

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

WPA 17581 of 2010

Shabnam Parveen & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Milan Ch. Bhattacharjee, Sr. Adv.
Ms. Sulagna Bhattacharya.

For the Respondent : Mr. Tanweer J. Mandal.
Nos. 4 & 6

For the Respondent : Mr. Santanu Kr. Mitra,
Nos.1/State, 2 & 3 Mr. Subhabrata Das.

Hearing concluded on : 18.07.2024

Judgment on : 26.07.2024

Shampa Dutt (Paul) , J.

1. The writ petitioners preferred this application, stating therein that the respondents published notification in the 'Ananda Bazar Patrika' inviting applications for appointment of Court's office Staff/employees under category of group C & D.
2. The respondent no. 3 issued admit cards to each of the writ petitioners for the written test to be held on 15.03.2009.
3. On 15.3.2009 the Written Test Examination for recruitment of lower division Clerk posts for the judgeship of Nadia under group C and recruitment of peon/farash/night guard posts under group D was held and the petitioners wrote the Said exam.
4. On 03.08.2010 the respondent no. 3 published notice for viva voce test to be held on 22.08.2010 at Krishnanagar Court premises at 11 a.m. for 24 candidates of group D and 45 candidates for group C, which did not include the names of writ petitioners.
5. It is stated by the writ petitioners that the respondents no. 2 & 3 denied to give information to the writ petitioners, thus violating the The Right To Information Act, 2005 though the writ petitioners are eligible candidates and secured sufficient marks to attend viva voce test to be held on 22.08.2010 and not being called, thus not permitted to appear for the viva voce test, the writ petition has been filed praying for the following reliefs:-

- a) *A writ of Mandamus commending the respondent/authorities to allow the writ petitioners for viva voce test to be held on 22.08.2010 as per notification dated 3.8.2010 by publishing their names in supplementary notice or in any way.*
- b) *A writ of mandamus commending the respondent/authorities to allow the writ petitioners as eligible candidates for viva voce test for the post of Group C the petitioner no. 1 & 4 and Group D of other petitioners.*
- c) *A writ of prohibition restraining the respondent authorities not to hold viva voce test to be held on 22.8.2010.*
- d) *A writ of prohibition restraining the respondent 2 & 3 not to give appointment of any candidates during pendency of writ petition to do justice for appointment of eligible candidates.*

- 6. Affidavit in opposition** has been filed by the respondent no. 2 & 3 (the District Judge, Nadia cum Chairman, District Recruitment Committee) enclosing the list of successful candidate, who qualified to appear in the viva voce.
- 7.** By a letter dated 19.01.2007, Registrar General-in-charge, High Court, Calcutta issued a letter for issuing advertisement relating to vacancies.
- 8.** By a Resolution dated 19.07.2010 the recruitment committee inter-alia decided that a basic minimum mark of 40 (Forty) would have to be obtained by the candidates to be invited for viva voce and type test, being resolved by the committee. As

such to be listed for successful candidate for Group C, the candidate must have obtained a basic minimum mark of 40 (Forty). In the Resolution, 35 candidates in the General category were selected for being invited for the viva voce and type test.

- 9.** By a Resolution dated 22.07.2010, the candidates securing 75 marks and above, were called for viva voce for Group D post.
- 10.** This writ petition was heard on 20.08.2010 and an interim order was passed thereby restraining the respondents from holding viva voce test as indicated in the aforesaid notice dated 03.08.2010.
- 11.** It is further stated by the said respondents that the Chairman, Recruitment Committee published a list of the successful candidates on 03.08.2010. It would appear from the said list that the list contains the names of the successful candidates based on merit of the written examination conducted. The Group C candidates who secured 40 and more marks in the written examination and upon applying ratio of 1:5 as per resolution dated 19.07.2010 in Group C post being found eligible for viva voce test and typing skill test were invited.
- 12.** The authorities concerned vide resolution dated 22.07.2010 and as per decision of the recruitment committee, the Group D candidates securing 75 and more marks in the written examination were found eligible for viva voce test to be held on 22.08.2010 at Krishnanagar Court premises.

