

19.04.2023
Court No. 19
Item no.01
CP

WPA No. 1069 of 2023

Mallika Roy Pramanik
Vs
The State of West Bengal & Ors.

(CIRCUIT BENCH AT JALPAIGURI)

Mr. Rudranil De
Mr. Debajit Kundu
Ms. Roma Roy

... for the Petitioner.

Ms. Sonal Sinha

... for the State.

The affidavit of service is taken on record.

The writ petitioner is aggrieved because she is unable to apply on-line in order to participate in the recruitment process initiated on the basis of the notice dated March 24, 2023, published by the Child Development Project Officer, Sitai ICDS Project, District – Cooch Behar. Vacancies to the post of Anganwadi Workers and Anganwadi Helpers under ICDS project, were sought to be filled up.

According to the petitioner, the application cannot be uploaded as the petitioner had crossed the upper age limited as prescribed in the recruitment notice. The petitioner prays that she may be allowed to submit the application form physically and the upper age limit be relaxed.

The entire recruitment process is through on-line mode. Applicants have to upload their applications with relevant documents as per the recruitment notice. Once such documents are uploaded the candidates are also required to file physical copies. The petitioner submits that physical copy was submitted in the office of the concerned authority, but no receipt of the same had been granted implying thereby, that the petitioner was not considered to be eligible by the authorities.

The petitioner submits that on an earlier occasion she had moved this court by filing WPA 2058 of 2022, for a direction upon the concerned authorities to fill in the vacancies in the post of Anganwadi Workers. The petitioner and some others prayed that the vacancies which were existing in the post of Anganwadi Workers should be filled up on the basis of their representations.

A Coordinate Bench of this court disposed of the writ petition, *inter alia*, holding that the petitioners therein were not entitled to any relief as the recruitment process had been initiated in 2006 and had been concluded. Appointment letters had been issued to the finally selected candidates who had joined against the vacant posts.

Although, the court did not grant any relief to the petitioner, the learned court observed that if in future any vacancies arose, the case of the petitioner and others should be considered in accordance with law.

Learned advocate for the petitioner submits that the true meaning and purport of the said order is that, the learned Coordinate Bench had impliedly condoned the overage of the petitioner, when a direction was issued to consider the petitioner's case.

Ms. Sinha, learned advocate on behalf of the State respondents opposes such prayer.

Heard the parties. The eligibility criteria in terms of the recruitment notice as far as age limit is concerned, is quoted below:

“b) **Age Limit** :- The candidate must be in the Age Limit of 18-45 years as on 01/01/2023 for all categories i.e. UR/SC/ST/OBC-A/OBC-B/PH candidates. The Candidate must have been born not earlier than 01/01/1978 and not later than 01/01/2005. Candidates should also note that once a date of birth has been submitted by them in the Application Form for the purpose of admission to this Examination, no change will be allowed subsequently on any grounds whatsoever. Admit Card of Madhyamik Examination/Madhyamik Pass Certificate/Birth Certificate will be accepted as Age-Proof of the candidate.”

It has been categorically provided that the candidate must be within 18 to 45 years as on January 1, 2023. The candidate should not have been born earlier than January 1, 1978 and not later than January 1, 2005. No relaxation of age limit has also been provided for even for the reserved category. The recruitment notice also does not provide that the authorities reserved the right or discretion to relax the age or condone the overage under special circumstances.

The recruitment rules also do not have any provision for such relaxation. The Court cannot rewrite the eligibility criteria provided in the recruitment notice by granting the prayer made in the writ petition.

In the Decision of ***The State of Jammu and Kashmir & ors vs. Shaheenna Masarat & anr.*** decided in ***Civil Appeal No.4991 of 2012***, the Hon'ble Apex Court held as follows:-

“Further, the Division Bench was of the opinion that there will be no uniformity in selection of Re-Ts in the State. The scheme would be rendered unconstitutional as being violative of Articles 14 and 16 of the Constitution of India. Therefore, the High Court construed the provision relating to upper age limit as mandatory. We approve the conclusion of the Division Bench. Appointments to public posts should be strictly in accordance with Articles 14 and 16 of the Constitution of India. Eligibility criteria should be uniform and there cannot be scope of arbitrary selections by unfettered discretion being vested in the authorities. Construing the provision relating to upper age limit as directory would be conferring unbridled power in the executive to choose persons of their choice by relaxing the age beyond 35 years. In such case, the provision would have to be declared as unconstitutional. Therefore, we are of the opinion that 35 years is the upper age limit for appointment as Re-T. The 2nd Respondent who has crossed 35 years on the cut-off date was not eligible for appointment. The High Court has correctly directed the appointment of the 1st Respondent as Re-T”

The Courts have time and again held that unless and until the recruitment notice or the rules provide condonation of age bar or allow the authorities to exercise discretion with regard to condonation of age bar under special circumstances, the writ court cannot, on

its own, extend the age limit in case of a candidate who has crossed the age limit at the time of filing of the application. The Courts further held that relaxing the upper age limited would be contrary to provisions of Articles 14 and 16 of the Constitution.

The petitioner was born on February 21, 1977. Hence, she has crossed the age limit by almost 11 months. There is no question of condonation of the overage by relaxing the age limit.

The learned Coordinate Bench had directed that in case vacancies arose, the petitioner shall be considered for the post, in accordance with law. The expression 'in accordance with law' would mean that the consideration of the petitioner would be guided by the recruitment rules and the advertisement or the recruitment notice on the basis of which the subsequent selection process would be initiated and completed. The learned Court did not direct that the petitioner shall be appointed by circumventing the recruitment process.

Under such circumstances, the court does not have any reason to pass any orders in favour of the petitioner.

The writ petition is dismissed.

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.)