

27.02.2024

DL.11

PP

Ct.No.15

WPA 2500 of 2018

Sulaiman Mondal

Vs.

The State of West Bengal & Ors.

Mr. Lutful Haque,
Ms. Taharima Khatun

... for the petitioner.

Mr. Sadhan Halder,
Mr. Supriya Majumder

... for the State.

Mr. Naren Ghosh Dastidar,
Mr. Haridas Das

....for the respondent no.6.

Vide notification dated 8th December 2016, post of Peon in Panchayat Samity was notified in the district of South 24-Parganas. As per the said notification one post of Panchayat Samity Peon was reserved for OBC-A category candidate, one post was reserved for OBC-A (EC) category candidate, one post was reserved for OBC-B category candidate and one post was reserved for OBC-B (EC) category candidate apart from the posts which were earmarked for general category candidate.

The petitioner applied for being appointed as Panchayat Samity Peon by offering his candidature as

OBC-A category candidate whereas respondent no.6 applied for being appointed as general category candidate in the said post of peon.

The petitioner by presenting the writ petition has challenged the selection of the respondent no.6 for the post of peon in Panchayat Samity upon treating him as OBC-A category candidate on the ground that the respondent no.6 is a general category candidate whereas petitioner belongs to OBC-A category. According to the petitioner, respondent no.6 has got no right to be appointed as Panchayat Samity Peon in the post which is reserved for OBC-A category candidate since he applied as general category candidate. It is also contended had there been appropriate selection process conducted by the concerned respondent authorities then respondent no.6 would have been excluded from the zone of consideration for being considered for the post of peon upon treating him as general category candidate which may have given opportunity to the petitioner to be considered for the post of Peon being OBC-A category candidate.

Respondent no.6 is represented by Mr. Ghosh Dastidar, learned advocate, who at the outset has raised the point of *locus standi* of the petitioner. It is

contended that in the event respondent no.6 would not have been selected for the post of Peon under OBC-A category, petitioner would not have come within the zone of consideration for being recruited in the post of Peon. Therefore, writ petition at the instance of the petitioner is not maintainable.

In addition thereto, submission has been made on behalf of the respondent no.6 based on document at page 12 and 13 of the affidavit-in-opposition used on behalf of respondent no.6 in order to contend that respondent no.6 participated in the selection process as general category candidate. Further contention on behalf respondent no.6 is if there is no mistake on his part in offering candidature as general category candidate and the appointing authority as well as the selecting authority while processing the application of the respondent no.6 wrongly treated the said respondent as OBC-A category candidate and appoint him in the post of Peon, it is not the fault of the respondent no.6. Therefore, after rendering service as Panchayat Samity Peon for a period of 7 years with effect from 16th August, 2017 appointment of the petitioner should not be frustrated.

State respondents are represented by Mr. Halder, learned advocate, who submits that already a

detailed report has been filed by the Secretary, Panchayat & Rural Development Department dated 15th September 2023. Therefore, there is no necessity to dilate further on this issue. However, the learned advocate for the State respondents has fairly submitted that if by mistake respondent no.6 is appointed by wrongly treating him as OBC-A category candidate, no right accrues in his favour and such mistake can be corrected upon detection.

This Court has heard the learned advocates representing the parties as well as perused the detailed report of the Secretary dated 15th September, 2023 which has been prepared pursuant to the order dated 8th August, 2023 passed by this Court.

The report of Secretary plays a significant role in determining the issue raised in this writ petition. In paragraph 3 of the said report it has been categorically admitted by the Secretary that for processing the applications for recruitment in the post of Panchayat Samity Peon as well as for checking and modification, storage and backup etc. an agency named S.R. Service was selected and entrusted with for the entire task vide memo. dated 24th August, 2010 issued by the concerned authority. The computerized data sheet indicates that name of the respondent no.6 has been

recorded under OBC category which goes to show that there is mistake on the part of the selecting authority as well as the agency engaged by the authority in processing the application of the respondent no.6, thereby respondent no.6 was wrongly treated as OBC-A category candidate though he applied as general category candidate. It is also indicated in the report that under the notification, number of vacancies in the post of Panchayat Samity Peon was increased and there were 19 posts altogether, out of which 3 posts were earmarked for unreserved category candidates and one post was reserved for OBC-A category candidate. It is stated in paragraph 13 of the said report that at the end of the selection process appointment letter was issued on 8th August, 2017 and the respondent no.6 was treated as OBC-A category and from a document at page 61 of the said report dated 9th December, 2020 it further appears that the respondent no.6 joined the post on 16th August, 2017. Under 'OBSERVATION' as contained in the report of the Secretary it is also stated that never the respondent no.6 had brought to the notice of the District or Block office on being appointed that he had been wrongly mentioned as OBC or OBC-A candidate

though he was communicated officially with certain documents containing mistaken caste category.