- 13.** Some of the successful candidates filed an application in this writ petition for addition of party being C.A.N. No. 7434 of 2011 and the said application was allowed by an order dated 19.09.2011.
- 14.** It is denied that the respondent authorities are trying to give appointment to their known persons and unfit candidates by superseding the eligible candidates like the writ petitioners, as alleged. It is also denied that the writ petitioners are eligible and bonafide candidates getting higher marks in the written examination than that of the list of candidates notified for viva voce test.
- 15.** These respondents further denied the entire case of the writ petitioners.
- 16. Vide a letter dated 19th January, 2007, the Registrar General-in-charge, High Court, Calcutta, directed as follows:-**

“To 19th January, 2007
The District Judge
Nadia at Krishnagar.

Sub: Selection of Group 'C' and Group 'D'
employees in your Judgeship/Court.

Sir,

With reference to the afore-mentioned subject, I am directed to ask you to follow the principle laid down by the Full Bench of this Hon'ble Court in the Case of Sri Rabindra Nath Mahata -vs- The State of West Bengal

and others reported in 2005 (2) C.L.J. (Cal) at page 161=2005 (3) C.H.N. at page 337 (Paragraphs 39-40) at the time of initiating the process of selection of Group 'C' and Group 'D' employees in your Judgeship. You will publish advertisement of the process of selection in most circulated local Newspaper in the district regarding the vacancies in question and will consider the applications received pursuant to such advertisement along with the candidates sponsored through Employment Exchange.

Yours faithfully,

Sd/-

Registrar General-in-charge."

- 17.** The recruitment process in the present case has got stalled for 14 years.
- 18.** The petitioners by way of CAN 7295 of 2014 sought an amendment of the writ petition, by making statements which are allegations in respect of the said recruitment.
- 19.** The Court vide order dated 12.05.2022, on hearing the prayer for amendment, did not allow the same.
- 20.** All parties herein have filed their written notes along with the judgments relied upon.
- 21.** The writ petitioners in their written argument have reiterated their case and have also made arguments which are beyond their pleadings in the writ petition.
- 22. The following judgments have been relied upon by the writ petitioners:-**

- 1) *Noor Emam Khan v. State of West Bengal & Ors.*, 2008 (1) CHN 105.
- 2) *Rabindra Nath Mahata v. State of West Bengal & Ors.*, 2005 (3) CHN 337.
- 3) *Bishnu Biswas & Ors. v. Union of India & Ors.*, (2014) 5 SCC 774.
- 4) *Duddilla Srinivasa Sharma & Ors. v. V. Chrysolite*, (2013) 16 SCC 702.
- 5) *The Excise Superintendent Malkapatnam, Krishna District ANDHR Vs. K.B.N. Visweshwara Rao & Ors.*, 1996 SCALE (6) 676.
- 6) *Jasvinder Singh & Ors. v. State of J&K & Ors.*, (2003) 2 SCC 132.

23. The Respondents No.1/State, 2 & 3, in their written notes have denied the right of the writ petitioners to appear for the viva voce, as they did not get the qualifying marks.

24. The following judgments has been relied upon by these Respondents:-

1. *Union of India & Ors. v. Ashok Kumar & Ors.*, (2005) 8 SCC 760.
2. *Anupal Singh & Ors. v. State of U.P. Through Principal Secretary, Personnel Department & Ors.*, (2020) 2 SCC 173.
3. *D. Sarojakumari v. R. Helen Thilakom & Ors.*, (2017) 9 SCC 478.
4. *Madan Lal & Ors. v. State of J&K & Ors.*, (1995) 3 SCC 486.

5. *Reserve Bank of India & Anr. v. C.L. Toora & Ors.*, (2004) 4 SCC 657.
6. *Union of India & Ors. v. N. Murugesan & Ors.*, (2022) 2 SCC 25.
7. *Union of India & Anr. v. Bilash Chand Jain & Anr.*, (2009) 16 SCC 601.
8. *Tajvir Singh Sodhi & Ors. v. The State of Jammu and Kashmir & Ors.*, 2023 LiveLaw (SC) 253.

