by the Teacher-in-Charge of the School. She further complains that the Teacher-in-Charge of the School at the time of interview verbally told her that though she was allowed by the Court to appear in the interview, her appearance could not take away the power of the Headmaster / Headmistress to oust her from the School. The petitioner alleges that she was treated by the School Authority with malicious attitude. She also alleges that the private respondent No. 7 is blind to the extent of 75% and it will not be possible for him to discharge the duties of a sweeper.

In the backdrop the aforesaid allegations, the petitioner submits that the entire selection process is vitiated with mala fide and illegality and the selection process is liable to be cancelled. The reliefs as prayed for by her may be granted in her favour.

As pointed out by the learned Counsel appearing

for the State respondent Nos. 1 to 4 the whole allegations as made by the petitioner are at paragraphs 7, 8 and 9 of WPA 2109 of 2023. But the affidavit annexed to the writ petition affirmed by the petitioner shows that paragraphs 1 to 6 are true to the knowledge of the petitioner and the rest paragraphs are her humble submissions. In such context learned Counsel submits that the allegations as made in the aforesaid paragraphs are submissions of the petitioner. Learned Counsel submits that in order to substantiate the allegations as made in the aforesaid paragraphs, there is no supporting evidence. On such score, learned Counsel submits that the second writ petition filed by the petitioner is liable to be dismissed.

On the other hand, learned Counsel appearing for the School Authority submits that the selection committee consisted of Sub-Divisional Officer, District Mass Education Extension Officer, Teacher-in-Charge and the District Social Welfare Officer. The members of the Selection Committee after considering the performance of the candidates, in their wisdom, awarded marks. Learned Counsel submits that the petitioner, who participate in the selection process cannot challenge the selection process. In support of his contention, learned Counsel cited a decision in the case of *D. Sarojkumari Vs. R. Helen Thilakom & Ors.* rendered by the Hon'ble Apex Court on 13th September, 2017 in Civil Appeal Nos. 8345-8346 of 2009.

However, learned Counsel appearing for the petitioner submits that from the very beginning the petitioner was not properly treated by the School Authority. She was not allowed to participate in the interview on flimsy reason. Learned Counsel submits that with a closed mind and with

malicious attitude, the selection committee awarded lesser marks to the petitioner with intent to make her unsuccessful. As such, the learned Counsel submits that the petitioner has good ground to seek the reliefs as prayed for.

As it appears from the final compilations score sheet for recruitment to the post of group D (sweeper) of the concerned school, the petitioner ranked 16 in the panel. I find that the Sub-Divisional Officer, Serampore, District Mass Education Extension Officer, the teacher-in-charge of the school and the District Social Welfare Officer awarded marks 31, 30, 32 and 22 respectively to the petitioner. On an average she scored 28.75 marks. Whereas the private respondent Tahudur Rahaman, Somashree Mudi and Prabir Mukherjee who ranked 1st, 2nd, and 3rd scored 40.5, 39.25 and 34.25 marks respectively.

As quoted above, the allegations as made by the petitioner at paragraphs 7, 8 and 9 are her submissions before this court. Such allegations are not supported by any iota of evidence. The whole allegations of the petitioner are against the teacher-in-charge of the school. But I find that the teacher-in-charge of the school awarded higher marks than that of the marks awarded by the other members of the committee. Therefore, the complaint made by the petitioner against the teacher-in-charge is not acceptable.

In the decision in the case of D. Saraja Kumari (supra) the Hon'ble apex court has held that if a candidate takes a calculated chance and appears at the interview, then only because the result of interview is not palatable to him/her, he/she cannot turn round and subsequently contends that the process of interview was unfair or selection committee was not properly constituted.

Having heard learned counsels for the respective parties and in view of the observations as recorded above, I find that there is no merit in the writ petition to succeed.

Accordingly, the writ petition is dismissed. No order as to costs.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Urgent photostat copy of the order, if applied for, be supplied to the parties on compliance of requisite formalities.

(*Rabindranath Samanta, J.*)