

20.02.2023
DL-3
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 28723 of 2022

Sri Samiran Maity
Vs.
The State of West Bengal & Ors.

Mr. Anil Kumar Chattopadhyay
....for the petitioner.

Mr. Arjun Ray Mukherjee,
Ms. Saheli Chakraborty
....for the respondent no.1/State.

Mr. Bhaskar Prasad Vaisya,
Mr. Nilay Baran Mandal
....for the respondent nos.2, 3 & 4.

Mr. Chattopadhyay, learned counsel appears on behalf of the petitioner and submits that the petitioner applied for the post of Lower Division Clerk (LDC) in unreserved (UR) exempted category (EC) pursuant to an advertisement dated January 31, 2021. It is submitted on behalf of the petitioner that there was only candidate who applied in UR (EC) category. Thereafter, the interview that was scheduled on December 12, 2021 was not held. The respondent authorities/respondent nos.2 to 4 again asked the petitioner to appear for written test on May 22, 2022. The petitioner sat for his written test. Till date, the petitioner has not been called for interview.

Mr. Vaisya, learned counsel appearing on behalf of the respondent nos.2 to 4/council submits that the

petitioner's candidature has been considered in the recruitment process that has been initiated by a subsequent advertisement dated April 12, 2022. There were three posts of LDC. The marks secured by the petitioner was less than the three candidates who have been chosen for the said post. A written instruction submitted by Mr. Vaisya is retained with the records.

Mr. Ray Mukherjee, learned counsel appears on behalf of the State/respondent no.1.

Having considered the rival submissions of the parties and the materials placed on record, it appears to this Court that the terms of the advertisement dated January 31, 2021 has been changed by the subsequent advertisement dated April 12, 2022. There is no vacancy that has been advertised for LDC in UR (EC) category. The rights of the petitioner which have crystalised pursuant to a previous advertisement dated January 31, 2021 cannot now be negated by way of a subsequent advertisement dated April 12, 2022.

In the light of the discussions above, the respondent no.3/the Chairman, Kolkata Primary School Council is to consider the representation dated November 26, 2022 made by the petitioner.

The said representation is to be disposed of by a reasoned order within 6 weeks from date, upon giving a personal hearing to the petitioner. The reasoned order is to be communicated to the petitioner within 2 weeks of passing thereof. The respondent no.3 will explain in the reasoned order what necessitated the subsequent advertisement to the post of LDC without reserving a post for a candidate in UR (EC) category.

From the advertisement, it does not appear that a reasoned decision has been taken by the respondent no.3 for non-reservation of the vacancies in UR (EC) category to the post of LDC.

Since no affidavits have been called for in the writ petition, the allegations contained therein are deemed not to have been admitted by the respondents.

With the directions aforesaid, **WPA 28723 of 2022 is disposed of.**

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)