Therefore, on consideration of the report of the Secretary dated 15th September, 2023 it is clear as crystal that respondent no.6 was not a candidate to be considered as OBC-A category since he applied under general category but wrongly he was treated by the recruiting authority as OBC-A category candidate and was allowed to be appointed in the lone post which was reserved for OBC-A category candidate.

Question arises for consideration if respondent no.6 is selected for being recruited as Panchayat Samity Peon wrongly or by mistake by treating him as OBC-A category candidate whether any right accrues in favour of the respondent no.6 to continue in service?

Answer is indisputably no. If by mistake recruiting authority appoints respondent no.6 by treating him as OBC-A category candidate though he is originally general category candidate then such mistake on the part of the recruiting authority does not confer any right in favour of the respondent no.6 to continue in service based on faulty appointment.

A point has been agitated on behalf of the respondent no.6 that petitioner does not have any

locus standi to question the selection of respondent no.6, but the same appears to be not tenable in view of the fact that the petitioner is OBC-A category candidate who also applied for the post of Panchayat Samity Peon under the said category and participated in the selection process.

In view of the aforesaid discussion, it is found that the selection which has been made in favour of the respondent no.6 for being appointed as Panchayat Samity Peon under OBC-A category is erroneous.

Accordingly, the selection of respondent no.6 stands set aside and cancelled in respect of the post of Panchayat Samity Peon reserved for OBC-A category candidate.

Since it is found that such selection in favour of the respondent no.6 is taken place due to mistake on the part of the recruiting authority, the District Magistrate, being the respondent no.2, is directed to perform an exercise to find out had the respondent no.6 being treated as general category candidate in that event considering the performance of the said respondent no.6 whether he would come within the zone of consideration for being appointed against one of the 3 posts reserved for general category candidate or not.

The respondent no.2 is directed to complete such exercise within 8 weeks from date and if it is found that considering the performance of the respondent no.6 he could have been selected against one of the 3 posts reserved for general category candidate necessary order shall be passed to protect the right of the respondent no.6 for being selected under general category.

However, respondent no.6 is not required to refund the salary which he has received till date since due to mistake of the recruiting authority he was appointed and discharged duty.

Before parting with, it needs to be addressed that in paragraph 22 of the report of the Secretary it has been disclosed that after appointment of the respondent no.6 a draft gradation list of Panchayat Samity Peon for the district of South 24-Parganas was prepared vide memo dated 27th May, 2022 for inviting objection/request for inclusion/omission/correction, if required, for the purpose of publishing final gradation list wherefrom it transpires that for the reasons best known to the authority the category of the respondent no.6 has been changed from OBC-A to general again. Perhaps, this has been done in order to suppress the misdeeds which was committed by the district

authority at the time of selecting the said respondent no.6.

The respondent no.2 is also directed to cause an enquiry as to how the category of the respondent no.6 got changed from OBC-A to general while preparation of gradation list, and if responsibility is fixed upon any employee/official of the concerned department, the respondent no.2 is directed to initiate appropriate proceedings against him/them.

Due to exclusion of respondent no.6, the respondent no.2 is also directed to find out whether petitioner comes within the zone of consideration or not in consideration of his performance as OBC-A category candidate and if it is found that the petitioner comes within the zone of consideration against the single post reserved for OBC-A category, necessary order shall also be passed by the respondent no.2 in connection with the candidature of the petitioner within a period 8 weeks from date and same shall be communicated to the petitioner within one week thereafter.

With the aforesaid directions and observations, the writ petition stands disposed of.

However, there will be no order as to costs.

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

(Saugata Bhattacharyya, J.)