

02.07.2024
Item No. ml.30
Crt.No.02
b.r.

WPA 16735 of 2024

Sk. Md. Ashikur Rahaman
-vs-
The State of West Bengal & Ors.

Mr. Soumen Kumar Dutta
Mr. Abu Sohel
Mr. Subham Dutta
Mr. Sk. Sayan Uddin
..... for the petitioner.

Mr. Lalit Mohan Mahata, Ld. AGP
Mr. Prasanta Behari Mahata
.... For the resp. nos. 1 and 4.

Mr. Pritam Roy
Ms. Triparna Roy
... for the resp. nos. 5 to 7.

Affidavit of service filed in Court today, is taken on record.

Mr. Soumen Dutta, learned counsel, appears for the petitioner.

Mr. Pritom Roy, learned counsel appears for respondent nos. 5 to 7, the relevant Co-Operative Bank.

Mr. Lalit Mohan Mahata, learned Additional Government Pleader, appears for respondent nos. 1 and 4.

The petitioner claims to an aspirant in respect of the recruitment process announced by the concerned Co-Operative Bank by publishing a notice dated **April 15, 2024, annexure p-2 at page-17** to the writ petition for recruitment of **Data Entry Operators**. The petitioner claims that he has requisite qualifications.

Learned counsel for the petitioner, Mr. Dutta submits that there was only a website publication of the said notice dated **April 15, 2024** and there was no further publication in the widely published newspapers as required in view of the settled law relating to recruitment in the service jurisprudence. He further submits that number of vacancies for which the selection process was advertised to be held was also not mentioned in the said notice. The petitioner therefore has challenged the said notice for recruitment dated April 15, 2024 including the recruitment process in its entirety thereunder, contending that the same suffers from serious infirmities and illegalities and could not have been proceeded with. He further submits that if the recruitment process has been proceeded with, the same is liable to be set aside and cancelled.

Mr. Lalit Mohan Mahata, learned Additional Government Pleader, appears for respondent nos. 1 and 4. He submits that the said notice for recruitment would show that the recruitment announced was for temporary basis and not a public recruitment for any permanent post. He further submits that the petitioner has not applied for the said recruitment process and accordingly did not participate therein.

Mr. Pritam Roy, learned counsel appearing for the concerned Co-Operative Bank submits that the

recruitment process has already been held and there were eight number of posts, eight individual candidates have already been selected but no appointment letter has yet been issued.

At the outset, Mr. Roy raises the point of maintainability of the writ petition principally on the plea that the dispute raised by the petitioner shall have to be adjudicated by the jurisdictional Registrar, Co-Operative Society in terms of the provisions laid down under **Section 102** of the **West Bengal Co-Operative Societies Act, 2005**.

Per contra, Mr. Dutta, learned counsel appearing for the petitioner submits that the petitioner came to learn about the said recruitment process from the said website publication on the date of interview itself, i.e. on **June 27, 2024**. The petitioner, therefore, had no opportunity to apply and join the said recruitment process.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, admittedly a recruitment process was sought to be initiated pursuant to the said notice dated April 15, 2024 as referred to above issued by the concerned Co-Operative Bank. Inasmuch as, whether advertisement was also published widely through newspapers disclosing the number of posts for

which the recruitment process was held, are questions of facts and evidence.

Section 102 of the said 2006 Act deals with the disputes to be raised before Registrar. The provision provides that **any dispute concerning the management or business or affair of a Co-Operative Society other than the disputes relating to its election**, shall be the subject matter to be decided by the jurisdictional Registrar. The decision for initiating and holding a recruitment process is a policy decision of the concerned Co-Operative Society. Such policy decision has to be taken by the Board of Directors of the Co-Operative Society. It is a decision of the internal management of the Co-operative Society. The recruitment process is held for management, business and running the affairs of the Co-operative Society. The recruited employees of the Co-Operative Society shall ultimately run the management and affair of the Co-operative Society lawfully, justly and for the benefit of the beneficiaries of the said Co-operative Society.

In the considered view of this Court, the recruitment process is a part and parcel of the management or business or affair of a Co-operative Society.

Inasmuch as already discussed above, to adjudicate upon the issues involved in this writ petition,

several fact finding enquiries are required to be made, which is also within the jurisdiction and domain of the Registrar being the statutory authority to cause such enquiry. Factual enquiry and if necessary to cause an evidence action is not within the domain of a writ Court.

In view of the foregoing discussions and reasons, this Court is of the firm opinion that, the disputes raised through this writ petition is a dispute covered within the meaning and ambit of **Section 102 of the said 2006 Act.**

This writ petition is accordingly disposed of with the following directions:-

- (i) The petitioner shall be at liberty to file necessary proceeding under **Section 102 of the said 2006 Act** before the jurisdictional **Registrar** positively within a period of **two weeks** from date;
- (ii) The petitioner shall implead all the selected candidates who are selected in the said recruitment process and shall serve them copy of the application;
- (iii) In the event, such application is filed by the petitioner, the same shall be registered on the same day by the office of the Registrar and shall be placed before the jurisdictional Registrar for hearing;

- (iv) If any interim relief is applied for by the petitioner, the same shall be disposed of positively within a period of **seven days** from the date of applying such interim relief, after granting an opportunity of hearing to all the parties including the selected candidates and by passing a reasoned order in accordance with law;
- (v) The reasoned order then shall be communicated to the petitioner and the other parties including the selected candidates positively within a further period of **one week** from the date of the said order to be passed on the interim relief.

If in the meantime, if the appointment letters are issued, the petitioner shall suffer prejudice and there will be a chance of multiplicity of judicial proceeding until the prayer for interim relief is not disposed of, if applied for by the petitioner.

Accordingly, the respondent nos. 5 to 7-Co-Operative Bank shall not take any step or further steps to issue the appointment letters to the selected candidates **from today** till **seven weeks** from the date of filing of the said application by the petitioner before the jurisdictional Registrar under **Section 102 of the 2006 Act**, if interim relief is applied for.

Thereafter, the Co-Operative Bank shall be free to take steps in accordance with law without any fetter depending upon the decision of the jurisdictional Registrar on the interim relief to be prayed for by the petitioner, if any.

It is made clear that this Court has not gone into the merits of the rival claims of the parties as recorded above, the parties shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the Registrar. The selected candidates after being impleaded before the Registrar shall also be at liberty to urge whatever points they wish to urge

The Registrar while deciding the issue shall not be influenced by observation, if any, made by this Court and shall decide the issue independently in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 16735 of 2024** stands **disposed of**, without any order as to costs.

(Aniruddha Roy, J.)