

S/L 47
21.03.2024
Court. No. 3
Sourav

WPA 11962 of 2021

**Maina Mal
Vs.
Union of India & Ors.**

*Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Ambiya Khatun*

...for the petitioner.

*Ms. Sumita Das De
Ms. Sangita Das*

...for the Union of India.

1. Both the petitioner and the respondents/ Union of India and its officials are represented by their respective learned advocates.
2. Heard learned advocates for the contending parties at length.
3. By filing the instant writ petition, the writ petitioner has prayed for cancellation and/or quashing and/or setting aside the order of rejection of her candidature which has been communicated to her by the respondent authorities, more specifically, the member of the Recruitment Board of the respondent authorities by issuing a rejection slip dated 21.04.2021 which has been annexed with the writ petition vide Annexure P-7 at Page 20.
4. Mr. Samim Ahammed, learned advocate for the writ petitioner in course of his submission draws attention of this Court to the print out of the provisional application as submitted by the writ petitioner with the respondents. It is argued that due to *bona fide* mistake, the date of birth of the petitioner has been typed as '02.01.1992'

instead of '15.04.1992'. It is further argued by Mr. Ahammed, learned advocate for the writ petitioner that such mistake occurred since in the Aadhar Card of the writ petitioner (Annexure P-1), her date of birth was written as '02.01.1992'. It is further argued on behalf of the petitioner that the petitioner's aforesaid application was duly scrutinized by the respondent authorities and she appeared in Computer Based Examination (CBE, in short) as conducted by the respondent authorities and after clearing such examination, she has been called for Physical Efficiency Test (PET, for short) and after qualifying the said PET, she was called for medical examination.

5. It is further contended that at the time of said medical examination, some documents have been verified by the competent authorities of the respondents and at that time, the aforementioned mismatch of actual date of birth was identified since in the School Leaving Certificate i.e., in the Admit Card issued by the West Bengal Board of Secondary Education, the date of birth of the petitioner was written as '15.04.1992'.
6. It is further argued that immediately after detection of such discrepancy, the writ petitioner has not only corrected her Aadhar Card incorporating her actual date of birth (Annexure P-3 of the writ petition) but also submitted two affidavits; i) sworn by her and ii) another sworn by her father, Tapan Mal, declaring that her actual date of birth is '15.04.1992' instead of '02.01.1992'. It is argued that despite such correction and/or rectification,

the respondent authorities rejected the candidature of the writ petitioner solely on the ground: “DOB (Date of Birth) mismatch”.

7. In course of his submission, Mr. Ahammed, learned advocate for the writ petitioner submits before this Court that on account of such unintentional and unforcible mistake, the writ petitioner had not taken any undue advantage to get her selected in the said post of Constable and, therefore, the respondent authorities ought to have considered the mistake committed by the writ petitioner with regard to the actual date of birth leniently.
8. Placing reliance upon a reported decision in ***Vashist Narayan Kumar Vs. The State of Bihar & Ors.*** reported in **(2024) 1 S.C.R. 1**, it is argued on behalf of the writ petitioner that in a similar circumstance, the Apex Court in the said reported decision expressed the view that the error in the application is trivial in nature which did not play any part in the selection process.
9. It is further submitted by the learned advocate for the writ petitioner that since the error and/or mistake committed by the writ petitioner has been done inadvertently and since the same does not tantamount to misrepresentation or fraud, the respondent authorities ought not to reject the candidature of the writ petitioner simply on the ground of mismatch of date.
10. Drawing attention to page no. 65 of the affidavit-in-opposition, it is further argued by Mr. Ahammed that for the first time i.e., while filing affidavit-in-opposition in the instant writ petition, the respondent authorities have

taken a completely new plea that even if, the mismatch of date of the writ petitioner is ignored, the writ petitioner's candidature cannot be considered favourably since her marks is much below the cut off marks of the last selected candidate for the West Bengal State (Female).

