

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 1118 of 2022

with

CAN 1 of 2022

**The West Bengal State Electricity Distribution
Company Limited & Ors.**

VS.

Sri Shib Narayan Sardar

For the Appellants : Mr. Srijan Nayak
Mr. Debjit Mukherjee

For the Writ Petitioner/Respondent : Mr. Pratip Kumar Chatterjee

For the State : Mr. Shamim Ul Bari

Heard on : June 28, 2024

Judgment on : June 28, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated June 7, 2022 passed in W.P.A. 5479 of 2022.
2. Appeal is at the behest of West Bengal State Electricity Distribution Company Limited.

3. Appellants contend that pursuant to a scheme of compassionate appointment, the private respondent applied for grant of compassionate appointment. Private respondent was found to be underage and that the document with regard to the date of birth of the private respondent was found to be fake. His candidature was, therefore, rejected.

4. Learned advocate appearing for the appellants submits that, the private respondent is claiming his date of birth to be November 11, 1987. In support of such contention, respondent annexed a document in the writ petition. If such date of birth is taken, then the private respondent apparently passed class VIII which is the minimum educational qualification required for grant of compassionate appointment, at the age of 10 years and 05 months. Therefore, the document of educational qualification was rightly doubted and consequently the authorities were correct in rejecting the candidature of the private respondent.

5. Learned advocate appearing for the private respondent submits that, in the writ petition although the specific date of birth of the writ petitioner was not given, the writ petition itself was verified by the writ petitioner stating that he was 35 years of age in the year 2022 when such writ petition was affirmed. Calculating the age, therefore, the writ petitioner passed class VIII again at the age of 10 years and 05 months.

6. Learned advocate appearing for the writ petitioner draws the attention of the Court to two reports filed by the State pursuant to orders of the Appeal Court. He submits that, the State produced documents to show that the date of birth of the writ petitioner was November 25, 1985 as recorded with the primary school. Therefore, the writ petitioner passed class VIII at the age of 13 years and such candidature of the writ petitioner cannot be rejected by the impugned order.

7. Learned Single Judge allowed the writ petition on the ground of benefit of doubt should be given to the writ petitioner with regard to his date of birth.

8. With deepest respect, it is for the writ petitioner to establish his date of birth. He is claiming himself to be born on November 25, 1987 as well as on November 25, 1985. For the purpose of present litigation before the Appeal Court, he is claiming that his date of birth is November 25, 1985 although in the application for grant of compassionate appointment before the authorities, writ petitioner gave a date of birth as November 25, 1987.

9. Despite two reports submitted by the State as called for by the Appeal Court, it cannot be said conclusively that the date of birth of the writ petitioner is November 25, 1985.

10. In the first report, the first school at which the writ petitioner claimed for studying stated that all documents were washed away by floods. During the first round of enquiry, the writ petitioner was not found by the

State authorities and, therefore, a report stating that the date of birth of the writ petitioner remained inconclusive was submitted before the Appeal Court.

11. Thereafter, the Appeal Court directed the State authorities to undertake a fresh enquiry in presence of the writ petitioner. During the second round of enquiry, a document dated April 19, 2024 was produced which it is claimed that date of birth of the writ petitioner is November 25, 1985.

12. As a Writ Court, we are concerned with the decision making process of the administration. In the facts of the present case, the employer, the appellant herein was considering an application for grant of compassionate appointment. In such application for grant of compassionate appointment, the writ petitioner stated his date of birth to be November 25, 1987 on the basis of an educational document. Based on such claim, the educational qualification certificate was doubted. Doubt with regard such educational document still remains despite two reports of the State filed pursuant to the orders of Court.

13. Doubt expressed by the appellants at the administrative level cannot be said to be without any material basis. Documents placed by the writ petitioner himself for the consideration of the appellants for the request of compassionate appointment reasonably gave rise to such doubt. The

doubt so raised involves disputed questions of facts and ideally should not be decided in a writ proceeding. That apart, since the decision of the employer in the administrative capacity cannot be said to be perverse, the same need not be interdicted by the Writ Court.

14. In such circumstances, we allow **M.A.T. 1118 of 2022** and set aside the impugned order dated June 7, 2022 passed in W.P.A. 5479 of 2022.

15. The connected application being CAN 1 of 2022 is disposed of.

(Debangsu Basak, J.)

16. I agree

(Md. Shabbar Rashidi, J.)

S.D.