

02 04.04.2024
NB Ct. 24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(Appellate Side)

WPA 7573 of 2024

Dr. Dipankar Pramanik
Vs.
The Kolkata Municipal Corporation & Ors.

Ms. Upama Nandy.
...for the petitioner.

Mr. Alak Kr. Ghosh,
Mr. Swapan Kr. Debnath.
..for the State.

Ms. Koyeli Bhattacharyya.
...for MSC.

The petitioner is serving as the Sub-Registrar in the Kolkata Municipal Corporation on contractual basis since 2010. He intends to participate in the recruitment process initiated by the West Bengal Municipal Service Commission for the permanent post of Sub-Registrar.

The petitioner possesses the prescribed essential qualifications required for participating in the recruitment process but he has crossed the prescribed age limit as mentioned in the advertisement. The age limit prescribed is 45 years on the 1st January of the year of advertisement; the petitioner is 52 years of age.

The advertisement prescribes that the upper age limit shall be relaxable by 5 years for candidates who are working in

similar nature of post either on permanent or contractual basis in the Burning Ghats/Burial Grounds for at least 5 years in the Government/ Semi-Government/ Local Authorities/ Statutory Bodies/Urban Local Bodies.

Despite the 5 years relaxation given to the petitioner, he is age barred and cannot take part in the recruitment process. The petitioner prays for relaxation of the age bar relying on the Larger Bench decision of this Hon'ble Court in the matter of ***Gobinda Chandra Mondal vs. Principal, Rabindra Mahavidyalaya*** reported in ***2013(1) CHN (CAL) 9***.

Learned advocate representing the Corporation opposes the prayer of the petitioner. It has been submitted that age relaxation was allowed to the petitioner on two earlier occasions but the petitioner failed to qualify in the selection test. Age relaxation cannot be allowed further as the same may open floodgates and may be treated as a precedent in respect of other candidates who are age barred and are not eligible to participate in the recruitment process. In support of the said submission, learned advocate for the Corporation relies on the decision passed by the Hon'ble Supreme Court in the matter of ***Union of India & Ors. Vs. Arulmozhi Iniarasu & Ors.*** reported in ***2011 AIR SCW 4252***.

In response of the aforesaid submission, learned advocate for the petitioner undertakes that this is the last attempt which the petitioner intends to take and the petitioner will not take part in any future recruitment examination to be conducted by the Municipal Service Commission for appointment of Sub-Registrars in the Corporation.

Learned advocate for the petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Union Public Service Commission vs. Dr. Jamuna Kurup & Ors.*** reported in ***(2008) 11 SCC 10***, paragraphs 14 and 15 and the judgment delivered by the Hon'ble Delhi High Court in the matter of ***Delhi Subordinate Services Selection Board & Anr. Vs. Preeti Rathi & Ors.*** reported in ***2011 SCC Online Del 4761***, paragraph 14.

I have heard the submissions made on behalf of the parties and have perused the documents placed before this Court.

It appears that at the time of initial appointment of the petitioner in the post of Sub-Registrar, he possessed the essential prescribed qualifications as specified in the recruitment notice.

The recruitment notice permits relaxation of age for candidates working in similar nature of post. The Larger Bench of this Court in the matter of Gobinda Chandra Mondal (*supra*) held that if the candidate is engaged on temporary basis having requisite qualification at the time of appointment and is allowed to participate in the selection process, such candidate has a right to be considered provided their services are continuous and without any break in the vacancy of the substantive post. Admittedly, in the present case, the petitioner is in service for a considerable period of time without any break.

It is true that the petitioner failed to qualify in the previous two recruitment examinations where he participated upon relaxation of age but the petitioner has made an

undertaking before this Court through the learned advocate that this is the last year when he will sit for the examination and in case he fails to qualify, he would not participate in future recruitment processes.

The judgment relied upon by the Corporation deals about the rights of temporary employees to participate in recruitment processes and it has been held that once the appointments are temporary it could not confer any right to claim any permanent post in the department.

In the instant case, the petitioner is not seeking permanency in the post in question. He intends to participate in the recruitment process and only if the petitioner is successful, then the question of appointment would arise.

There is no reason as to why another chance cannot be given to the petitioner to take part in the recruitment process.

In view of the above, the West Bengal Municipal Service Commission is directed to accept the offline application of the petitioner for participating in the recruitment examination to be conducted pursuant to the advertisement no.01/2024 dated 23rd February, 2024 upon relaxation of the age bar.

The present employer of the petitioner is directed to issue the required 'no objection certificate' in his favour so that he can submit the same in the office of the West Bengal Municipal Service Commission.

The permission to appear in the recruitment examination along with other eligible candidates, will under no circumstances, create any equity in favour of the petitioner for being appointed in the post. The employer shall be entitled to

appoint the successful candidate in the post strictly in accordance with law.

The writ petition stands disposed of.

Urgent certified copy of this order, if applied for, be supplied to the parties expeditiously, on compliance of usual legal formalities.

(Amrita Sinha, J.)