

Form No. J. (2)
Item No.1

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 06.09.2024

DELIVERED ON: 06.09.2024

**CORAM:
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**W.P.A. 12575 of 2017
With
IA No. CAN 2 of 2022**

**Sumit Kumar Bhattacharya
Vs.
The State of West Bengal & Ors.**

Appearance:-

**Mr. Biswaroop Bhattacharya
Mr. Purnasis Bhuniya**

.....For the Petitioner

**Mr. Chandi Charan De, Ld. AGP
Mr. Anirban Sarkar**

.....For the State

**Mr. Tapash Kumar Bhattacharya
Mr. Aviroop Bhattacharya**

.....For Dainhat Municipality

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioner has prayed for setting aside the Memo dated September 26, 2014 issued by the Directorate of Local Bodies (for short "DLB), Government of West Bengal in this writ petition. By the said Memo, the DLB held that the approval of appointment of the petitioner cannot be accorded to for the post of Accountant.

2. Pursuant to the Notification issued in the Bengali daily on February 24, 2012 inviting applications from eligible candidates for appointment to the post of Accountant in Dainhat Municipality (for short, "Municipality"), the petitioner applied for the said post. The petitioner participated in the selection process and he was ultimately selected by the Selection Committee constituted by the Municipality. The petitioner was placed at the top of the panel and the Chairman of the Municipality sought for approval of such appointment from the DLB. Alleging inaction on the part of the respondent authorities, the petitioner approached this Court by filing a writ petition, being WP No.12761 (W) of 2014 wherein a Co-ordinate Bench of this Court, by an order dated May 14, 2014, directed the DLB to pass a reasoned order and to communicate the same to the petitioner and the Chairman of the Municipality within the time-limit specified therein. Pursuant to the said direction, the DLB after hearing the parties, passed a reasoned order dated September 26, 2014 thereby observing that the approval of appointment of the petitioner cannot be accorded to for the post of Accountant.
3. The DLB in the said order observed that the age limit of the candidates for the post of Accountant shall be between 18-37 years and the Municipality, while issuing the employment Notification, fixed the age-limit between 18-40 years, which was contrary to the provisions laid down in the rules. The DLB held that the candidates for the post of Accountant beyond the age of 37 years were ineligible for the post of Accountant in terms of the rules laid down in that regard.
4. Mr. Biswaroop Bhattacharya, learned Advocate appearing for the petitioner submits that pursuant to the Notification published in the newspaper, the

petitioner applied for the post of Accountant. It was mentioned in the said Notification that the maximum age is 40 years as on January 1, 2012. He submits that since the petitioner was within the age-limit stipulated in the said advertisement, he applied for the post of Accountant and thereafter participated in the selection process. He submits that the petitioner was placed in the first position in the said panel and, therefore, the petitioner ought to have been appointed in the said post.

5. Mr. Tapas Bhattacharya, learned advocate appearing for the Municipality submits that the Government of West Bengal, Finance Department, Audit Branch issued a Notification no.11653-F(P) dated December 30, 2011 thereby fixing the upper age-limit as 40 years. He submits that such Notification came into effect from January 1, 2012. He submits that in view of the Notification dated December 30, 2011, the Municipal Authority published the employment notification fixing the upper age-limit as 40 years.
6. Mr. Chandi Charan De, learned Additional Government Pleader submits that the DLB after taking into consideration the provisions of the West Bengal Municipal Employees Recruitment Rules, 2005 and after taking note of the Rule 4(2) of the said rules observed that in case of direct recruitment for the post of Accountant, the upper age-limit should be 37 years. He submits that since the age of the petitioner as on the date of publication of the advertisement was beyond 37 years, the petitioner was over aged and, therefore, not eligible for appointment to the said post.
7. Heard the learned advocates for the parties and perused the materials placed.
8. It is not in dispute that the Municipality applied before the D.L.B. for permission to fill up several posts including the post of Accountant vide letter

dated September 27, 2010 and the D.L.B. vide memo dated June 21, 2011 accorded permission for filling up the sanctioned posts including the post of Accountant under the Municipality. It is also not in dispute that the Joint Director of Local Bodies was also one of the members of the Selection Committee constituted for the purpose of selecting the candidates for the post of the Accountant.

9. Rule 4 of the West Bengal Municipal Employees (Recruitment) Rules, 2005 (for short, “ the 2005 Rules”) specifies the qualifications for various posts. Clause 10 of the 2005 Rules deals with the post of Accountant. Sub-Clause (b) deals with the qualification for the post of Accountant and it is stated therein that in case of direct recruitment, the minimum age-limit for such recruitment shall be 18 years.
10. Rule 4(2) of the 2005 Rules states that in all cases of direct recruitment, excepting in the post of Secretary, Tax Collecting Sarkar and Teacher, the upper age-limit shall be 37 years. Proviso thereto states that the provisions of the West Bengal Service (Raising of Age Limit) Rules, 1981 shall apply.
11. The Government of West Bengal, Finance Department, Audit Branch in exercise of power conferred by proviso to Article 309 of the Constitution of India issued a Notification No.11653-F(P) dated December 30, 2011 wherefrom it appears that the Governor was pleased to make some amendments in the West Bengal Services (Raising of Age limit) Rules, 1981. The said Notification would be relevant for the purpose of deciding the issues involved in this writ petition and for which the same is extracted hereinafter:-

“In exercise of the power conferred by the proviso to article 309 of the Constitution of India, the Governor is pleased hereby to make the following amendments in the West Bengal Services (Raising of Age limit) Rules, 1981,

published with this Department notification No. 10317-F dated the 31st December, 1981, as subsequently amended (hereinafter referred to as the said rules:-

Amendments

In the said rules,-

- (1) In sub-rule (2) of rule 1 for the words, figures and letters “the 31st December, 2011, substitute the words, figures and letters, “the 31st December, 2016.”*
- (2) Where the upper age-limit for recruitment to any post or service is fixed at less than 32 years, such upper age-limit shall be raised to 32 years.*

Provided that upper age-limit for the direct recruitment to all Group ‘C’ and Group ‘D’ posts shall be 40 years:

Provided further that where recruitment to any post or service is made in accordance with the West Bengal Regulation of Recruitment in State Government Establishments and Establishments under Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 (West Ben. Act, XIV of 1999) and rules or notifications issued thereunder and not through the Public Service Commission, West Bengal, the upper age-limit shall be raised to 40 years.”

2. This notification shall come into force with effect from the 1st January, 2012.

By order of the Governor,

*Sd/- C.M. Bachhawat
Principal Secretary to the
Government of West Bengal
Finance Department.”*

12. The 2nd Proviso would be relevant for the case in hand and it appears that where recruitment to any post or service is made in accordance with the West Bengal Act, XIV of 1999 and Rules or Notifications issued thereunder and not through the Public Service Commission, West Bengal, the upper age-limit shall be raised to 40 years. It was further noted that the Notification shall come into force with effect from January 1, 2012.
13. The Director of Local Bodies while passing the order impugned did not take note of the amendment in the 1981 Rules vide Notification dated December 30, 2011.

14. In view thereof, the order dated September 26, 2014 stands set aside and quashed.
15. The Director of Local Bodies is directed to consider the issue of approval of appointment of the petitioner afresh in the light of the Notification dated December 30, 2011 as extracted hereinbefore by passing a reasoned order after giving an opportunity of hearing to the petitioner, the Municipality or their authorized representatives on or before October 1, 2024.
16. The petitioner is directed to communicate the server copy of this order to the appropriate respondents forthwith.
17. With the above directions, writ petition and the connected application stand disposed of.
18. There shall be however, no order as to costs.
19. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)