

Form No. J (2)

**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

MAT 1962 of 2022

Malay Kumar Bera

vs.

The State of West Bengal & ors.

For the Appellant : Mr. Anindya Sundar Das, Advocate
Mr. Shaunak Ghosh, Advocate
Ms. Suva Gayen, Advocate
Ms. Paramita Mondal, Advocate
Ms. Kuheli Gayen, Advocate

For the State : Mr. Santanu Mitra, Senior Govt. Advocate
Ms. Anandamayi Ghosh, Advocate

Heard on : 08.11.2024

Judgment on : 08.11.2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the order dated September 9, 2022 passed in W.P.A. 9588 of 2018.

2. By the impugned order, the learned Single Judge dismissed the writ petition of the appellant.

3. Learned advocate appearing for the appellant submits that, the appellant and the private respondent no.8 participated in a selection process for the post of Lower Division Assistant undertaken by the Zilla Parishad.

4. Learned advocate appearing for the appellant submits that, the appellant was placed in serial no.3 in the merit list while private respondent no.8 was placed in serial no.2.

5. He draws the attention of the Court to the affidavit-in-opposition used by the private respondent no.8 before learned Single Judge. He submits that, the private respondent no.8 acknowledged that, the private respondent no.8 was employed elsewhere during the course of the subject selection process. He submits that, therefore, the private respondent no.8 lost the status of Exempted Category and was therefore wrongly given appointment.

6. State is represented.

7. Both the appellant and the private respondent no.8 participated in the selection process for Lower Division Assistant in the exempted category. In such selection process, the private respondent no.8 was placed ahead of the appellant in the merit list.

8. We find from the pleadings in the writ petition that, written examination of the selection process was held on February 12, 2017 and that, *viva voce* test was held on September 23, 2017. In the affidavit-in-

opposition, used by the private respondent no.8 before the learned Single Judge, he stated that, he participated in the written examination for the selection to the post of Gram Panchayat Karmee on February 5, 2017. He was successful thereat and was given provisional appointment for a period of one year. He joined such post on August 17, 2017 and resigned such post on April 2, 2018.

9. It appears from the records that, Purba Medinipur Zilla Parishad initiated selection process to various posts including Lower Division Assistant by a Notification dated December 7, 2016. Written test in respect thereof was held on February 12, 2017. *Viva voce* test was subsequently held. Result was declared on December 24, 2017.

10. Zilla Parishad declared two posts as vacant for filling up of Lower Division Assistant Unreserved (Exempted Category).

11. Private respondent no.8 was placed second in the merit list. He was issued a Memo dated January 17, 2018 requesting him to submit details of his present employment. Private respondent submitted such application on January 30, 2018. He was issued provisional appointment on March 28, 2018. He joined on April 3, 2018.

12. Learned Single Judge proceeded on the basis that, the recruitment process to the post of Lower Division Assistant initiated by the Zilla Parishad was much prior to the private respondent joining the post of

Gram Panchayat Karmee and therefore, respondent no.8 did not suffer any disqualification in the selection process.

13. The view taken by the learned Single Judge being plausible in the factual matrix narrated above, we are not minded to interfere with the discretion exercised by the learned Single Judge.

14. In such circumstances, we find no merit in the present appeal.

15. M.A.T. 1952 of 2022 is dismissed without any order as to costs.

(Debangsu Basak, J.)

16. I agree.

(Md. Shabbar Rashidi, J.)

CHC