11. It is further argued by Mr. Ahammed that since the Annexure B to the affidavit-in-opposition is a new document which is totally foreign to the instant litigation and since the same has never been communicated to the writ petitioner, the contention of the respondents in respect of Annexure B of the affidavit-in-opposition may be ignored. Mr. Ahammed, learned advocate for the writ petitioner thus submits that it is a fit case for allowing the instant writ petition by quashing the order of rejection of the candidature of the writ petitioner by the respondent authorities.
12. Per Contra, Ms. Das Dey, learned advocate for the respondents in course of her submission at the very outset draws attention of this Court to page no. 20 vis-à-vis page nos. 32, 38 and 43 of the affidavit-in-opposition. It is argued by her that in the notice of advertisement as issued by the respondent authorities, it has been categorically mentioned that while submitting an online application, the candidates have to be vigilant and no request for any change in preference will be entertained by the respondent authorities under any circumstance. It is submitted by learned advocate for the respondent authorities that since such a decision is a policy decision, the same is not amenable to the writ jurisdiction.

13. It is further argued that on a cursory reading of all the clauses of the notice of advertisement, it would reveal that in the event a candidate is called for a medical examination and even if, she has passed such medical examination, it cannot be presumed that she has been selected for the post for which he/she applied for. It is further argued that in page no. 38 of the affidavit-in-opposition, mode of selection has been described elaborately.
14. It is further argued on behalf of the respondent authorities that in accordance with the mode of selection, the present petitioner cannot be considered as a qualified candidate even if, the discrepancy regarding her date of birth is overlooked since it has been placed on record by affidavit that the marks secured by the writ petitioner is far below the cut off marks as obtained by last selected candidate in State of West Bengal (Female) namely, the last selected candidate has obtained 44.45672 while the petitioner has obtained 42.97218. It is thus argued that under no stretch of imagination, it can be said that the writ petitioner is a qualified candidate on the basis of the aforementioned arithmetical calculation. In course of her argument, learned advocate for the respondents submits before this Court that result of the aforesaid recruitment examination has already been published. In course of her submission, she placed reliance upon an unreported decision dated 28.08.2012 as passed in ***Writ – A No. 48846 of 2006 (Ram Kailash Saroj & Anr. Vs. Government of India & Ors.)*** which has been

annexed as Annexure C to her affidavit-in-opposition. It is thus submitted that the instant writ petition is devoid of any merit.

15. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, this Court considers that it becomes obligatory for this Court to come to a logical conclusion as to whether the respondent authorities are at all justified in rejecting the candidature of the writ petitioner basically on the ground of “DOB mismatch”. From the materials as placed before this Court, it appears that undoubtedly in her online application, the writ petitioner has mentioned her date of birth as ‘02.01.1992’ while her actual date of birth is ‘15.04.1992’. Sufficient materials have been placed before this Court that while submitting her online application, the writ petitioner was misled on account of wrong entry of her date of birth in her Aadhar Card though correct date has been mentioned in her Admit Card as issued by the West Bengal Board of Secondary Education. From chronology of events, it reveals that as soon as such mistake has been identified and/or brought to the notice of the writ petitioner by the respondent authorities, the writ petitioner has taken appropriate steps for correction of her date of birth in her Aadhar Card and she has also submitted two affidavits stating her current date of birth including the copy of her birth certificate.
16. From the conduct of the writ petitioner, it thus appears to this Court that even though, she had furnished a wrong

information with regard to her correct date of birth, she had corrected and/or rectified the same in due course. Admittedly, nothing could be placed before this Court either on the side of the writ petitioner or on behalf of the respondent authorities that by furnishing such wrong date, the writ petitioner had made an endeavour to take some undue advantage in her favour.

17. In view of such, the next question arises as to whether such an action on the part of the writ petitioner is at all condonable or not.
18. In considered view of this Court, the reported decision of ***Vashist Narayan Kumar (Supra)***, shows the right path inasmuch as the Supreme Court while deciding the aforementioned case practically on similar facts and circumstances held the following:

“18. The learned counsel for the State drew attention to the verification by the appellant, of the details in a printed form furnished by the selection board. He contended that the appellant signed the form which carried the date of birth. First of all, the form was a printed form which reflected the date of birth as given by the appellant and the appellant signed the printed form on 10.03.2018. We are inclined to accept the explanation of the appellant that since the appellant was unaware of his own mistake he had mechanically signed the printed form. It is only later, on 11.06.2018, on the publication of the result that the appellant realized the error. We do not think that the appellant could be penalized for this insignificant error

which made no difference to the ultimate result. Errors of this kind, as noticed in the present case, which are inadvertent do not constitute misrepresentation or wilful suppression.

