

02.04.2024.
Court No.13
Item No. 116
pk

W.P.A. No. 10094 of 2022

**Ashis Munda
Versus
State of West Bengal & Ors.**

With

W.P.A. No. 11281 of 2023

**Saikat Pal
Vs.
The State of West Bengal and others**

Md. Sarwar Jahan,
Mr. Sayantan Hazra
...For the petitioner in WPA 10094 of 2022 .

Mr. Chittapriya Ghosh,
Mr. Somesh Ghosh
... For the petitioner in WPA 11281 of 2023.

Ms. Sipra Majumder,
Ms. Srilekha Bhattacharyya
... For the State in WPA 10094 of 2022.

Mr. Biswabrata Basu Mallick,
Mr. Biman Halder.
...For the State in WPA 11281 of 2023.

Mr. Bhaskar Prasad Vaisya,
Mr. Pinaki Bhattacharyya,
... For the DPSC, North 24 Pgs. in both writ
petitions.

Facts of the Case

1. Prior to April 2010, the District Primary School Council in the State recruited Assistant Teachers primarily by calling for applications from the local employment exchange.
2. A change of policy decision occurred in the State and consequent thereupon the State followed the process of inviting applications for recruitment to the posts of Assistant Teachers from employment

exchanges as well as by newspaper advertisements.

3. An advertisement was published by the District Primary School Council, North 24 Parganas (in short 'DPSC') on 23rd April, 2010 inviting applications for the posts of Assistant Teachers in Government Aided Sponsored Primary/Junior Basic Schools. The writ petitioners in two writ petitions applied thereunder.
4. In the said advertisement, Clause 4 prescribed the age limit which is set out hereinbelow:

“4. Age : Not less than 18 years and less than 40 years as on 01/01/2009. Provided that the maximum age limit of the candidates, whose names have been sponsored by the Employment Exchange by virtue of the requisition made by this Council against the vacancies notified but could not be considered for the reasons of non-completion of the recruitment by the Council due to pendency of court cases with respect to such recruitment, shall be relaxed for such period by which such recruitment process have been kept pending upper age limit is relaxable by 5 years for SC and ST candidates of West Bengal, 3 years for OBC candidates of West Bengal and upto 45 years of Physically Challenged (PC) persons with physical disability of 40% and above. Upper age limit is also relaxable for Ex-Serviceman (ES) and Exempted Category (EC) candidates as per existing norms.”

5. There is another relevant fact that needs to be mentioned. The DPSC, North 24 Parganas had invited applications from the District Employment Exchange Office in the first half of the year, 2009. The said recruitment process was abandoned by

the State most likely in view of the pending review of the procedure for recruitment of Assistant Teachers in the State.

6. As on the date of advertisement i.e. 23rd April, 2010 both the petitioners were above 18 years of age. However, in terms of the age stipulations contained in clause 4 set out hereinabove, both the petitioners fell short of minimum age by 11 months and 9 months respectively, as on 1st January 2009.
7. The petitioners were issued admit cards pursuant to their applications to the notice dated 23rd April, 2010. The written examination was conducted on 20th February, 2011. The examination was cancelled, inter alia, for various court cases.
8. A fresh notice was published on 26th July, 2012 for a fresh examination in respect of all the candidates, who sat for the examination on 20th February, 2011. The relevant portions of the newspaper publication dated 26th July, 2012 is set out hereinbelow:

“Those candidates who by filling in the specific Bio-data for the post of Primary Teacher submitted the same to different branches of State Bank of India in 2010 and possesses the qualifying standard equal to that mentioned above or more than that the only will get the chance of appearing in the written examination held again. These candidates will follow the under mentioned procedure for collecting new Admit Card.”

9. Fresh admit cards were issued to the petitioners. Both the petitioners sat for the examination that was held on 26th August, 2012. This examination was also abandoned.
10. A further advertisement was made on 11th February, 2013 in terms of the directions of this Court. Both the petitioners sat for the examination for the third time. Petitioner no.1, namely, Ashis Munda secured 26 marks. The other petitioner, namely, Saikat Pal secured 23.18% marks.
11. A Panel of successful candidates was published finally on 10th February, 2021. The names of the two writ petitioners did not feature in the panel. They made enquiries but in vain. The writ petitions were filed thereafter by Ashis Munda in the year 2022 and Saikat Pal in the year 2023.
12. While the two writ petitions of being heard, the DPSC, North 24 Parganas informed the Court that their names did not feature in the final panel of successful candidates since they were below 18 years as on 1st January, 2009.
13. Admittedly, the last successful appointed candidate in the respective category of the petitioners secured 21 marks. Both the petitioners therefore between 26 and 26.18 marks respectively were otherwise liable to be appointed.

