

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA 1767 of 2021

Sourav Roy

Versus

Union of India & Ors.

Mr. Bikramaditya Ghosh

Mr. Debasish Mukhopadhyay

.....For the Petitioner.

Mr. Sudipto Kumar Mazumdar

Mr. Sourab Kar

.....For the Union of India.

Hearing Concluded On : 09.06.2023

Judgment on : 14.06.2023

Krishna Rao, J.:

1. The petitioner has filed the present writ application praying for a direction upon the respondent authorities for consideration of the case of the petitioner for appointment under the unreserved category in the post of Assistant Grade - III (Technical) in North Zone.

- 2.** The Food Corporation of India had published an advertisement being Advt. No. 01/2019 for the vacancy in different categories including the post of Assistant Grade-III (Technical) on 23rd February, 2019. The petitioner being eligible for the post of Assistant Grade - III (Technical) had applied for under the Economic Weaker Section (EWS) category.
- 3.** As the petitioner was qualified for the Phase-I Examination and accordingly call letter was issued to the petitioner for Phase-I Examination and the petitioner has successfully passed Phase-I Examination and was called for Phase-II Examination and accordingly the petitioner has also qualified Phase -II Examination and secured 99 marks out of 240.
- 4.** On completion of both examinations, the respondent authorities have prepared two lists of declaration of result as “selected list” and “waiting list”. The name of the petitioner was placed in the list of selected candidates at serial No. 147. The petitioner was selected under the EWS category, the petitioner was directed to submit EWS Certificate. The petitioner could not submit EWS Certificate due to Covid-19 Pandemic within the specific time and accordingly the petitioner had requested the respondent authorities to consider his case under the unreserved category. Without considering the request made by the petitioner, the respondents have cancelled the

candidature of the petitioner on the ground that the petitioner has not submitted EWS Certificate.

- 5.** The respondents have called for 67 candidates from the waiting list of the unreserved category for verification of document without considering the candidature of the petitioner though the petitioner obtained higher marks in Phase-II Examination. The last candidate selected from the waiting list of the unreserved category is Rank 67 for document verification who has obtained 95 marks which is less than the marks obtained by the petitioner.
- 6.** As the respondents had not considered the case of the petitioner under the unreserved category though in the Phase-I Examination, the category of the petitioner was considered as unreserved though the petitioner had applied under EWS category. The petitioner has made a representation to the respondent authorities for consideration of her case for appointment but the case of the petitioner has not been considered.
- 7.** The respondents have filed their affidavit-in-opposition wherein the respondent authorities have pleaded that as per extent rules, the candidate is respective of their category are considered against unreserved category depending on merit. The candidates who are shortlisted under OBC/EWS categories in the main list have not been considered against unreserved category for want of merit.

- 8.** It is the further case of the respondents that the candidature of the petitioner was cancelled/rejected and uploaded in the website as the petitioner failed to establish the respective category by submitting necessary certificate and thus there is no instruction to the effect that the candidature of the petitioner can be considered under the unreserved category.
- 9.** It is the further case of the respondents that the candidates selected under EWS/OBC in the main list may not be considered under unreserved waiting list while operating waiting list if their marks are more than unreserved wait listed candidates being considered during operation of waiting list.
- 10.** Admittedly, the petitioner had applied under the EWS category but while declaring Phase-I Examination result, the category of the petitioner was considered under unreserved category though the petitioner had applied under EWS category.
- 11.** As per the Office Memorandum dated January 31, 2019, “A person belonging to EWS cannot be denied the right to compete for appointment against an unreserved vacancy. Persons belonging to EWS who are selected on the basis of merit and not on account of reservation have not to be counted towards the quota meant for reservation.”

- 12.** In the present case, the petitioner had applied under EWS category but Phase-I Examination, the category of the petitioner was treated as unreserved but in the list of selected candidates the category of the petitioner was shown as EWS.
- 13.** As the petitioner could not produce EWS Certificate, the candidature of the petitioner was cancelled though the petitioner has specifically submitted an affidavit and informed the respondent authorities on 10th February, 2021 that the petitioner could not obtain EWS Certificate due to Covid-19 pandemic and the petitioner has not taken any benefit either age relaxation or educational qualification on the basis of EWS Category and requested to be treated under the unreserved category but the authorities have not considered the request of the petitioner.
- 14.** The respondents have appointed 67 candidates from waiting list wherein about four candidates were appointed who have obtained 99 marks and the last candidates who was appointed from the waiting list has secured only 95 marks that is the lesser mark than the petitioner.
- 15.** By order dated 13th July, 2022, this Court had directed the respondents nos. 2, 3 and 4 to keep one post vacant of AG-III (Technical) in North Zone till the disposal of the present writ application.

16. In view of the above, this Court finds that though the petitioner has applied under EWS category but the petitioner has obtained 99 marks and also requested the authorities to consider his case under the unreserved category as the petitioner could not produce EWS Certificate and the respondents have appointed from 67 candidates from waiting list but the last three candidates have obtained 95 marks though the petitioner has obtained 99 marks that is much more than the last candidates and the respondent authorities have also failed to consider the office Memorandum dated January 31, 2019 and thus the petitioner is entitled to be appointed in the post of AG-III (Technical).

17. The respondents particularly, the respondent Nos. 2, 3 and 4 are directed to appoint the petitioner in the post of AG-III (Technical) in the North Zone subject to fulfilment of other formalities within a period of four weeks from the date of communication of this order.

18. WPA No. 1767 of 2021 is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)