25. The Respondent no. 4 to 6, qualified candidates (for viva voce) in their written notes have also denied the right of the writ petitioners and relied upon the following judgments:-

- i) *Union of India & Ors. vs Ashok Kumar & Ors.*, (2005) 8 SCC 760.
- ii) *Sarva Shramik Sangh vs Indian Oil Corporation Limited & Ors.*, (2009) 11 SCC 609.
- iii) *Union of India & Ors. vs S. Vinodh Kumar & Ors.*, (2007) 8 SCC 100.
- iv) *Tajvir Singh Sodhi & Ors. vs The State of J & K and Ors.*, 2023 LiveLaw (SC) 253 : 2023 SCC OnLine SC 344.

26. As directed by the Court, original records relating to the recruitment were produced by the District Judge, Nadia.

27. From the materials on record the following is evident:-

- i. The recruitment process in this case was initiated in compliance of the High Courts' Order No. 352/2-RG dated 19.01.2007.
- ii. As directed, publication in the "most circulated local Newspaper" in the District, being 'Nadia Sundar' and 'Karma Sansthan' was made.
- iii. Vide a Resolution dated 19.07.2010, the Recruitment Committee decided that a basic minimum marks of 40(forty) would have to be obtained by the candidates to be invited for viva voce and type test for the Group 'C' post. As such to be listed as a successful candidate for Group 'C', the candidate must have obtained a basic minimum mark of 40 (forty). Further on 22.07.2010, it was decided by the said Committee that the candidates securing 75 marks and above would be called for Viva Voce for Group 'D' post.
- iv. **The resolutions deciding the cut off marks for Group 'C' is reproduced here:-**

a) **RESOLUTION**

Dated:19.07.10.

Prior to deciding the list of successful candidates for the Group "C", it was decided that a basic minimum marks of 40, would have to be obtained by the candidates, to be invited for the viva voce and type test, was resolved by this Committee. It was further resolved that the

candidates, to be invited for the viva voce and type test, would be in the ratio of 1:5. In other words it would mean, that for every single post of Group "C", five candidates having minimum 40 marks would be invited.

It was decided that the next meeting of the Committee would be held on 22/07/2010.

**Sd/-
Member**

**Sd/-
Chairman**

**Sd/-
Member**

b) For Group 'D' it was as follows:-

RESOLUTION

Dated:22.07.10.

Today was fixed for selecting the examinees who had appeared for the Group-D examination and to decide the names of the successful candidates, for the 4 posts, (3 for the general candidates and 1 reserved for exempted category) as per notification no.1 dt 9.1.2007.

It is further decided that the successful candidates to be called for the viva voce should be those candidates who have secured 75 and above in the written examination, for the general, obc, sc and st category. Since the post for Ex. Category was reserved, all the five candidates who appeared, are called.

**Sd/-
Member**

**Sd/-
Chairman**

**Sd/-
Member**

- v. Written examination in this case was held on **15.03.2009**, in which the writ petitioners were permitted to sit being eligible for the same.
- vi. The writ petitioners have claimed to have acquired qualifying marks to be called for viva voce.

- 28.** The respondent no. 2 and 3's case and documents show that the writ petitioners did not get the qualifying marks, though there is no pleading in the writ petition as to which group (specifically) they have applied for.
- 29.** The Registrar General, High Court, Calcutta had informed the District Judge to follow the guidelines of the Apex Court in ***Rabindra Nath Mahata vs State of West Bengal & Ors.*** (2005 (2) CLJ (Cal) 161=2005 (3) CHN 337 (Para 39-40)) at the time of initiating the process of recruitment. **Para 39 and 40 is reproduced here:-**

39. *In such a situation in the decision in Abu Taker (vide supra), the Apex Court had held:*

"On a writ petition being filed, the learned Single Judge disposed of the matter holding that for the appointment of a Teacher in Arabic, the candidate should possess B.A. with Arabic combination and not with B.A. Special Arabic. Appropriate direction was given to the District Inspector of Svchools, Murshidabad to ignore the candidature of the present appellant, who was respondent No. 6, since he had the qualification of B.A. with Special Arabic and not B.A. Arabic combination. Against the judgment of the learned Single Judge, the appellant approached the Division Bench. The Division Bench without considering the ground on which the appellant is held to be disqualified for being appointed went into the question as to whether his name had been sponsored by the Employment Exchange and then following the earlier decision of the said Court namely Debasis Dutta (vide supra) came to hold that since appellant's name had not been sponsored by the Employment Exchange, he was ineligible for being considered for the post in question. It is this order of the Division Bench which is being assailed.

