

November 18, 2024
Sl. No. 1
Court No.23
s.biswas

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 3432 of 2024

Sk. Tajan
vs.
The State of West Bengal and others

Mr. Sabyasachi Chatterjee
Mr. Kiron Sk
Mr. Badrul Karim
Ms. Indrani Roy
... for the petitioner

Mr. Jayanta Samanta
Mr. Supriya Majumder
... for the State

Mr. Ranjay De
Mr. Basabjit Banerjee
Mr. Adityajit Abel Bose
... for the respondent nos.2 to 5 (WBPDCCL)

The West Bengal Power Development Corporation Limited (in short ‘WBPDCCL’) being the respondent no.3 in this writ petition published an Employment Notification being No. WBPDCCL/Recruitment/2018/09 (hereinafter referred to as ‘the said advertisement’).

In the said advertisement, apart from others there were 14 vacancies declared for the post of Operation and Maintenance Supervisor – Probationer (Mechanical) (hereinafter referred to as ‘the said post’). Out of 14 vacancies, for Unreserved Category i.e. UR-04, Unreserved Exempted Category i.e. UR (EC)-02, Scheduled Caste Category i.e. SC-02, Scheduled Caste Exempted Category i.e. SC(EC)-01,

Scheduled Tribe Category i.e. ST-01, Other Backward Class (A) Category i.e. OBC(A)-01, Other Backward Class (B) Category i.e. OBC(B)-02, Unreserved Meritorious Sports Person Category i.e. UR(MSP)-01, were reserved.

The petitioner applied for his candidature to be considered against the said vacancies declared for the post in question. In the application form, the petitioner under Serial No.7 against the Special Category-D, clearly mentioned that he belongs to OBC(A) from West Bengal. The petitioner participated in the said recruitment process and was not successful. A list of short-listed candidates sent for medical examination was published by WBPDC. The petitioner has challenged the recruitment process by seeking a mandamus directing the respondents to fill up the post, notified against the vacancies for Unreserved (Exempted Category) by giving preference to the petitioner being a candidate under OBC-A(EC) Category. The petitioner has also asked for consideration of his representation and other incidental relief(s).

The argument on behalf of the petitioner can be briefly summarised as follows:

- 1) The petitioner belongs to OBC(A) category as also under the exempted category being a land loser.

- 2) The petitioner says that it was incumbent upon the WBPDCCL to provide for an option in the application form to enable the petitioner to state that the petitioner belonged to exempted category. But no such option was available and as such the petitioner against the Serial No.7 and Special Category-D had to state that he belongs to OBC(A) category only and not OBC-A(EC) category, as there was no stipulation to provide for being under the exempted category against the said serial number.
- 3) The petitioner says that from the report filed by the WBPDCCL, it is evident that suitable candidates under UR(EC) category were not available to fill up 2 (two) vacancies under UR(EC) and as such the same has been filled up by UR candidates not belonging to EC category.
- 4) The petitioner says that this is contrary to the government policy, the Constitutional mandate as also the provisions of the said advertisement. In support of the government policy as also the Constitutional mandate, the petitioner says that the social reservation in favour of the SC, ST and OBC is under Article 16(4) of the Constitution of India. These are

vertical reservation. This is different from the special reservation in favour of the physical handicapped, woman, etc. under Article 16(1) or 15(3) of the Constitution of India. These reservations are horizontal reservations.

- 5) The petitioner further says by relying upon the judgment report in 2021 (4) SCC 542 (Saurav Yadav & Ors. vs. The State of Uttar Pradesh & Ors.), where a vertical reservation on being made in favour of backward class under Article 16(4), the candidates belonging to such backward class may compete for non-reserved post and if they are appointed against any such non-reserved post on their own merit, their number will not be counted against the quota reserved for respective backward class. As an example, the petitioner says that for a candidate under OBC(A) category which in the instant case is one, then a candidate belonging to OBC(A) on own merit can fill up a vacancy under the UR category on the basis of his/her marks obtained in the said recruitment process. The vacancy against the OBC(A), therefore, will be fill up by another OBC(A) candidate as per merit. Thus, two OBC candidates will enter into the selection process which will be in excess of

the percentage of reservation, earmarked for OBC(A). But the same will not be considered to be in excess of the percentage reserved for OBC(A) category, since one of the candidates is entering the list as an own merit candidate while the other under OBC-A category.

