

5th November, 2024
(D/L No.36)
Ct. No.4
(SKB)

W.P.S.T.87 of 2019

Sri Pradyat Saha
Versus
The State of West Bengal and others

Mr. Soumya Majumder,
Mr. Anindya Lahiri,
Mr. Gourab Das,
Mr. Mainak Ganguly,
Mr. Arkadipta Sengupta
... for the petitioner.

Ms. Shraboni Sarkar,
Ms. Krishna Yadav
... for the Public Service Commission.

Mr. Tapan Kumar Mukherjee, A.G.P.,
Ms. Sangita Roy,
Mr. Kartik Chandra Kapas
... for the State.

1. Heard learned counsel for the petitioner as well as the learned counsel for the respondents.
2. The present writ petition arises out of an order passed by the State Administrative Tribunal on 8th August, 2018.
3. The brief factual background is that an advertisement was published bearing No.4 of 2015 in the month of April, 2015 by the Public Service Commission for recruitment of Assistant Public Prosecutors. The petitioners are the unsuccessful candidates and had approached the Tribunal assailing the recruitment process and the result on the ground that the same was

vitiated because the process for selection/rules were changed in the midst of the selection process. It is submitted that it is by now a settled legal proposition that once a recruitment process is set in motion under a rule or based on specific criteria, it is required to be carried through till the publication of result, based on such criteria. Any change in the criteria in the midst of the selection process, cannot be sustained on the touchstone of fairness and the Commission having done so in the present case, the selection process is rendered illegal and liable to be set aside.

4. Mr. Majumder, learned counsel for the petitioner has further submitted that prior to the notification of the selection process, the Commission in its meeting dated 19.09.2014 had vide item no.(iv) resolved as to the allocation of cut-off marks to be prescribed for selection process/es. Pursuant to such decision of the Commission, the advertisement incorporated a stipulation regarding prescription of minimum cut-off marks which can be seen in the advertisement no.4 of 2015, in the present case, wherein the scheme and syllabus have been prescribed. The relevant extract reads as follows:

“PART-II: Personality Test

For this purpose, a limited number of candidates selected on the results of the written examination will be called to appear at the personality test. The final merit list will be prepared on the basis of total marks obtained in the written examination and in the personality test.

N.B.: The Commission shall have the discretion to fix qualifying marks in the aggregate.”

5. Referring to the same, it is submitted that at the time of commencement of the recruitment process, the Commission based on a conscious decision specified its discretion only to fix the qualifying marks in the aggregate. The Commission, therefore, did not have any discretion otherwise.
6. Having regarding to the said prescription, it is submitted that the Commission was bound to proceed with the recruitment process retaining the discretion only to prescribe the minimum qualifying marks in the aggregate and not separately for the various levels of the examination, namely, written, interview and/or in the aggregate.
7. The learned counsel for the Commission, on the other hand, has laid emphasis on the fact that the Commission had come out with an announcement widely published in the two newspapers as well as on the website of the Commission on 04.07.2015. The announcement reads as follows:

“The Commission may fix qualifying cut-off marks for all the categories of vacancies in each level of examination i.e. written, interview and in aggregate.”

8. It is only after the Commission had duly notified, its discretion to fix the qualifying or cut-off marks in each level of the recruitment process, i.e. written, interview and in the aggregate, that the Commission proceeded to conduct the written examination from 25th July, 2015. After publication of the result of the selected candidates in the written examination, the interview was conducted based on a minimum qualifying marks/cut-off marks being 38 marks.
9. The change in the recruitment process having been duly notified, there is no scope for the candidates who participated in the selection process without any demur, and with open eyes to contend that they are in any manner affected by the change; or that it can be said to be illegal.
10. The prescription of 38 marks as the cut-off marks in the selection process was specified in exercise of discretion duly notifying by the announcement dated 04.07.2015. It has been uniformly applied to one and all candidates and, therefore, there is no occasion for the petitioner to contend otherwise.
11. The learned counsel for the petitioner in reply has submitted that the notification at any

rate is much after the initial advertisement published in April 2015, at the time of commencement of the selection process, which fact is not in dispute. He has further submitted that the candidates were entitled to know the exact minimum qualifying marks prior to the commencement of the selection process. Publication of the same prior to the examination does not meet the requisite fairness in the selection process. He has further submitted that the Commission's argument hinges on applicability of the principles of promissory and equitable estoppel which may apply only where the person has knowledge of the change which, in the present case, is not applicable. In this regard, he has referred to the Apex Court's decision ***Sivanandan C.T. and others Vs. High Court of Kerala and others*** reported in **2023 SCC Online SC 994**.

