

27.02.2024
Item No.16&17
Ct. No. 238
AKG

WPA 7591 of 2023
Rephail Hansda
Vs.
The State of West Bengal & Ors.

Mr. Sarajit Sen,
Mr. Pradip Kumar Ghosh

...for the Petitioner

Mr. Shamim ul Bari

...for DPSC Malda

Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly

...for the State

Let the application form and score-sheet of the petitioner produced by the learned advocate appearing for the Malda District Primary School Council be kept with the records.

The petitioner applied for the post of Assistant Teacher in Primary School (Bengali Medium) before Malda District Primary School Council, following an advertisement published on August 30, 2009.

The petitioner, in his application, described himself as a Scheduled Tribe candidate though he had no caste certificate at that point of time. He obtained his Scheduled Caste Certificate on or about March 2, 2010.

Despite various legal challenges that arose during the recruitment process, it is pertinent to note that the petitioner was eventually permitted to participate in the written test on March 2, 2014.

He was successful in the written test and was called for an interview on February 17, 2015. He was, however, not allowed to take part in the interview on the ground that though he had applied as a Scheduled Tribe candidate, he was not in possession of a Scheduled Tribe Certificate at the time of making the application.

The petitioner had to approach this Court against the Primary School Council for allowing him to participate in the interview. A co-ordinate Bench of this Court by an order dated May 6, 2015 directed to hold a special interview for the petitioner along with some other candidates. Following the said order, the petitioner participated in the interview on June 2, 2015.

The Council has produced the score-sheets of the interview. It appears that the petitioner secured an average of 4.5 marks in the interview out of 5.

The petitioner contends that in total, he secured 25.7 marks out of 50. The council does not dispute that if the petitioner is treated to be a Scheduled Tribe candidate, he meets the cut off marks for appointment under the Scheduled Tribe category.

The Council vehemently submits that in the brochure, it was clearly indicated that only the qualification acquired at the time of filling up the form would be considered.

It has been argued that on the last date of submission of application, the petitioner was not in possession of the Scheduled Tribe Certificate in his favour. The Council was, therefore, right in treating the petitioner as a General Candidate and the total score of the petitioner does not qualify him to be appointed under the General category.

In support of his submission, Mr. Shamim ul Bari, learned advocate appearing for the Primary School Council, Malda has relied upon a judgment reported at **(1997) 4 SCC 18 (*Ashok Kumar Sharma v. Chander Shekhar*)**. The relevant part of the said judgment is quoted below:

“6. The review petitions came up for final hearing on 3-3-1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such

representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234] . The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.”

Per contra, the petitioner has relied upon a judgment passed by the Division Bench of this Court reported at (2013) 2 Cal LJ 377 (*Kalpna Mondal v. Shyamali Mondal*). The relevant part of the said judgment is quoted below:

“22. We, however, do not approve the aforesaid stand taken by the learned Advocate of the State-respondents since the Government of India has made it clear that non-submission of the Scheduled Caste certificate within the prescribed time limit cannot be fatal and the competent authority at best could appoint the concerned candidate provisionally to the post in question subject to submission of the requisite Caste certificate issued by the competent authority within a reasonable time.”

The law laid down in ***Kalpana Mondal*** case is clear; if a Scheduled Tribe/Scheduled Caste candidate is not in a position to produce his certificate during the process of recruitment, he should be notionally appointed as a Scheduled Caste or Scheduled Tribe candidate and his appointment will be approved subject to production of a valid Scheduled Caste/Scheduled Tribe certificate subsequently.

In **Ashok Kumar Sharma (supra)**, the Supreme Court dealt with an educational qualification acquired subsequent to the last date of submission of application.

A Scheduled Tribe candidate acquires his Scheduled status by birth if he is born to a Scheduled Tribe family. Therefore, it is not a qualification acquired subsequent to the last date of application.

It cannot be said that the petitioner should have been treated as a General candidate since at the time

of making application, he could not produce his Scheduled Tribe Certificate. I have already noted that the petitioner had applied as a Scheduled Tribe candidate and possessed the caste certificate during the process of recruitment.

Facts of this case are squarely covered by the case in **Kalpana Mondal (supra)**.

It is expected that the council shall appoint the petitioner against an available vacant post as early as possible, preferably, within one month from the date of communication of this order.

Mr. Shamim ul Bari submits that as on date, there is no vacant post, where the petitioner can be appointed.

In that view of the matter, this writ petition is disposed of restraining Malda District Primary School Council from filling up any post of Assistant Teacher of Bengali Medium unless and until the petitioner is appointed to the post of Assistant Teacher under the said Council.

Accordingly, **WPA 7591 of 2023** is disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)