

2.5.2024
Ct.35,sl27
& 28,sk

**W.PA 6519 of 2020
CAN 1 of 2020), (CAN 2 of 2020)**

Krishna Keshab Dandi & Ors.-vs-State of West Bengal & Ors
with
WPA 12591 of 2022
Asim Das & Ors.-vs-State of West Bengal & Ors.

Mr. Arka Maiti
...for the petitioners (In WPA 6519 of 2020)

Dr. Sutanu Kr. Patra
Ms. Supriya Dubey
.....for the WBSSC Item Nos. 27 & 28).

Mr. Biswaroop Bhattacharya
Mr. Golam Mohiuddin
Mr. Anindya Bose
Ms. Puja Mondal
Mr. Mridul Biswas
....for the petitioners (In WPA 12591 of 2022).

Mr. Panaki Dhole
Ms. Ananya Neogi
...for the State (In WPA 12591 of 2022).

1 The writ petition being WPA 6519 of 2020 and WPA 12591 of 2022 are being taken up together for hearing and disposal by dint of this common judgment, since the subject matter is same.

2) The petitioners are the wait listed incumbents for the post of Headmaster, in the panel prepared and published on January 16, 2019. The selection test was held in the year 2017. The notification was published on June 12, 2017 and written test was taken on December 17, 2017.

3) There are some petitioners whose names have not found place in the waiting list even after obtaining equal or more aggregate than the last empanelled wait listed candidate.

4) At present, the writ petitioners are seeking relief of consideration of their prayers to take part in the counseling process, the last round of which has been concluded on January 13, 2020. Alternatively, they have prayed that the concerned authority, may be directed to consider their such prayers reasonably.

5) The fact remains that after publication of the panel on January 16, 2019, the issue came before this Court in litigation. The entire selection process was stalled by dint of an order of the Court dated January 22, 2019. Such interim order was however, vacated subsequently, vide order dated June 26, 2019.

6) The respondent authority has claimed that life of the panel, published on January 16, 2019, has expired on January 15, 2020, that is, after a period of one year, as stipulated. The writ petitioners have urged that the six months period, during which the operation of the panel was stayed by virtue of an order of this Court(as stated above), may be treated to have been added to that survival period of one year of the panel and they may be given opportunity to take part in the counseling process.

7) Mr. Maiti, learned advocate for the petitioners has submitted two folds. Firstly, he says that the writ petitioners have received either similar or more number in aggregate, than

the last empanelled candidate in the waiting list. Therefore, he says that the petitioners should have been considered as eligible and called for to take part in the counseling process. The second limb of his submission is that since after publication of the result of the selection test the further process was stayed by dint of an order of this Court till June 26, 2019. During the said period of six months, the panel as prepared may be considered to have stayed alive.

8) It is further submitted that since the vacancies are still available for the post, the writ petitioners who are otherwise eligible on the basis of the marks obtained, may be granted opportunity to take part in the counseling process.

9) Dr. Sutanu Patra, learned advocate is appearing for the respondent/School Service Commission. He has submitted that while inviting the candidates for counseling, the said respondent has maintained 1:2 ratio i.e. two candidates have been called for interview, as against one post. That, the total number of candidates to be called for, to take part in the counseling process, has been determined in this process. Rest have not been so invited. He very sincerely and amiably informs the Court, that sequence of the candidates, having same aggregate, was determined as per their respective age, that is date of birth. He guesses that while maintaining an aggregate number of interviewees commensurate to the ratio, as above and on the basis of their respective dates of birth, some candidates with

similar aggregate, like that of the persons called for counseling, may have been left out of the zone of consideration.

10) Dr. Patra has further submitted that in large scale recruitment process as undertaken by the Commission, there might have been several numbers of candidates having similar aggregate. In that event, according to the policy decision of the Commission, the aggregate marks of the candidate and his date of birth together, have been considered to determine his place in the panel and eligibility to be called for counseling. The concerned respondent Commission has acted within the periphery of the policies set up by it for the purpose and thus within its authority and jurisdiction, he states.

11) It appears that the writ petitioners undisputedly have got an aggregate of number in the written test, similar to or more than some of the candidates, who have been called for interview by the Commission.

12) It is learnt that the same is pursuant to a policy undertaken by the respondent/Commission, to call the candidates at the ratio 1: 2 and determining the number of total prospective interviewees, in that way. This has been a policy decision of the Commission, in the process of recruitment. However, the eligibility of the present writ petitioners having similar or more aggregate, could not be denied by the respondent/Commission.

13) In such view of the fact, the Court cannot help but notice, that the policy decision of the Commission, as above, in

the process of recruitment, has effected unequal treatment amongst the equals without any reasonable or intelligible basis. The ratio as above, may not be stuck to, in that case, to safeguard discrimination being meted out to similarly placed persons, like the writ petitioners.

14) Under such circumstances, this writ petition is disposed of by directing the respondent/Commission to consider the case of the petitioners as made out in these writ petitions, and pass a reasoned order as to the prayers of them.

15) In doing so, the respondent/Commission shall give opportunity of hearing to the present writ petitioners and also to all other concerned and interested person/s, as it may deem fit and proper. The said respondent shall consider and dispose of the petitioners' prayer as above within a period of eight weeks from the date of communication of this order.

16) The writ petitions no. WPA 6519 of 2020 and WPA 12591 of 2022 are disposed of along with applications pending, if any.

17) Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)