Arguments of the petitioners

14. Learned Counsel for the petitioners Mr. Sarwar Jahan and Mr. Chittapriya Ghosh, would argue before this Court that since the petitioners applied pursuant to the recruitment notice dated 23rd April, 2010 and were above 18 years on the said date, they should be deemed as qualified in terms of the recruitment notice dated 23rd April, 2010.
15. It is also argued that the petitioners have been issued admit cards and were allowed to participate in three successive written examinations (two of which were cancelled by the respondents). The DPSC, North 24 Parganas is, therefore, estopped from now contending in 2021 that the petitioners were under the age in terms of the Recruitment Notice dated 23rd April, 2010.
16. It is also argued by reference to a decision of the Hon'ble Supreme Court of India in the case of **Union of India – Vs. – Uzair Imran & others reported in 2023 INSC 901** that if the authorities did not reject the petitioners' candidature at the first available instance, it would be inappropriate to permit them to cancel the candidature at the conclusion or the end of a recruitment process.
17. It is lastly argued by the petitioners that in the notice dated 26th July, 2012 the candidates were only to rely upon documents up to 12th June,

2010 in respect of their castes. It was further stipulated at Clause II of the advertisement that only those candidates who participated in the written examination on 20th February, 2012 would be entitled to participate in the said written examination. This according to the petitioners confirmed and legalized the petitioners' candidature in the recruitment process.

Arguments of the Respondents

18. Mr. Bhaskar Prasad Vaisya, learned Counsel for the DPSC, North 24 Parganas vehemently opposed the submissions on behalf of the writ petitioners. It is submitted that the advertisement of 23rd April, 2010 was a furtherance of the previous employment of the recruitment process through the employment exchange of the year 2009. The age criteria as in the 2009 recruitment process only therefore must be final and binding at all stages of the recruitment process. The petitioners were underage as on 1st Jan 2009.

19. It is further submitted that the advertisement dated 23rd April, 2010 and the subsequent examination and re-examination were not part of any new recruitment process. The petitioners being underage by more than nine months at least as on 1st January, 2009 could not have participated in the recruitment process much less

in the examination. The petitioners, therefore, could not be empanelled in the list of successful candidates even if it was published as late as 2021.

Analysis of the Court

20. This Court has carefully considered the rival submissions advanced by the parties.

21. The heading of the recruitment notice dated 23rd April, 2010 is set out herein below:

“Applications are invited for the post of Assistant Teachers in the Govt. Aided/Sponsored Primary/Junior Basic Schools under the North 24 Parganas District Primary School Council to fill up the tentative vacancies as mentioned below.”

22. The said recruitment notice would indicate that the same is a stand-alone independent recruitment process. There is no reference to any earlier recruitment process being continued, renewed, or started afresh. The petitioners being above 18 years as on 23.04.2010 were clearly entitled to participate in the said process.

23. The Supreme Court in *Ami Lal Bhat (Dr) v. State of Rajasthan*, (1997) 6 SCC 614, held that:-

“7. In the present case, the cut-off date has been fixed by the State of Rajasthan under its Rules relating to various services with reference to the 1st of January following the year in which the applications are invited. All Service Rules are uniform on this point. Looking to the various dates on which different departments and different heads of administration may issue their advertisements for recruitment, a uniform cut-off date has

been fixed in respect of all such advertisements as 1st January of the year following. This is to make for certainty. Such a uniform date prescribed under all Service Rules and Regulations makes it easier for the prospective candidates to understand their eligibility for applying for the post in question. Such a date is not so wide off the mark as to be construed as grossly unreasonable or arbitrary. The time-gap between the advertisement and the cut-off date is less than a year. It takes into account the fact that after the advertisement, time has to be allowed for receipt of applications, for their scrutiny, for calling candidates for interview, for preparing a panel of selected candidates and for actual appointment. The cut-off date, therefore, cannot be considered as unreasonable. It was, however, strenuously urged before us that the only acceptable cut-off date is the last date for receipt of applications under a given advertisement. Undoubtedly, this can be a possible cut-off date. But there is no basis for urging that this is the only reasonable cut-off date. Even such a date is liable to question in given circumstances.

In the first place, making a cut-off date dependent on the last date for receiving applications, makes it more subject to vagaries of the department concerned, making it dependent on the date when each department issues an advertisement, and the date which each department concerned fixes as the last date for receiving applications. A person who may fall on the wrong side of such a cut-off date may well contend that the cut-off date is unfair, since the advertisement could have been issued earlier; or in the alternative that the cut-off date could have been fixed later at the point of selection or appointment. Such an argument is always open, irrespective of the cut-off date fixed and the manner in which it is fixed. That is why this Court has said in the case of Parameswaran Match Works [(1975) 1 SCC 305 : AIR 1974 SC 2349] and later cases that the cut-off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. To say that the only cut-off date can be the last date for receiving applications, appears to be without any basis. In our view the cut-off date which is fixed in the present case with reference to the beginning of the calendar year

following the date of application, cannot be considered as capricious or unreasonable. On the contrary, it is less prone to vagaries and is less uncertain.”