Sri Krishnamani appearing for the appellant contended that the aforesaid conclusion of the

Division Bench of the Calcutta High Court is erroneous in view of the decision in Excise Superintendent, Malkapatnam, Krishna District, Andhra Pradesh v. K.B.N. Visweshwara Rao [1997 (1) L.L.N. 8] (vide supra) and Raj Kumar v. Shakti Raj (vide supra). We find sufficient force in the aforesaid contention and as such the name of the appellant cannot be excluded from consideration merely because his name had not been sponsored by the Employment Exchange. In that view of the matter, the Division Bench of Calcutta High Court not having applied its mind to the merits, namely whether B.A. with Special Arabic can be said to be the same of B.A. with Arabic combination on which reasoning the learned Single Judge allowed the writ petition, it would meet [be fit] and proper to direct the Calcutta High Court to decide the case on merits. We, therefore, set aside the impugned judgment of the Calcutta High Court and remit the appeal to the Calcutta High Court for reconsideration on merits.”

40. *As already observed that the guidelines were never given the character of statute or of containing any statutory force in the decision in Debasis Dutta (vide supra). It may now be considered whether the compulsory requirement of consideration only of candidates sponsored by Employment Exchange can be derived from the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. The answer would be simply no in view of the fact that the 1959 Act was related to compulsory notification of vacancies to the Employment Exchange. Apart from the title of the Act, S. 4 of the 1959 Act prescribes:*

“(1) After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall before filling up any vacancy in any employment in that establishment, notify that vacancy to such Employment Exchange as may be prescribed.

(4) Nothing in Sub-secs. (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the Employment Exchange to fill any vacancy merely because the

vacancy has been notified under any of those sub-sections.”

30. The said guidelines have been duly followed by the said recruitment committee.
31. **The main contention of the petitioners is that the ‘cut off marks’ was decided by the committee, after the written test and as such the petitioners have been prejudiced, not having been called for the viva voce test.**
32. The Supreme Court in ***Arunachal Pradesh Public Service Commission & Anr. vs Tage Habung & Ors., in Civil Appeal No. 4168 of 2013 (arising out of SLP (C) No. 3036 of 2009, on 1st May, 2013***, held:-

“29. As noticed above, cut-off marks of 33% fixed as qualifying marks in all subjects for the purpose of interview cannot by any stretch of imagination be held illegal or unjustified merely because such criteria for securing minimum 33% marks was notified for the Preliminary Examination and Main Examination. Rule 11 of Arunachal Pradesh Public Service Combined Civil Service Examination Rules, 2001 empowers the Commission to fix minimum qualifying marks for the purpose of shortlisting the candidates for interview. **In our considered opinion, the power exercised by the Commission under Rule 11 of 2001 Rules fixing the qualifying marks in the written examination in the process of conducting the recruitment test cannot be interfered with by this Court.** We reiterate that there must be some yardstick to be followed by the Commission for the purpose of shortlisting the candidates after the written examination. The fixation of qualifying marks as 33% in the written examination cannot be held to be illegal or arbitrary action of the Commission merely **because it was notified in the process of conducting recruitment tests.** It was argued from the side of the Appellant-

*Commission that the Commission has in the past conducted written examination fixing the cut-off marks in exercise of power under Rule 11 of 2001 Rules. The High Court has lost sight of the fact that pursuant to the directions of the learned Single Judge in his order dated 30th September, 2008, **the result was declared applying the qualifying marks** as notified in O.M. dated 7th January, 2008 and **the same was adopted by the Commission.**”*

