

Item-
6. 02-04-2024

MAT 1136 of 2023
CAN 1 of 2023
CAN 2 of 2023

sg Ct. 8

The West Bengal State Electricity
Transmission Company Ltd. & Ors.
Versus
Somnath Mukherjee & Ors.

Mr. Sumit Kumar Panja, Adv.

Mr. Sumit Roy, Adv.

...for the appellants

Mr. Shaunak Ghosh, Adv.

Mr. Anindya Sundar Das, Adv.

Mr. Subrata Mandal, Adv.

Mr. Ratul Deb Banerjee, Adv.

Ms. Priya Nayak, Adv.

Ms. Paramita Mondal, Adv.

...for the respondent nos.1,2,4&6

1. The appeal is arising out of an order dated 1st May, 2023 in a writ petition in which the writ petitioners challenged the decision of the authority concerned to deny their appointments under Unreserved (Exempted Category). The learned Single Judge allowed the writ petition. Hence, this appeal.
2. The petitioner participated in the interview for the post of Junior Engineer (Electrical), Grade-II pursuant to an Employment Notification vide No. REC/2021/04 issued by the appellants. The writ petitioners applied to the post of Junior Engineer (Electrical) under Unreserved (Exempted Category). The names of the petitioners featured in the Unreserved (Exempted Category) and were sponsored by the Directorate of Employment, Government of West Bengal. This fact would appear from the office order dated 14th October, 2021 issued by the General Manager (HR & A) of

the West Bengal State Electricity Transmission Company Limited, the appellant herein. Before the learned Single Judge, reports were filed by the Corporation to clarify whether the cut off marks for a candidate in the Unreserved (Exempted Category) was 40% or 32.441%.

3. Mr. Sumit Kumar Panja, learned Counsel appearing for the appellants submits that the reports have explicitly clarified that the writ petitioners were ineligible as they did not secure the qualifying marks which fact was overlooked by the learned Single Judge. This submission of Mr. Panja as recorded in the earlier order seems to be different from the argument made before Justice Banerjee as the submission was that the Employment Notification did not specifically make any provision for the candidate under Unreserved (Exempted Category). The Employment Notification only provided for cut off marks Unreserved, OBC-A and OBC-B, Scheduled Castes, Scheduled Tribes and P.W.D.D. Candidates. Therefore, the petitioner could not be considered in the Unreserved (Exempted Category) candidates. It was further argued that there are no suitable candidate in the Exempted Category belonged to UR, SC, ST, OBC-A of OBC-B candidates and accordingly, the vacancies are now required to be filled up by Non-Exempted Category candidates. However, in the appeal, the submission is that there was an apparent mistake in the Employment Notification No. REC/2021/04 with regard to category-wise cut off marks of Junior Engineer (Electrical), Grade-II, appearing at page 73 for which the clarification was issued

with regard to cut off marks subsequently and it has been explained in the affidavit filed by the Additional General Manager (Human Resources & Administration).

4. We proceed on the basis that the cut off marks being applicable to the petitioners should be 40% on the basis of the clarification issued subsequently, is the main grievance in this appeal. In the report filed in the form of affidavit before the learned Single Judge, it would appear that the writ petitioner nos. 1, 2, 4 and 6 have secured marks more than cut off marks mentioned in the Employment Notification No. REC/2021/04 appearing at page 73 of the stay petition.
5. The deponent to the said affidavit has stated that there were 62 posts for Unreserved (Exempted Category) as per the said Employment Notification, but only 16 candidates of Unreserved (Exempted Category) secured the minimum qualifying marks in the computer based test. Admittedly, the writ petitioners mentioned above, have secured marks which is more than 32.441%. It is stated in the said affidavit that due to non-availability of the required numbers of the candidates under Unreserved (Exempted Category), the other category candidates those who had secured the minimum qualifying marks in their respective categories as per the Employment Notification, were short listed under UR(EC) for interview and all together 211 candidates were short listed for interview for UR(EC) Category. It was based on such subsequent development clarification regarding cut off marks was issued and the petitioners who applied under UR(EC) were denied appointments based on such

clarification.

6. There was no dispute that the petitioners participated in the interview and they have secured marks which is more than 32.441 and at that point of time, there was no revision of the marks. It is sought to be argued now that there are clerical mistakes in the Notification appearing at page 73 where for the UR(EC) instead of 32.441, it should be 40.000 is the cut off marks.
7. We are unable to accept the said submission as the clarification is not same as that of correction of a mistake. The document at page 74 is a subsequent document which is clearly evident from the opening paragraph of the said document namely, due to non-availability of required numbers of the candidates under Unreserved (Exempted Category). By that time, candidates were called for interview and based on the cut off marks mentioned in the said Notification appearing at page 73 all were selected. After the interview process was over, the Corporation tried to revise the cut off marks which, in our view, is not permissible. The clarification is not the same as correction of a mistake or rectification of an error. The justification for clarification is inadequate number of candidates under Unreserved (Exempted Category).
8. Hence we are unable to accept the submission as submitted by Mr. Panja that the document at page 73 is in effect amended the Employment Notification No. REC/2021/04 noticing the apparent mistake with regard to the cut off marks mentioned in the said document. Moreover, the

clarification at page 74 also does not mention anything about any mistake in the Employment Notification.

9. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.

The appeal and the applications fail. However, there shall be no order as to costs.

10. Mr. Panja has prayed for stay of operation of the order.

11. The said prayer is considered and rejected.

12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)