12. The last limb of the submissions advanced by the learned counsel for the petitioner is based on the information application, and the information made available under the Right to Information Act to one candidate, copy of which is enclosed with the writ petition as Annexure P-3. The first query in the application is as follows:

“1. What is the basis of selection of Mr. Dorji Tshering Sherpa, bearing Roll No.0100099, who absented himself in the Paper III and IV of the said examination? Can a candidate who absents himself in interview be considered for PT, as per WBPSA norms? If yes, please specify the said norms/law.”

13. Response thereto of the Commission at page 106 reads as follows:

“Regarding query 1:- A candidate who did not appear in two papers of the written examination under reference may still get selected if he/she fulfilled all the criteria considered for recommendation.”

14. It is submitted that the reply to the query no.1 in the application filed under RTI, itself discloses the shady manner in which the process of selection has been conducted. It leaves no room for doubt that fairness has been lacking in the selection process and, therefore, this court ought to interfere with the process of recruitment and the result thereof.

15. Having considered the rival submissions, we are further informed that a coordinate Bench of this court has considered the challenge to the recruitment process in question, based on the same ground as is being urged by the petitioner herein regarding change of the criteria of recruitment in the midst of the selection process.

16. Decision in the case of **Sivanandan C.T. and others** (Supra) relied upon by the learned counsel for the petitioner has also been considered by the coordinate Bench in the case of

Tamasi Konner Vs. The State of West Bengal and another and analogous cases decided on 29th August, 2023. The decision in the said case with respect to the same recruitment process and on the same ground is to the effect that the candidates are estopped from assailing the recruitment process on the ground of change of criteria during the process of selection, for the reason that the change in criteria was duly notified even before the written examination took place.

17. We are also of the same view. The candidates after being notified of such change in discretion being retained by the Commission to prescribe a minimum qualifying cut-off marks at each level of the selection process have participated in the recruitment process with open eyes and without any demur.

18. Even though the candidates were aware that there would be a prescription of cut-off marks both at the written stage as also at the personality test. The candidates, including the petitioner have participated in the selection process and, therefore, they cannot be heard to contend that such change in any way would render the selection process to be unfair or illegal.

19. As regards the argument that the principles of promissory and equitable estoppel are inapplicable in the present case by referring to the decision **Sivanandan C.T. and others** (supra), we are not persuaded by such submission based on the said decision of the Apex Court for the reason that the decision in the case of **Sivanandan C.T. and others** (supra) was rendered in a completely different set of facts and circumstances. In the said case, the test was held between January 14, 2017 and January 16, 2017. The decision to prescribe the cut-off mark was taken much thereafter on January 27, 2017. The present case, however, is completely different where the change was notified in two newspapers and on the Commission's website, much before the written examination. We, therefore, find that the petitioner cannot rely on the said decision to sustain the submission advanced in this regard in the facts and circumstances of the present case.

20. Coming to the last limb of the submission regarding the RTI application and its response, we find that the application was made by someone else and not by the present petitioner. We are not in a position to ascertain whether the applicant under RTI has taken up the issue, based on the

information furnished under RTI, and if so, what is the fate of such exercise. The reply is also containing disclosures with reference to an individual which are being cited in a manner and with an intention detrimental to the interest of the individual whose name appears in the RTI application; who has not been made a party to the present proceedings. We in such circumstance are not inclined to deal with the allegations made against the individual behind his back, based on such information supplied under the RTI Act.

21. Reference/reliance to the RTI application and the response thereto, therefore, does not help the case of the petitioner in any way.
22. In view of the discussions and reasons assigned above, we find no reason to differ with the decision of the coordinate Bench in the case of ***Tamasi Konar*** (supra); and are in respectful agreement with the same, which squarely covers the present case.
23. Accordingly, the writ petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)