- 6) The petitioner therefore says when suitable candidates under UR(EC) were not available, the candidature of the candidate like the petitioner should have been considered for filling up the vacancy of UR(EC), as he belonged to an exempted category apart from belonging to OBC-A category. By not doing so, WBPDCCL has violated the government policy as also the mandate of the Constitution.
- 7) The petitioner by referring to a note in the said advertisement, which is as follows:
“Note:- In case of non-availability of a suitable Exempted Category candidate belonging to UR, SC, ST or OBC(A)/(B) for any of such reserved points as mentioned above, the said vacancies shall be filled up by non-Exempted Category Candidate belonging to UR, SC, ST or OBC(A)/(B) as the case may be as per Notification No.50-Emp/1M-25/98 dtd.01st March 2011, Labour Department Govt. of West Bengal.”, says that the note clearly provides for

consideration of OBC(A)(Exempted Category) candidates like the petitioner for filling up the UR(EC) vacancy, when suitable candidates under UR(EC) category were not available.

- 8) The petitioner says that in this manner, the WBPDCCL had violated its own stipulations in the said advertisement.

On behalf of the WBPDCCL, it is submitted that there were no vacancies under the OBC(EC) category. The vacancies for exempted category were under UR and SC i.e. UR(EC) and SC(EC). The exempted category is a horizontal reservation provided within the vertical reservation by complying with the provisions of Article 16(4), 15(3) and 16(1) of the Constitution of India. A candidate therefore has to belong to an unreserved category with the criteria of being under the EC for applying against two vacancies under UR(EC). The similar was the case for applying under SC(EC) category. This will be, according to the WBPDCCL, more clear from the reservation norms specified in the said advertisement.

The WBPDCCL particularly refers to a portion of such reservation norms which reads as follows:
“However, all candidates can apply against UR positions identified suitable for them and shall be considered on general standards of merit if otherwise

eligible.” The WBPDCCL also says that there was no vacancy for OBC(A)(EC). The open category UR with the horizontal reservation (EC) in built therein does not fall under UR positions as urged by the petitioner.

The WBPDCCL also says that a list of exempted candidates is maintained at the office of the Director of Employment, West Bengal (Exempted Category), having its office at 67 Bentinck Street, 4th Floor, Kolkata 700069.

The petitioner’s claim for exemption was sent along with similar claims from other candidates claiming said exemption to such Director. The Joint Director of Employment (Exempted Category) by a memo dated 22nd November, 2018 has clearly indicated that the petitioner falls under the exempted category under OBC(A).

Thus, according to the WBPDCCL, the petitioner’s candidature can or could have been considered under vertical reservation of OBC(A) with an horizontal reservation of exempted category and not under the UR(EC) category. The petitioner’s candidature could also be considered under open UR Category as own merit candidate.

It is further submitted by the WBPDCCL that a participant to a recruitment process like the petitioner can challenge the recruitment process only

on limited score after having participated in the same. The grounds of challenge thrown by the petitioner are untenable in law and as such the writ petition is not maintainable.

Having heard the parties and considering the materials on record, I do not find that the ratio laid down in *Saurav Yadav (Supra)* has any manner of application in the instant case, although there is no dispute as to the ratio laid down therein. The said judgment relates to own merit candidate and the petitioner has not run such a case.

Firstly, the petitioner in the instant case is not asking for being considered as an own merit candidate. The cut off marks as provided by the WBPDCCL for OBC(A) category is 42.5, while the petitioner has obtained 32.5 and as such the petitioner did not emerge successful in respect of the only one vacancy for OBC(A) category. The cut off marks in case of UR is 48.6 while the petitioner has obtained 32.5 and as such he did not also enter the zone of consideration for the UR vacancy as an own merit candidate. Secondly, the moment the horizontal reservation is attached to UR Category the same does not remain as an open category but a Special Category to be filled up only by Exempted Category candidates without any reservation unlike the petitioner who is OBC-A(EC). As a future

elucidation we can consider the vacancy for SC(EC). The only 1 (one) vacancy under such category in absence of a suitable candidate can be filled up by SC candidate by following the note in the said advertisement quoted hereinabove.

So far as the UR(EC) is concerned, the petitioner does not belong to UR Category. The petitioner belongs to OBC(A)(EC) category. The two vacancies under UR(EC) category, therefore, were not open to the petitioner for his candidature being considered against the same as the same relates to open category coupled with special reservation as elucidated in *Saurav Yadav (Supra)*.

In the aforesaid circumstances, I do not find any merit in the petitioner's case. Nothing further remains to be adjudicated in this writ petition. The writ petition is, therefore, dismissed accordingly.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Arindam Mukherjee, J.)