

WPST 116 of 2024

(Sudip Biswas Vs. The State of West Bengal & Ors.)

Mr. Anindya Bose
Mr. Santanu Maji
Mr. Mridul Biswas

.... For the petitioner

Mr. Tapan Kr. Mukherjee, Ld. AGP
Mr. Sangeeta Roy

.... For the State

On the prayer of the learned advocate appearing for the petitioner, leave is granted to implead the Director General, West Bengal Fire & Emergency Services, Government of West Bengal as a party respondent. Let necessary correction be effected in the cause title of the petition.

As Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents can also appear for the added respondent no. 6, service of copy of the writ petition upon the said respondent is dispensed with.

The present writ petition has been preferred challenging an order dated 29th April, 2024 passed by the learned Tribunal in the original application (in short, OA), being OA 43 of 2024.

Records reveal that responding to the Advertisement No. 15 of 2018, the petitioner applied and participated in a selection process for appointment to the post of Fire Operator in West Bengal Fire Service. He was thereafter

called for a written examination on 15th September, 2018 and in an interview on 22nd January, 2021 by the Public Service Commission, West Bengal (in short, PSC). As the petitioner emerged to be successful, his name was recommended by the PSC and by a memo dated 12th May, 2022 issued by the respondent no. 5, the petitioner was asked to submit the verification roll, who in turn duly submitted the same before the competent authority. Thereafter, by a memo dated 5th September, 2023 issued by the respondent no 5 to the Special Superintendent of Police (T), it was informed, *inter alia*, that –

‘Discrepancy arises regarding nationality of the V.R. – Subject. During enquiry V.R. subject did not produce any necessary documents in support of his nationality. Nationality as Indian of the V.R. subject could not be established.

During enquiry it has been established that both his parents are residing and working in Bangladesh.’

When the matter was last taken up for hearing on 4th July, 2024, a supplementary affidavit was filed by the petitioner stating, *inter alia*, that during pendency of the writ petition, a passport had already been issued in his favour on 18th June, 2024. A copy of the said supplementary affidavit was duly served upon Mr. Mukherjee and an interim order was passed restraining the respondents from filling up the post in which the petitioner has been recommended by the PSC.

Mr. Bose, learned advocate appearing for the petitioner submits that the memo dated 5th September,

2023 was produced for the first time before the learned Tribunal on 29th April, 2024 and without granting any opportunity to the petitioner to deal with the same, the OA was disposed of refusing the petitioner's prayer for appointment to the post in which he has been selected and recommended by PSC.

Drawing our attention to the annexures to the writ petition, Mr. Bose submits that the petitioner's parents are Indian nationals and they have been issued Voter Identity Cards, AADHAAR Cards. The petitioner's parents are permanent residents of the State of West Bengal and their names feature in the electoral rolls. The petitioner's father is a recorded rayiat in respect of a plot of land situated at J.L No.67, Dag no. 1656, Khatian no. 11476 and he also purchased properties in the year 1989 and 2009 and registered the same before the Additional District Sub-Registrar, Hanskhali, Nadia. The petitioner's grandfather also purchased properties upon registration of sale deed before the Additional District Sub-Registrar, Naihati, North 24-Parganas.

He submits that after passing the Madhyamik Pariksha and the Higher Secondary Examination, the petitioner obtained the Bachelor of Arts Degree and the Master of Arts Degree from the University of Kalyani in the year 2019 and 2021 respectively. He belongs to *namasudra* Caste which is recognized as a Schedule Caste. Without considering such facts, the learned

Tribunal abruptly refused the petitioner's prayer and that too by a cryptic order. Such infirmity warrants interference of this Court.

He argues that in the given facts and circumstances of the case there can be no doubt as regards the nationality of the petitioner and his parents and as such the information communicated by the respondent no. 3 *vide* memo dated 5th September, 2023 that there exists discrepancy as regards the nationality of the petitioner is not sustainable in law, moreso when prior to issuance of the passport an enquiry was conducted and a report was forwarded to the Deputy Superintendent of Police, D.I.B. *vide* memo dated 21st June, 2024 categorically observing that during local enquiry it was learnt that the identity of the petitioner has been established beyond doubt and that there is nothing adverse against him in the records of the local police station and D.I.B. records under Ranaghat Police District. In support of the arguments, reliance has been placed upon the judgments delivered by the Hon'ble Supreme Court in the cases of *Satwant Singh Sawhney Vs. D Ramarathnam*, reported in *AIR 1967 SC 1836* and *Maneka Gandhi Vs. Union of India & Ors.*, reported in *AIR 1978 SC 597*.

Mr. Mukherjee, however, denies and disputes the contention of the petitioner and submits that appropriate documents were not produced by the petitioner in support of his nationality while he filled up the

verification roll. In view thereof, the respondent no. 5 rightly issued the memo dated 5th September, 2023. During pendency of the writ petition, though the passport has been issued, the same cannot be construed as a definitive proof of the petitioner's nationality and as such, the learned Tribunal has rightly refused to exercise discretion in favour of the petitioner.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

From the documents on record it appears that the petitioner's parents are permanent residents of the State of West Bengal and such fact is explicit from the property documents and the Voter Identity Cards and AADHAAR Cards issued in their favour. The documents annexed at pages 93 to 96 would also reveal that the petitioner's parental grandmother was also issued AADHAAR Card, Voter Identity Card, PAN Card, Ration Card. The educational certificates as well as the petitioner's the Voter Identity Card, AADHAAR Card also support the petitioner's contention that he is an Indian national. Upon proper enquiry, a passport has also been issued in favour of the petitioner by the competent authority.

The petitioner was born in the State of West Bengal and he acquired his academic qualification in this State. The memo dated 5th September, 2023 appears to be a cryptic one. In the said order doubt has been expressed

as regards the nationality of the petitioner alleging discrepancies but without specifying the documents in support of such allegation or in support of the finding that his parents are residing and working in Bangladesh. On the contrary, during pendency of the writ petition, the petitioner's application for passport was considered upon conducting an enquiry and in the enquiry report it has been categorically observed that '*the identity of the subject has been established beyond doubt*'. In view thereof, no weightage can be granted to the information as conveyed by the respondent no. 5 *vide* memo dated 5th September, 2023.

Passport is generally considered as a proof of nationality. It is issued by the country's Government confirming the nationality of an individual. It is also recognized as a travel document and proof of nationality by countries worldwide. The authenticity of the documents produced by the petitioner is not questionable nor there is any allegation that forged or tampered document had been produced by the petitioner. In the said conspectus, the respondents cannot deny appointment to the petitioner, who had emerged to be successful in the selection process and has also been recommended by the PSC. Such denial of appointment affects the petitioner's constitutional right to life and livelihood and his appointment cannot be withheld on a purported plea of doubt and suspicion.

Accordingly, this Court directs the respondents to grant appointment to the petitioner to the post of Fire Operator in West Bengal Fire Service within a period of 4 (four) weeks from the date of communication of this order.

Needless to observe, in the event upon any enquiry in future, it is ascertained that the petitioner is not an Indian national, the respondents would be at liberty to take appropriate steps, in accordance with law.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)