

13.08.2024
Ct. No. 14
Sl. No.20
KB

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 18843 of 2024

**Azam Mohammad Molla
-versus-
The State of West Bengal & Ors.**

Mr. Sudipta Dasgupta
Mr. Arka Nandi
Ms. Sinjini Chakroborty
...For the Petitioner.

Mr. Joydip Banerjee
Ms. Tuli Sinha
... For the State.

Mr. Subir Sanyal
Mr. Ratul Biswas
Mr. Kaushik Chowdhury
... For the WBBPE.

The petitioner participated in the recruitment process for appointment of primary school teachers conducted by the West Bengal Board of Primary Education in the year 2022. His name has been empanelled in the additional panel of five per cent candidates for recruitment prepared by the Board.

According to the petitioner his name ought to have been empanelled in the main merit list from where appointments will be made.

Specific allegation is that the marks which he obtained in the Madhyamik and the Higher Secondary Examination was not properly assessed for which less marks have been awarded to him and his name has

been empanelled in the additional list and not in the primary merit list.

Prayer has been made to reassess his marks in the proper manner and place him in the proper panel according to the marks secured by him.

Learned advocate representing the West Bengal Board of Primary Education has produced the application form filed by the petitioner.

Learned advocate has placed in details that the petitioner has put in incorrect data in the application form. The full marks of the Madhyamik Examination and the Higher Secondary Education were wrongly mentioned. The marks obtained by him with and without the additional paper were also wrongly mentioned. Because of the wrong inputs given by the petitioner, the subsequent assessment by the Board may have been erroneous.

The Board granted opportunity to all the applicants to edit the entries made in the application form. The petitioner availed the said opportunity but despite the same, all the incorrect entries were not rectified.

The petitioner was given a further opportunity to correct the entries at the time of verification of documents. Even at that point of time, the petitioner failed to rectify the errors in the figures quoted by him in his application form.

Document has been produced before this Court in support of the submission that the petitioner himself signed at the time of verification of his documents in the presence of the verifier whose signature is also appearing in the verification sheet.

In spite of repeated opportunities granted to the examinee to rectify the errors in the application form, the petitioner either failed or neglected to correct the entries. At this stage the petitioner cannot blame the authority for incorrect assessment of his marks.

The petitioner did not disclose the fact of availing the opportunity to rectify his application form and the writ petition is liable to be dismissed on the ground of suppression of material facts. It has been submitted that the writ petition ought not to be entertained by the Court and is liable to be dismissed with costs.

In support of the submission that the writ petition ought not to be entertained, the Board relies upon the decision passed by the Hon'ble Supreme Court in the matter of ***K.D. Sharma -vs- Steel Authority of India Limited and Ors.*** reported in ***(2008) 12 SCC 481*** paragraphs 34 and 52 wherein the Court held that the jurisdiction of the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary. It is, therefore, of utmost necessity that the petitioner while approaching the Writ Court must come with clean hands, put forward all the facts before the

Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

Reliance has also been placed on the order dated 25th June, 2024 passed by the Hon'ble Supreme Court in Petition for ***Special Leave to Appeal (C) No(s). 13329-13330/2024*** in the matter of ***All India EPF Staff Federation -vs- Union of India & Others*** wherein the Court dismissed the Special Leave Petitions on account of suppression of material facts and directed payment of costs.

Reliance has also been placed on the unreported order dated 24th July, 2024 passed by the Hon'ble Division Bench of this Court in ***MAT 1163 of 2024 with CAN 2 of 2024*** in the matter of ***Sudip Kumar Mahato -vs- The State of West Bengal & Ors.*** wherein the Court affirmed the order of dismissal of the writ petition on account of apparent inaccuracy in disclosure of the percentage of marks by the candidate.

I have heard the submissions made on behalf of both the parties and have perused the documents placed before this Court.

Admittedly, in the instant case the figures disclosed by the petitioner in the application form are erroneous. The full marks in the Class X and Class XII Examination are wrongly mentioned. The marks obtained with and without the additional marks are also incorrectly mentioned. Because of incorrect entries, the subsequent calculation made by the parties has turned out to be erroneous.

The application form contains a declaration clause wherein the candidate declares that the information given by him are true and in the event it is found that the statements are false then the candidature of the candidate is liable to be cancelled.

From the submission made on behalf of both the parties, it appears that in spite of more than one opportunity granted to the petitioner for rectification of the mistake, the correct figures were not disclosed in the application form. Surprisingly, the verifier at the time of verification of the documents also failed to detect the mistake. Had the mistake been detected in the presence of the petitioner at the time of verification of documents, then the proper entries could have been made then and there.

It seems that the petitioner failed to appreciate that he was putting in incorrect figures in his application form making his candidature liable to be cancelled. Under mistaken belief or under absolute

misconception the full marks of the Board examinations have been incorrectly mentioned.

The mark sheet of the Madhyamik Examination of the petitioner annexed to the writ petition clearly discloses that the full marks of the examination is 800, whereas the petitioner has mentioned in the application form that the full marks of the Madhyamik Examination is 900. The marks obtained in the Higher Secondary Examination are calculated based on the marks secured in the best of five subjects. Full marks in respect of five subjects are 500 but the petitioner mentions it as 600.

By mentioning erroneous full marks the petitioner will not gain anything; on the contrary, the percentage of his marks, if calculated on the erroneous full marks mentioned by him, will come down.

Despite all the above errors in the application form the respondent authorities did not cancel the candidature of the petitioner, presumably because the Board also failed to detect the same. Had the Board detected the error in proper time, the candidature of the petitioner could have been cancelled.

The fact that the petitioner has already been empanelled in the additional panel implies that he is eligible for being appointed.

The Court has no quarrel with the ratio relied upon by the Board in the judgments referred to hereinabove. They are too well settled position of law.

Apropos the submission that the writ petition is liable to be dismissed on the ground of suppression it appears that, the petitioner has even failed to appreciate that there has been any suppression of material facts. He has annexed his marksheets but he has miserably failed to realize that the erroneous assessment of marks is because of the wrong inputs given by him. It does not appear that he had any mala fide intention in doing so. He could not have obtained any benefit by disclosing improper facts as the error would have been detected immediately upon cross checking with his testimonials.

The Court can't help but observe that though it is expected that an aspirant for a job will disclose accurate details in his application form but even thereafter the examination conducting authority must verify the entries carefully to rule out any error or else an ineligible candidate may try to manipulate the figures deliberately for taking advantage out of the same.

Keeping in mind that the writ court is a court of equity and only for the purpose of providing substantial justice to a candidate, the Court directs the Board to recalculate the marks of the petitioner relying upon the educational certificates submitted by him and not only relying upon the entries that he made in the application form.

If upon checking the marks from the mark sheet, it appears that there is any error in assessment of the marks awarded to the petitioner, then necessary changes be made.

Steps shall be taken in the matter at the earliest but positively within a period of six weeks from the date of communication of this order.

Before concluding the Court makes it clear that the petitioner ought to have been more attentive and careful at the time of filling up the application form by disclosing proper figures. This is more so because the petitioner was participating in a recruitment process for appointment of primary school teachers and such type of lapses on the part of an intending candidate who, if successful, will train a young mind, is not acceptable.

The writ petition stands disposed of.

No costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)