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AB

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

BEFORE:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Shampa Dutt (Paul)

M. A. T. 833 of 2022

With

IA CAN 1 of 2022

Rajiv Kumar Agarwal

VS

The State of West Bengal & Others

For the Appellant : Mr. Shamim Ul Bari, Advocate,

For the DPSC : Mr. Bhaskar Prasad Vaisya, Advocate
North 24 Parganas : Mr. Pinaki Bhattacharya, Advocate

Heard on : July 29, 2024

Judgement on : July 29, 2024

Harish Tandon, J. :

1. At the very outset, we must record that the Court cannot substitute itself in the armchair of an examiner and decide whether the marks awarded by the examiner are in commensurate with the answers given by the candidates. The examiners are experts in their academic field

and, therefore, the Court should not intrude into such field unless the parties coming before the Court demonstrate from the reliable piece of evidence that the awarding of the marks is not in commensurate with the quality of the answers given for the particular question. The apprehension of the DPSC in this regard is unfounded as this Court never intended to substitute itself in the place of an examiner, who is the best Judge in evaluating the answers and awarding the marks.

2. The point fell for consideration is not whether the Court is considering the answers and the awarding of marks, but it hovers around whether the candidature of the appellant can be rejected solely on the ground that he has written the answers in English language though applied for the post in Hindi medium school.
3. Our attention is drawn to the advertisement published by the Authority for filling up the post of Assistant Teachers in different schools imparting education in different mediums. Our endeavour has failed to find out any instruction or the condition having disclosed that the candidate opting for a particular medium of school has to answer in such language and the consequential effect of answering in different language would invite the dismissal of his candidature or may deny the candidate to be considered for appointment.
4. Our endeavour has failed to find out any such conditions and/or criterion having disclosed in the advertisement except that the

candidate applying his candidature in a particular medium of school should have a proficiency of writing, reading and able to converse in the said language. The stand of the DPSC is fallacious that the candidature of the appellant was rejected as he answered the questions in English language though opted for a school imparting education in Hindi language. The Authority cannot setup a bench mark nor create illusory restrictions after the commencement of the recruitment process or at the time of preparation of the panel unless the same is disclosed in the advertisement being the first step for initiation of the recruitment process. Even in absence of statutory Rules, in order to streamline the effective and potential management and administration in the education system, restrictions can be imposed provided it does not run counter to the statutory Rules or in other words, may invite a healthy competition and the better candidate must be chosen for the quality of education to be imparted to the children of the said school.

5. In course of the hearing, the Counsel hands over the answer sheets of the appellant wherefrom it appears that all candidates were directed to write a small paragraph in their mother tongue on the two topics transcribed in English and Bengali languages. The aforesaid topics have not been transcribed in Hindi language, yet the DPSC proceeded to cancel the candidature of the appellant as he wrote a small paragraph on one of such topics in English language. Had it been the intention of the Recruiting Authorities that a person must write the paragraphs on the topic in a language for which he has applied, it is inevitable and

unavoidable that the said topic should also be transcribed in the said language.

6. The object of ascertaining the suitability and eligibility must be based on the subjective as well as objective manner and the stand cannot be taken whimsically at the time of preparation of the panel that the candidature is liable to be cancelled as the paragraphs have been written in English language and not in Hindi language. The moment the State has setup the school imparting education in different languages and initiated a recruitment process so that the medium of the education should be conveniently provided, if the teacher is proficient in the said language and teaches such students, the Authority should also take into account that the topics, for which it invited the candidature to write small paragraphs, are also be transcribed in the said language and should not be restricted into English as well as the Bengali.

7. Be that as it may, it is not such case but we hasten the aforesaid aspect only because of the stand taken by DPSC that unless the paragraphs are written in a language for which the teacher opted to be appointed in the school imparting education in the said language it would entail the candidature liable to be cancelled. The shelter is sought to be taken on the instruction which indicates that the said paragraphs should be written in a mother tongue. It is transcribed in English and Bengali languages and does not contain any kind of the conditions that if it is not so, it would invite the cancellation of the candidature.

8. As indicated hereinabove, the advertisement does not disclose that the candidate applying for the Hindi medium school should write all the answers in the Hindi language but the condition so imposed pertains to the proficiency of writing, reading and conversing in the Hindi language.
9. We thus do not find the stand of the DPSC to be legally sustainable in cancelling the candidature of the appellant. However, on the last occasion, we directed the Counsel to submit the report disclosing the marks obtained by the candidates included in the panel and the marks obtained by the appellant in order to find out the eligibility of the appellant or entitlement to be included in the panel so prepared. The report discloses that the appellant obtained 27.75 marks in total whereas the cut off marks in the Hindi medium general category is 24.64. Obviously, the appellant obtained more marks than the marks obtained by the last candidate, who has been offered an appointment in the same category and, therefore, we do not find any reasonability into the stand of the DPSC in discarding the candidature of the appellant, who secured more marks and appears to be more meritorious than the last offered candidate.
10. We, therefore, dispose of the instant appeal along with the connected application directing the DPSC to offer the appointment to the appellant having secured more marks than the marks obtained by the last offered candidate within two weeks from date.

11. Let the certified copy of this order be given to the parties within two days from the date of an application on the priority basis.

(Harish Tandon, J.)

I agree,

(Shampa Dutt (Paul), J.)

Later

After the delivery of the judgment, the Counsel for the DPSC prays for stay of the operation of this order, which we gave our anxious consideration, and do not find that the facts as disclosed hereinabove warrant the stay of the operation and, therefore, the prayer for stay of the operation of this order is rejected.

(Harish Tandon, J.)

I agree,

(Shampa Dutt (Paul), J.)