19. In this case, the appellant has participated in the selection process and cleared all the stages successfully. The error in the application is trivial which did not play and part in the selection process. The State was not justified in making a mountain out of this molehill. Perhaps the rarefied atmosphere of the cybercafé, got the better of the appellant. He omitted to notice the error and even failed to avail the corrective mechanism offered. In the instant case, we cannot turn a Nelson's eye to the ground realities that existed. In the order dated 22.11.2021 in C.A. No. 6983 of 2021 [Prince Jaibir Singh vs. Union of India & Ors], this Court rightly observed that though technology is a great enabler, there is at the same time, a digital divide.

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21. Learned counsel for the State, in the written submissions, stated that the instructions clearly stipulated that if two or more candidates obtain the same marks in the Physical Eligibility Test, their relative rank in the final merit list could be determined on the basis of their date of birth. The implication in the submission is that the date of birth is a significant aspect. On that basis, he submits that the cancellation ought to be upheld. We do not find merit in the submission. The original date of birth, as available is 18.12.1997, in the

educational certificates. There is no dispute that the appellant's date of birth was, in fact, 18.12.1997. In view of that, we do not see the said clause in the instructions as an impediment for the selection of the appellant."

19. Keeping in mind the proposition of law as discussed in the reported decision of ***Vashist Narayan Kumar (Supra)***, it appears to this Court that the mistake and/or error committed by the writ petitioner while submitting her online application regarding furnishing information of her actual date of birth is unintentional and without any ill-motive. Sufficient materials have been placed before this Court that the writ petitioner has been misled on account of wrong entry in her Aadhar Card. It has also been placed on record that in course of medical examination, she has submitted her school examination certificate as well as two affidavits to intimate and/or inform the respondent authorities regarding her actual date of birth. This Court further considers that the action on the part of the writ petitioner in furnishing the wrong date of birth does not tantamount to an act involving moral turpitude as well as the same does not raise any question with regard to the honesty and integrity of the writ petitioner.

20. Considering such circumstances, this Court is constrained to hold that the respondent authorities have taken unnecessary strict and rigid stand while rejecting the petitioner's candidature on the aforementioned ground and accordingly, the rejection slip dated

21.04.2021 as issued by the member of the Recruitment Board of the respondent authorities stands hereby quashed and set aside.

21. So far as the Annexure B to the affidavit-in-opposition i.e., the letter no. A-VI-867/2018-RECTT (SSB)-CT/GD-2018 dated 10.08.2021 as written by N. K. Singh, DIG (Recruitment) is concerned, it appears to this Court that the contents of such communication has never been communicated to the writ petitioner since the candidature of the writ petitioner was cancelled only on the ground of mismatch of her date of birth. The alleged non-securing of requisite cut off mark in the above recruitment examination for the West Bengal State (Female) is of little consequences in disposal of the instant writ petition.

22. In view of the discussion made herein above, while allowing the instant writ petition as well as while cancelling and/or setting aside the rejection slip dated 21.04.2021 as issued by the member of the Recruitment Board of the respondent authorities, this Court in exercise of its plenary power directs the respondent authorities, more specifically, the respondent no. 2 to consider the representation of the writ petitioner by treating the instant writ petition as her written representation and, thereafter, to pass a reasoned order with regard to the eligibility of the writ petitioner for the post she has applied for within two months from the date of communication of this order.

23. It is further directed that before passing the reasoned order, the respondent no. 2 shall give a sufficient opportunity of hearing to the writ petitioner either personally or through her learned advocate at a place preferably in Kolkata but not outside the State of West Bengal. Liberty is given to the writ petitioner to furnish her e-mail account details to the respondent no. 2. On receipt of such e-mail account details from the writ petitioner and on conclusion of the hearing, the respondent no. 2 shall communicate its reasoned order positively within three days from the date of passing of such order to the writ petitioner through e-mail.
24. With the aforementioned observation, the writ petition being **WPA 11962 of 2021** is allowed and disposed of.
25. All parties to act on the server copy of this order duly downloaded from the official website of this Court.
26. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)