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2024
Ct. No. 08
ab

MAT 1506 of 2015
IA No. CAN 1 of 2015 (Old No. CAN 9783 of 2015)
With
WPA 12866 of 2011

Tapan Kumar Karmakar
Vs.
The State of West Bengal and others

Mr. Sayan De,
Mr. Koustav Shome,
Mr. Abhijit Mondal,
Mr. Shyan Kanjilal.

... for the appellant.

Mr. Arindam Chattopadhyay.

... for the DPSC, Nadia.

At the time of hearing the instant appeal, the Counsel for the appellant invited our attention to the portion of the impugned order wherein the Single Bench recorded that the record produced before it demonstrate that the last person receiving employment under other backward class category obtained 41.23 marks; whereas it is all along the stand of the respondent authorities that the writ petitioner/appellant along with another person obtained 41.21 marks and for the tie, the other person, who was senior in age, was appointed. It is, thus, contended that if such version of the authorities is accepted, the last cut off marks under OBC category cannot be 41.23, but should be 41.21.

Our attention is further drawn to an order passed in the earlier writ petition filed by the appellant, wherein a direction was passed upon the authorities to consider the appellant in the event any candidate securing position above the appellant resigned during life span of the panel. We had an occasion to peruse the original panel produced by the Counsel for the District Primary

School Council, Nadia, we find three separate panels prepared in relation to OBC. The first panel contains the name of 86 candidates, who secured more than 41.21 marks; the second panel relates to OBC (Converted) containing the name of 26 persons and the last cut off marks was also higher than the marks obtained by the appellant.

Our attention is drawn to the third panel, which, according to the Counsel for the State, were prepared keeping 5 percent of the post in the event the candidates, who came within the zone of appointment, either refused to join or resigned during life span of the panel, the appointment can be given to the candidate kept in the said panel in the order of their merit.

The explanation is sought to be given that since one of the successful candidates whose name was included in the panel of said 86 and 26 candidates respectively did not join or resigned during life span of the panel, such post was filled up from the extra panel by appointing a candidate, who was senior in age but secured the identical marks that of the appellant.

Such being the position, we find that the finding of the Single Bench that the last cut off of marks was 41.23 cannot be said to be factually incorrect. The said cut off marks would appear from the panel of OBC (Converted) prepared for 26 candidates and, therefore, the contention of the appellant in this regard does not appear to hold water.

However, the appellant has taken us to the report submitted by the then Chairman, District Primary School Council, Nadia, on 19th February 2014 in WP 12866(W) of 2011. The said report revealed that the last cut off marks in OBC category is 39.61 and not 41.21 or 41.23, as the case may be.

We are not satisfied with the submission of the Counsel for the District Primary School Council, Nadia nor we find such cut off marks in any of the 3 panels

prepared for OBC category. The authority cannot take a different stand at the different stages of the litigation nor expected to disclose the fact, which is not supported by documentary evidence. It is unexpected that the authority would disclose a fact, which is factually incorrect or not supported by the document, only for the purpose of securing a dismissal of the judicial proceeding.

A time has come that nobody should be permitted to treat the Court for a ride or disclose a fact in a judicial proceeding in the form of a report, which belied the documents and, therefore, should be dealt with in strong hand. We are conscious that the Chairman, who filed the said report on 19th February 2014 is no longer holding the office, we, therefore, direct the present Chairman, District Primary School Council to initiate a proceeding against the said erstwhile Chairman by seeking explanation and in the event the explanation is not satisfactory, appropriate steps shall be taken in accordance with law.

Since the appellant does not come within the zone of appointment, we do not find any infirmity and/or illegality in the judgment of the Single Bench.

The appeal is, thus, dismissed. There shall, however, be no order as to costs.

Let the file of WP 12866(W) of 2011 be immediately sent down to the concerned department.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

