

04.12.2024

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FMA 267 of 2024

Sri Biswajit Majee & Others

– Versus –

The State of West Bengal & Others

Mr. Anindya Bose

... for the Appellants.

The present appeal has been preferred challenging an order dated 5th February, 2020 passed by the learned single Judge in the writ petition, being WP 242 (W) of 2020. By the said order the learned single Judge refused to exercise discretion in favour of the writ petitioners/appellants herein and dismissed the writ petition as there was nothing on record to show that the allegations made were supported by any cogent evidence and as there was no proof of service of the letter demanding justice issued by the appellants through their learned advocate.

The case of the appellants in the writ petition was that responding to a notice dated 6th February, 2018, they filled up the requisite forms and applied for participation in the selection process for the appointment to the post of Contractual Auxiliary Fire Operator in the West Bengal Fire & Emergency Services. Thereafter, they were called for an endurance test in which they duly participated. Subsequent thereto, the respondents published a list of 35 candidates including the names of the private respondents. The appellants sought for specific

information pertaining to the selection process through an application under the Right to Information Act. In reply thereto, the respondent no. 5 *vide* memo dated 31st May, 2019 could not furnish any information as to whether any appointment has been granted. Detailing the illegalities perpetrated by the respondents while conducting the selection process, the appellants issued a demand notice through their learned advocate stating *inter alia* that the private respondent nos.6 to 9 did not fulfil the prescribed height criteria and the respondent no.10 was over aged. As the said notice was not responded to, the appellants were constrained to file the writ petition and the order passed in the same has been impugned in the present appeal.

Mr. Bose, learned advocate appearing for the appellants submits that the writ petition was dismissed at the motion stage without even calling for affidavits from the respondents. The specific allegations levelled by the appellants were left unanswered. Without even considering the documents annexed to the writ petition, the same was abruptly rejected.

Drawing our attention to the notice annexed at page 21 of the paper book and the Madhyamik Pariksha certificate of the respondent no.10 annexed at page 165A of the paper book, Mr. Bose submits that the date of birth of the respondent no.10 was 26.10.1984 and as such, he did not fulfil the age criterion, as specified in the said

notice. The respondent no.10 exceeded 33 years of age as on 1st January, 2018.

Referring to the document annexed at page 166 of the paper book, Mr. Bose argues that the respondent no.6 was not a resident of Purulia district and as such, his participation in the selection process was palpably illegal. The respondent nos. 6 to 9 also did not fulfil the height criteria as specified in the notice dated 06.02.2018 and in view of the glaring illegalities apparent on record, the appellants had the right to challenge the selection process even after participation. Without participating in the same, the appellants could not have gauged the deficiencies in the process. In support of such contention, reliance has been placed upon the judgment delivered by a co-ordinate Bench of this Court in *Mriganka Mondal Vs. Dr. Asitabha Das*, reported in 2019 LAB I C 953 (Cal).

Records reveal that the allegations levelled by the appellants in the writ petition were answered by the State/respondents by filing an affidavit-in-opposition to the stay application. In the same it has been disclosed that there were 35 vacancies in the district of Purulia for which names of trained civil defence volunteers were called for by a memo dated 26th May, 2017 and as on 01.01.2017, the age of the respondent no.10 was 32 years 1 month 6 days. There were 35 vacancies in the concerned post in the district of Purulia and marks obtained by the last selected candidate was 33. The marks obtained by the appellants

were disclosed in paragraph 2(k) and the marks obtained by the private respondent nos.6 to 10 were disclosed at paragraph 2(l). In the said affidavit the respondents also denied the allegation that the respondent nos. 6 to 9 did not fulfil the height criteria.

We have heard Mr. Bose, learned advocate appearing for the appellants and considered the materials on record.

The arguments of Mr. Bose that the entire selection process was illegal and there were glaring illegalities in the same, are not acceptable to us. The allegations of non-fulfilment of age and height criteria and that the respondent no.6 was not a resident of the district of Purulia involve disputed questions of fact and the writ Court cannot conduct any roving enquiry.

Admittedly the appellants secured marks within the range of 15.5 to 26.5 whereas the private respondent nos. 6 to 10 obtained marks within the range of 35 to 38 marks. The last selected candidate obtained 33 marks. There is a gap of about 6.5 marks in between the marks obtained by the last selected candidate and the appellant no. 6 (Avijit Nandy), who obtained the highest marks (26.5) amongst the appellants. As such, there was no scope for the appellants to come within the zone of consideration for appointment.

In the said conspectus and as the judgment delivered in the case of *Mriganka Mondal (supra)* is

distinguishable on facts, no interference is called for in the present appeal.

The learned single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Partha Sarathi Sen, J.)

(Tapabrata Chakraborty, J.)