33. In *Ram Sharan Maurya and Ors. vs State of U.P. & Ors.*, on 18th November, 2020, in Civil Appeal No. 3707 of 2020,

the Supreme Court held:-

“62. We are then left with the question whether prescription of such minimum qualifying marks by order dated 07.01.2019 must be set aside merely because such prescription was done after the examination was conducted. At this juncture, it may be relevant to note that the basic prayer made in the leading Writ Petition before the single Judge was to set aside the order dated 07.01.2019. What could then entail as a consequence is that there would be no minimum qualifying marks for ATRE-2019, which would run counter to the mandate of Rule 2(1)(x) read with Clause (C) of Rule 14. It is precisely for this reason that what was submitted was that the same norm as was available for ATRE-2018 must be adopted for ATRE-2019. In order to lend force to this submission, it was argued that Shiksha Mitras who appeared in ATRE-2018 and ATRE-2019 formed a homogeneous class and, therefore, the norm that was available in ATRE-2018 must be applied. This argument, on the basis of homogeneity, has already been dealt with and rejected.

63. If the Government has the power to fix minimum qualifying marks ‘from time to time’, there is nothing in the Rules which can detract from the exercise of such power even after the examination is over, provided the exercise of such power is not actuated by any malice or ill will and is in furtherance of

the object of finding the best available talent.

In that respect, the instant matter is fully covered by the decisions of this Court in **Municipal Corporation of Delhi vs. Surender Singh & Ors., (2019) 8 SCC 67** and **Jharkhand Public Service Commission vs. Manoj Kumar Gupta and another, (2020) 1 SCALE 504**. In the first case, the power entrusted under Clause 25 of the advertisement also provided similar discretion to the Selection Board to fix minimum qualifying marks for each category of vacancies. While construing the exercise of such power, it was found by this Court that it was done 'to ensure the minimum standard of the teachers that would be recruited'. Similarly, in **Jharkhand Public Service Commission, (2020) 1 SCALE 504**, the exercise of power after the examination in paper III was over, was found to be correct and justified.

64. If the ultimate object is to select the best available talent and there is a power to fix the minimum qualifying marks, in keeping with the law laid down by this Court in **State of Haryana vs. Subash Chander Marwaha and Others, (1974) 3 SCC 220**, **State of U.P. vs. Rafiquddin and Others, 1987 (Supp) SCC 401**, **Municipal Corporation of Delhi vs. Surender Singh, (2019) 8 SCC 67** and **Jharkhand Public Service Commission vs. Manoj Kumar Gupta and another, (2020) 1 SCALE 504**, we do not find any illegality or impropriety in fixation of cut off at 65-60% vide order dated 07.01.2019. The facts on record indicate that even with this cut off the number of qualified candidates is more than twice the number of vacancies available.

It must be accepted that after considering the nature and difficulty level of examination, the number of candidates who appeared, the concerned authorities have the requisite power to select a criteria which may enable getting the best available teachers. Such endeavour will certainly be consistent with the objectives under the RTE Act.

65. In the circumstances, we affirm the view taken by the Division Bench of the High Court and conclude that in the present case, the fixation of cut off at 65-60%, even after

the examination was over, cannot be said to be impermissible. In our considered view, the Government was well within its rights to fix such cut off.”

- 34. In the present case** the recruitment committee headed by the District Judge too was well within its power to fix minimum qualifying marks ‘from time to time’ even after the examination was over. There is prima facie no material to show that in this case the power was exercised by malice or ill will. On the other hand the materials prima facie shows that the same was done and is in furtherance of the object of finding the best available talent ***(Ram Sharan Maurya and Ors. vs State of U.P. & Ors., (Supra) (Para 63))***.
- 35. In the present case** the facts show that even with the ‘cut off’ mark at 40 and 75 respectively, the number of qualified candidates is 1 is to 5, that is five times the number of vacancies available. Thus the cut off in this case is valid and justified and thus fair and in accordance with law.
- 36. Seventeen (17) long years have passed.** The candidates who would have/will succeed have lost 17 precious years, thus losing out on their lawful right and benefits.
- 37.** The writ petition deserves to be disposed of with costs, but considering that they are the unsuccessful candidates, **the writ petition stands dismissed, but without costs.**
- 38. The District Judge Nadia cum Chairman Recruitment Committee shall proceed with the viva voce test and**

complete the total process of appointment in accordance with law within 15 days from the date of this order.

- 39.** No order as to costs.
- 40.** All connected application, if any, stands disposed of.
- 41.** Interim order, if any, stands vacated.
- 42.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)