

WPST 68 of 2024
(Ratna Dey Vs. The State of
West Bengal & Ors.)

Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Gulsanwara Pervin

.... For the petitioner

Mr. Tapan Kumar Mukherjee, Ld. AGP
Ms. Tuli Sinha

.... For the State

Ms. Piyali Sengupta
Mr. Souvik Ghosh

..... For the P.S.C.

Affidavit-of-service, as filed, be kept on record.

The present writ petition has been preferred challenging an order dated 29th February 2024 passed by the learned Tribunal in the original application (in short, OA), being OA 664 of 2021.

Mr. Ahammed, learned advocate appearing for the petitioner submits that inviting applications for filling up the post of Industrial Development Officer (in short, IDO), an advertisement no. 10/2019 (hereinafter referred to as the said advertisement) was published. In the same it was categorically stated that the Public Service Commission, West Bengal (hereinafter referred to as the Commission) would prepare the panel by taking aggregate of marks obtained in written test and interview. However, the Commission conducted such selection process only on the basis of the marks obtained by the candidates in interview. No cut-off marks were also notified in such interview and such infirmities rendered

the selection process to be arbitrary. Such selection of candidates only on the basis of interview has been deprecated by the Hon'ble Supreme Court.

His next argument is that participation of the petitioner in the selection process does not debar him from challenging the infirmities involved in the same which he could ascertain only upon such participation. To fortify such argument reliance has been placed upon the judgment delivered in the case of *Dr. (Major) Gita Sahai & Ors. Vs. State of Bihar & Ors.*, reported in (2019) 20 SCC 17 wherein the Hon'ble Supreme Court was pleased to observe, *inter alia*, that by agreeing to participate in the selection process, the candidate only accepts the procedure prescribed and not the illegality in the same. Mere participation of the candidate in the selection process cannot cure the illegalities in the selection process.

He contends that public employment should be transparent. As per the said advertisement, the Commission was required to conduct a written test and to interview the candidates coming within the zone of consideration. The Commission, however, did not follow the said procedure and no reason was also disclosed as to why the selection process was conducted only on the basis of interview without holding any written test. Such arguments, as advanced before the learned Tribunal,

were glossed over and no finding was returned on the same.

He submits that in total there were 118 vacancies. The petitioner participated as a general candidate and from the documents annexed, it would be evident that 9 vacancies in the UR category are still existing. In view thereof, there can be no hurdle in conducting an interview of the other candidates in the reserve list including the petitioner for filling up the vacancies.

Ms. Sengupta, learned advocate appearing for the Commission denies and disputes such contention of the petitioner and submits that nowhere in the panel it had been specified that the selection should be on the basis of aggregate marks scored by the candidates in a written test and an interview. The Commission conducted a screening test as specified in the advertisement and the shortlisted candidates were brought within the zone of interview. The last candidate recommended under the UR category scored 65 marks whereas the petitioner scored only 60 marks.

She submits that the Director, MSME, West Bengal by a memo dated 23rd May, 2022 intimated the Commission that out of 118 candidates recommended, 14 candidates have not shown interest to join/refused to join and as such there are 14 vacancies (9-UR, 3-SC, 1-BC-A, 1-BC-B) and further candidates may be sent for filling up the vacancies. In response thereto, it was

intimated by the Commission that the life of the reserve list had already expired on 31st January, 2022.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents denies the contention of Mr. Ahammed and submits that having participated in a selection process being well aware of the terms and conditions of the same, the petitioner cannot turn back and challenge the same since the results are not palatable.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

In the Advertisement No. 10 of 2019, it was, *inter alia*, stated as follows:-

'The prescribed 'essential qualifications' are the minimum and mere possession of the same does not entitle applicants to be called in for the interview. Where the number of applications received in response to the advertisement is large and it is not convenient or possible for the Commission to interview all the applicants the Commission may restrict the number of candidates for interview to a reasonable limit on the basis of either higher qualifications in the relevant subjects/higher standard of marks/grade obtained in the essential qualifications or on the basis of a Screening Test/ Written Test.

The Commission may fix qualifying cut-off marks for all the categories of the vacancies in each level of examination, i.e. written, interview and aggregate.'

A perusal of the said provision does not substantiate the argument of Mr. Ahammed that in the said advertisement it was categorically stated that the

Commission would prepare the panel on the basis of aggregate of marks obtained in written test and interview. There was also no direction that the Commission is required to conduct a written test and an interview upon specifying cut-off marks.

Indisputably, the petitioner participated in the selection process being well aware of the terms and conditions of the advertisement. It is not a case that only upon participating in the selection process, the candidate came to learn about any illegality or infirmity in the selection process. The petitioner admittedly did not challenge the said advertisement or any of the clauses incorporated in the same. The last candidate recommended under the UR category scored 65 marks whereas the petitioner scored only 60 marks. No legal right of the petitioner has thus been infringed warranting interference of this Court.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. There is no dispute as regards the proposition of the law laid down in the judgment upon which reliance has been placed by Mr. Ahammed but the same is distinguishable on facts.

Drawing our attention to the contents of the opposition affirmed from the Commission, Mr. Ahammed

submits that the petitioner was empanelled at serial no. 14 in the reserve list under UR category and there are 9 existing vacancies under UR category. 5 vacancies can be filled up through the candidates who secured 65 marks. The remaining 2 vacancies can be filled up upon conducting an interview of the candidates in the reserve list under the UR category, who have secured 60 – 64 marks including the petitioner. Such argument of Mr. Ahammed is, however, not acceptable to us moreso when the life of the panel has expired.

The learned Tribunal, 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 judgment impugned, warranting interference of this Court.

Accordingly, the writ petition being WPST 68 of 2024 is 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 Chatterjee, J.) (Tapabrata Chakraborty, J.)