

WP.ST 194 of 2023

Subhajit Mishra
Vs.
The State of West Bengal & Ors.

Mr. Sudipta Dasgupta
Mr. Arka Nandi
Ms. Sagarika Goswami
Ms. Shalini Ghosh ... for the petitioner

Mr. Tapan Mukherjee, Ld. A.G.P.
Ms. Sangeeta Roy ... for the State

Ms. Shraboni Sarkar
Ms. Krishna Yadav ... for the P.S.C.

Affidavit-of-service filed by the petitioner and the affidavit-in-opposition filed by the respondent nos. 2 and 3 be kept on record.

As prayed for, leave is granted to the learned advocate-on-record of the Public Service Commission, West Bengal (hereinafter referred to as the Commission) to make necessary correction in paragraph 7 of the affidavit-in-opposition.

When the matter last appeared on 19.12.2023, considering the submission of Mr. Dasgupta, learned advocate appearing for the petitioner that on the basis of the report submitted by the expert committee constituted pursuant to an order passed in an earlier writ petition, the petitioner becomes entitled to additional 2.66 marks and that the grant of such marks could bring the petitioner within the zone of consideration for appointment to the post of Motor Vehicles Inspector (Non-Technical) under 'Unreserved Category', this Court directed the parties to exchange their affidavits and passed an interim order directing the

respondents to keep one post vacant till the disposal of the writ petition.

Drawing our attention to paragraphs 6 and 7 of the affidavit-in-opposition, Ms. Sarkar, learned advocate appearing for the Commission submits that the petitioner comes within the zone of consideration and as such, the Commission may issue recommendation in favour of the petitioner, in the event the State respondents communicate to the Commission that there are existing vacancies in the concerned post.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents submits that no appointment can be granted unless a recommendation is issued in favour of the petitioner by the Commission.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The paragraphs 6 & 7 of the affidavit-in-opposition filed by the Commission runs as follows;

'6. With regard to the statement made in para 8 & 9 of the writ application this deponent admitted that as per the experts opinion the answer key which was supplied for question no. 65(Booklet Series 'C') was erroneous and the correct answer would be option 'A' and further it may be stated that the recruitment process was completed in November, 2019 without any grievances reported against the said answer key. This deponent further states that due the correctness of the said answers the petitioner is entitled to get the 2(two) marks since option (B) is incorrect and the petitioner correctly answered the

Question Number 65 with correct answer which is option (A). Hence, the petitioner is entitled to get 2 marks and further entitled to get 0.66 marks as question no. 65 was wrongly assessed as incorrect and 0.66 marks was wrongly deducted as negative marking from the total marks obtained by the petitioner. This deponent further states that after adding the 2.66 marks with the marks as obtained by the petitioner in Written Test and in Interview stands 163.33.

7. With regard to the statement made in para 10 of the writ application this deponent admitted the fact that after awarding the 2.66 marks to the petitioner the total marks of the petitioner stands 163.33 (Written Test 130.67 marks + Interview 30 marks) =160.67 + 2.66=163.33 marks and the last recommended candidate got marks in general category. This deponent further states that the petitioner applied in the general category for the subject recruitment process and the subject recruitment process was already completed and recommendation with regard to all the categories were already completed and the subject post is already filled up by the concerned department and further state that if any non-joining is being reported from the concerned department then only the petitioner name can be recommended against the said category for the subject post.'

Records would further reveal from the document annexed at page 108 of the writ petitioner that there are 'at present 6(six) clear vacant posts of Motor Vehicles Inspector (Non-Technical) purely for the "Unreserved Category" out of 38 vacant posts as of now.'

In the said conspectus, we are of the opinion that the petitioner is entitled to be appointed to the concerned post since he had secured more marks than the last recommended candidate in general category and vacancies in the said category are existing.

Accordingly, this Court directs the Commission to issue recommendation in favour of the petitioner for appointment to the post of Motor Vehicles Inspector (Non-Technical) under Unreserved Category within a period of two weeks from the date of communication of this order.

Immediately, upon receipt of such recommendation, the State respondents shall issue appointment letter in favour of the petitioner in the concerned post, as expeditiously as possible, preferably within a period of six weeks from the date of receipt of recommendation upon compliance of necessary formalities.

With the above observations and directions, the writ petition is disposed of.

There shall, however be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Patha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)