24. Admittedly an entirely new procedure for recruitment of Teachers was adopted by the State in 2010. There is therefore no rationale or justifiable reason for the continuation of any age restriction contained in a previous, abandoned recruitment process of the year 2009. Public advertisement in recruitment by the State is a commendable procedure. There was no need whatsoever for the State to the earlier, age restriction. This would have deprived the State of the services of a large number of teachers without even compromising on the opportunities for candidates from employment exchanges.
25. This Court therefore holds that the notice inviting applications dated 23.04.2010 must be treated as a fresh formal notice of recruitment, consequent upon the change of policy in the State. Public advertisement was introduced as a new method of recruitment for the post of Assistant Teachers in the State. The petitioners being above 18 as on 23rd April 2020 were eligible to participate in the same.
26. Admittedly both the petitioners were allowed to participate in the recruitment process and allowed to sit in three successive written examinations by

the DPSC, North 24 Parganas. The second petitioner, Saikat Pal is also visually handicapped. The first petitioner belongs to the ST category.

27. The respondent could have rejected the candidature of the petitioners in the year 2010 itself which they did not. They issued Admit Cards to the petitioners on two several occasions. It is presumed that all documents must have been available to the respondents for verification or rejection of candidature. The respondents thus knowingly allowed the petitioners to participate in the recruitment process.
28. Both the writ petitioners admittedly secured more marks than the last candidate selected in the respective categories. It would be grossly inappropriate, unfair, and arbitrary to reject the candidature of the petitioners 11 years after allowing them to participate in the recruitment process. It appears that the petitioners might have been led on the garden path by the respondents. There is a legitimate expectation of appointment that has accrued on the petitioners. The respondents may be prevented by the doctrine of promissory estoppel from denying the candidature of the petitioners in the year 2021. Reference in this regard is made to paragraph 15 of the decision of **Uzair Imran & Ors. (Supra)**

“15. Notwithstanding this settled legal position, the stage when ineligibility is cited for not offering employment also assumes importance. It is indeed indisputable that none has any legal right to claim public employment. In terms of Article 16 of the Constitution, a candidate has only a right to be considered therefor. Once a candidate is declared ineligible to participate in the selection process at the threshold and if he still wishes to participate in the process perceiving that his candidature has been arbitrarily rejected, it is for him to work out his remedy in accordance with law. However, if the candidature is not rejected at the threshold and the candidate is allowed to participate in the selection process and ultimately his name figures in the merit list though such candidate has no indefeasible right to claim appointment-he does have a limited right of being accorded fair and non-discriminatory treatment. Given the stages of the process that the candidate has successfully crossed, he may not have a vested right of appointment but a reasonable expectation of being appointed having regard to his position in the merit list could arise. The employer, if it is a state within the meaning of Article 12 of the constitution, would have no authority to act in an arbitrary manner and throw the candidate out from the range of appointment, as distinguished from the zone of consideration, without rhyme or reason. The employer-State being bound by Article 14 of the Constitution, the law places an obligation, nay duty, on such an employer to provide some justification by way of reason. If plausible justification is provided, the courts would be loath to question the justification but the justification must be such that it is rational and justifiable, and not whimsical or capricious, warranting non-interference.”

29. The case of the petitioners if at all falls foul of the range of consideration and not the zone of consideration. To deprive the petitioners in 2021 on the basis of an age bar in 2021 would be unfair and capricious.

30. In **2024 INSC 2 CIVIL APPEAL NO. 1 OF 2024**
(Arising out of SLP (C) No. 12230 of 2023)
Vashist Narayan Kumar Versus The State of
Bihar & Ors, held as follows-

“15. Recently, this Bench in Divya vs. Union of India & Ors., 2023:INSC:900 = 2023 (13) Scale 730, while declining relief to candidates who acquired eligibility after the date mentioned in the notification carved out a narrow exception. There, the judgment in Ajay Kumar Mishra vs. Union of India & Ors., [2016] SCC OnLine Del 6563, a case very similar to the facts of the present case, was noted. In Ajai Kumar Mishra (supra), Indira Banerjee, J. (as Her Ladyship then was) speaking for the Division Bench of the Delhi High Court in para 9 stated as under:-

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/ or misrepresentation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors.” The exception for trivial errors or omissions is for the reason that law does not concern itself with trifles. This principle is recognized in the legal maxim - De minimis non curat lex.”

31. This Court is of the view that the observations of the Supreme Court would squarely apply to the petitioners.

32. One of the petitioners is physically handicapped and the other is from the ST category. There is a Constitutional Obligation on the part of the State

to give special status to these categories of persons.

Conclusion

33. In the above circumstances, this Court directs the DPSC, North 24 Parganas to recommend the case of the two petitioners to the Commissioner of School Education, West Bengal. The said Commissioner shall thereafter approve the appointment of the petitioners and communicate the same to the DPSC, North 24 Parganas. The DPSC, North 24 Parganas shall thereupon issue letters of appointment to the petitioners and place them in any school in the District of North 24 Parganas as available as on date.
34. It is expected that the aforesaid exercise is carried out by the Chairman, DPSC, North 24 Parganas, and the Commissioner of School Education, within a period of 3 weeks from the date of receipt of a copy of this order.
35. The aforesaid judgement shall apply only in respect of the petitioners and shall not be cited as a precedent by any other candidate who has not approached the Court as on 2022 in respect of the selection process.
36. With the aforesaid directions, both the writ petitions shall stand disposed of.
37. There shall be no order as to costs.

38. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)