

WPA 1444 of 2024
Sri Kamal Ghosh
Vs.
The State of West Bengal & Ors.

Mr. Pratip Kumar Chatterjee

...for the Petitioner

Mr. Chittapriya Ghosh,
Ms. Priyanka Saha

...for Respondent No. 7

Let the documents produced by the college be kept with the records.

A permission was granted by the Department of Higher Education by a letter dated September 14, 2018 to City College, Kolkata for filling up the post of Accountant on promotion.

The permission letter required the Selection Committee to conduct the recruitment procedure in terms of G.O. No. 915 –Edn (CS) dated 19.11.2007, 887-Edn (CS) dated 19.11.2010, 1140-Edn (CS) dated 11.12.15, 940-Edn (CS) dtd. 25.08.17 and 170-Edn (CS) dated 15.02.2018.

Accordingly, the college authority constituted a Selection Committee as per notification no. 170-Edn (CS) dated February 15, 2018. The committee consisted of nominees representing the State Government, the College Service Commission and Governing Body of the College.

Three candidates appeared in the selection process namely, Sri Ratan Kumar Modak, Sri Pulak De, and Sri Kamal Ghosh, the petitioner herein.

The Selection Committee assessed the candidates under four headings namely, attendance, experience, seniority, character roll and computer knowledge.

The name of the petitioner appeared in the panel prepared by the selection committee at serial no. two with an average score of 40.64. Mr. Pulak De was at serial number one with average score of 83.09. Mr. Ratan Kumar Modak did not feature in the panel since he did not participate in the computer test.

The Governing Body of the College declined to approve the panel on the ground that the Selection Committee did not follow the recruitment process as prescribed in the G.O. 915 –Edn (CS) dated 19.11.2007. Specifically during interview on June 21, 2019, a practical examination in computer application was taken without informing the candidates. The Governing Body in a meeting dated September 19, 2019 resolved to cancel the said selection “as there was considerable doubt regarding the fairness and transparency of the selection process”.

Thereafter the petitioner approached this Court with a prayer for his appointment to the post.

In an earlier round of litigation, WPA 1288 of 2022 (Sri Kamal Ghosh Vs. The State of West Bengal & Ors.), an order was passed directing the Director of Public Instruction to take a decision with regard to the promotion of the petitioner to the relevant post within a

period of 8 weeks from the date of communication of the order.

Accordingly, the Director of Public of Instruction by an order dated December 4, 2023, inter alia, passed the following orders:-

“It appears from the letter vide Ref. No. 798/DPI dated 14.09.2023 the College Authority submitted three documents, 1. the panel recommended by the Selection Committee, 2. The consolidated score sheet signed by all the assessors & 3. Governing Body resolution that for cancelation of the panel for the post of Accountant. It appears from the record that Governing Body had resolved to cancel the said selection as there was considerable doubt regarding the fairness and transparency of the selection process in its meeting dated 19.09.2019. As per the report of the College it appears that the recruitment procedure as enumerate in G.O. No. 915-Edn (CS) dated 19.11.2007 was not followed in the selection process. Specifically during interview on 21.06.2019 the practical examination in computer application was taken without any prior intimating to the candidates. Moreover the petitioner was not sole contender for the promotional post of Accountant. At present fresh post filling permission cannot be granted in view of enforcement of Chapter-IV of the West Bengal College Service Commission Act, 2012, on 01/02/2022 vide Notification No. 04L/OM/-150L/2021 dated 05.01.2022.

In view of what are discussed herein above the undersigned is constrained to refuse the promotion of the petitioner to the post of Accountant.”

It is therefore, apparent that the Director of Public Instruction accepted the decision of the college not to approve the panel and at the same time declined to grant fresh permission to fill up the post in view of the enactment of Chapter-IV of the West Bengal College Service Commission Act, 2012.

It is an admitted position that in terms of the notification dated November 19, 2007, the post of Accountant had to be filled up by way of promotion on the basis of attendance, experience, seniority, character roll. In addition to the aforesaid headings, the selection committee, however, conducted a computer test going beyond the scope of the notification dated November 19, 2007.

The relevant part of the notification dated November 19, 2007 is quoted below:

“In cancellation of this Department’s order No. 222-Edn (C.S.) dated 22.02.2001, the undersigned is directed by order of the Governor to say that after careful consideration, the Governor has been pleased to prescribe the following rules for recruitment to the post of Head Clerk/Accountant/Cashier in non-Government Colleges in the State:-

(i) Whenever a vacancy arises in the post of Head Clerk, the post is to be filled up by promotion of an employee of the status of Upper Division Clerk such as Accountant, Cashier etc.

(ii) Whenever a vacancy arises in the post of Accountant/ Cashier, the post is to be filled up by promotion of an employee belonging to the category of Lower Division Clerk, such as Clerk, Typist, etc.

In either case, attendance, experience, efficiency, seniority and character roll shall have to be taken into consideration.”

It is therefore clear that the selection was in fact conducted in terms of the said notification. The Selection Committee, however, conducted a computer application test and awarded marks under the said heading as well. The notification dated November 19, 2007 did not provide for a computer test.

In my view, such an aberration could not render the entire section process as invalid.

The documents produced by the college do not demonstrate any unfairness or lack of transparency in the selection process as alleged by the Governing Body of the College. The recruitment was in fact, carried out in terms of the notification dated 19th November, 2007.

In my view, the Governing Body could have asked the selection committee to recast the panel by excluding the marks awarded under the heading “computer knowledge” particularly when the Governing Body did not find any other illegalities or irregularities in the selection.

It has been submitted by the college as well as by the petitioner that the other selected candidates namely, Mr. Pulak De has been transferred to a different college. Sri Ratan Kumar Modak has already retired. Therefore, the petitioner at this juncture is the sole aspirant for the promotion.

The order dated December 4, 2023 passed by the Director of Public Instruction cannot be accepted. No regulation has been framed to enforce Chapter-IV of the West Bengal College Service Commission Act, 2012. In absence of such regulation, it cannot be said that the Chapter-IV of the West Bengal College Service Commission can be implemented. In the facts of the case, granting a fresh permission by the Director of Public Instruction does not arise. Therefore, the order dated December 4, 2023, passed by the Director of Public Instruction is set aside.

Accordingly, this writ petition is disposed of with a direction upon the Governing Body of the College to recommend the name of the petitioner for the post of Accountant within a period of two weeks from the date of communication of this order.

The Director of Public Instruction after receiving such recommendation shall approve the appointment of the petitioner within a period of two weeks. The appointment of the petitioner will be prospective from the date of approval granted by the Director of Public Instruction.

WPA 1444 of 2024 is allowed.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)

