

04-12-2023

ct no. 13

Sl. 137

sp

WPA 7155 of 2020

Uma Das (Kayal)

-Versus-

The State of West Bengal & Ors.

Mr. Lakshminath Bhattacharya

...for the petitioner

Mr. Santanu Kumar Maitra,

Mr. Abhishek Banerjee

..for the State

Mr. Supratic Roy,

Mr. S. Roy

...for the added respondent nos. 10 to 20

1. The issue that comes for consideration in the instant writ petition is the recruitment process to the post of Anganwadi Workers and Anganwadi Helpers notified on March 23, 2018 by the Child Development authority, Falta, South 24 Parganas.
2. In the notification it was indicated that the qualifying age for candidates would be 18 to 35 years. The subjects for written examination are mentioned and Bengali appears to be the medium. The last date for submission of applications was on 4th May, 2018. The minimum educational qualification required was Class-VIII.
3. In January 2020, however, two months' before the written examination, a notice was

published in the Centre concerned that English would also be a subject matter of the examination process.

4. Learned counsel for the sole petitioner before this Court submits that his client was not informed of the corrigendum published on January 27, 2020.
5. Be it mentioned here that the original notification for recruitment dated March 23, 2018 was also published on the notice board at the Centre concerned.
6. The petitioner participated in the selection process and complained that the process itself was faulty for the following reasons:-
 - (a) The recruitment process is contrary to the guidelines of the department of Women & Child Development and Social Welfare, Government of West Bengal dated January 25, 2006.
 - (b) The age limit prescribed therein was 18 to 35 years.
 - (c) The educational qualification prescribed in the modified notification of the January 25, 2013, was Class- X and not Class VIII.
 - (d) English was a mandatory subject matter in the said notification whereas the

instant notification dated March 23, 2018 did not specify as such.

(e) The parent Government notification indicates that the only candidates having residence within the said Centre itself could apply, whereas the impugned notice dated March 23, 2018 allowed any person residing within the gram panchayat to participate in the selection process.

7. The petitioner reasonably apprehends that since she was taken by surprise as regards the questions put to her in English language, he would not have a chance in the recruitment process.
8. It is further alleged that the deviation from the Government guidelines itself is a ground for interference with the recruitment process. It is also argued that the relaxation and deviation from the rules was aimed at facilitating the engagement of a particular class of persons, namely, the private respondents.
9. Learned counsel for the State, however, admits that a slightly different process of recruitment has been followed in the instant block. Such process and terms have not been followed in any centre in the State.

10. There is some substance in the argument advanced by the petitioner that the recruitment process in the instant case is different from the one followed by the Woman and Child Development Ministry in implementing the ICDS programme where Anganwadi Helpers and Anganwadi Workers are engaged. Admittedly, the State has been following its parent circular originating from the one dated January 25, 2006 as amended on September 19, 2013 uniformly at every centre in the State, except in the instant case.
11. There has indeed been a deviation from the recruitment rules. In the instant case, the question to be answered are two-fold:-
 - (a) Whether the deviation from the normal norms of recruitment in the State under the ICDS scheme, would by itself negate the impugned recruitment process? And,
 - (b) Whether the petitioner, having participated in the recruitment process under the notification dated March 23, 2018, can turn around and challenge the same?
12. The private respondents being 11 persons who have opposed the writ petition appear to be satisfied and happy with the process of

recruitment. The only aggrieved person is the petitioner.

13. This Court is of the view that merely because there has been some deviation from admitted guidelines of the ICDS project for recruitment, namely, January 25, 2006 as amended on September 19, 2013, the same would not automatically invalidate the process of recruitment.
14. The petitioner was comfortable and happy with the notification dated March 23, 2018 until she participated in the examination process. The petitioner found the original recruitment notification in the Centre itself where the corrigendum dated January 27, 2020 was also published. It, therefore, does not lie in the mouth of the petitioner to turn around and challenge the said recruitment process for being in violation of the ICDS guidelines and the two notifications January 25, 2006 as amended on September 19, 2013 (*supra*).
15. Learned counsel for the petitioner would place reliance upon two decisions, namely, in the case of ***Raj Kumar and others Vs. Shakti and other*** reported in **(1997) 9 SCC 527**. At paragraph 16, the Hon'ble Supreme Court accepted that it is settled proposition

that a person who participated in the recruitment process and is unsuccessful in the same, cannot turn around and challenge it. While accepting so, it continued to, however, interfere with the recruitment process of the post of Canal Patwaris at the instance of certain candidates who participated in the selection process. The issue there, was the application of rules of 1955 before formation of the State of Haryana and the application of the 1970 rules framed after the State was formed.

16. The deviation in the case ***Raj Kumar (supra)*** before the Supreme Court occurred, after the recruitment process was finalized and announced and completed.
17. The instant rules and/or deviation thereof occurred two years prior to the date of the actual examination process. Two months prior to the examination date, the corrigendum was published on the same place where the original notice was published, i.e., in the local Centre.
18. The petitioner along with the private respondents duly participated in the written examination. It is only after sitting in the written examination that the petitioner has chosen to challenge the original notification

of March 23, 2018 itself. There is a substantial difference between the facts of the ***Raj Kumar case (supra)*** and the present case.

19. This Court is, therefore, not inclined to apply the dicta of the ***Raj Kumar case (supra)*** in the instant case.
20. The second decision relied upon by the learned counsel for the petitioner is unreported dated February 18, 2019 delivered in ***WPST 99 of 2018 (Md. Zakir Hossain and others Vs. The State of West Bengal and others)***, particularly, paragraph 24 thereof.
21. It is seen in the facts of the said case ***Md. Zakir Hossain case (supra)*** that after the written examination and when the results were published or in the process of being published, petitioner therein challenged the non-compliance of the reservation roster mandated under the rules of the State Government.
22. It follows that in the facts of the said ***Md. Zakir Hossain case***, the application of the reservation roster and/or the absence thereof is what aggrieved the petitioner therein. A roster for reservation is applied in cases, in most cases either in course of and even post

recruitment. The ***Md. Zakir Hossain case***, also cannot apply in the instant case as it is factually different from that of the instant case.

23. In the instant writ petition, it is stated at the risk of repetition that the petitioner was comfortable and happy with regard to the recruitment notice dated March 23m, 2018 until she sat for the examination. It is only upon being unsuccessful or upon finding that she could not respond to any of the question in English that she has chose to challenge the entire recruitment process. This is what is specifically not permitted in terms of the decision of the Supreme Court in the case of ***Madan Lal vs. State of J & K*** reported in ***(1995) 3 SCC 486***.
24. In the above circumstances, this Court is not inclined to interfere with the recruitment process.
25. However, the District Magistrate, South 24 Parganas shall review the entire process of recruitment initiated by the notification dated March 23, 2018. He shall, in consultation with the Ministry of Women and Child Development and Social Development department, take a decision as to whether the recruitment notification which is

admittedly in deviation from the notification dated January 25, 2006 as amended on September 19, 2013, was necessitated in the facts of the instant case. It is only thereupon that the process would be finalized.

26. It is left to the discretion of the Ministry of Women and Child Development and Social Development department who may, in consultation with the District Magistrate, South 24 Parganas, take an appropriate decision with regard to the continuation or abandonment of the aforesaid recruitment process.
27. With the aforesaid observations, the instant writ petition shall stand disposed of.
28. Let the aforesaid exercise be completed by the District Magistrate, South 24 Parganas and the Secretary, Ministry of Women and Child Development and Social Development department, within a period 45 days from the date of receipt of a copy of this order.
29. There shall be no order as to costs.
30. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

