

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

M.A.T. 209 of 2023

Subrojit Majumdar @ Suvrojit Majumder
-Vs-
Registrar General, High Court, Calcutta & Ors.

For the Appellant	: Mr. Sanjay Mazumdar, Adv. Mr. Rahul Ghatak, Adv.
For the respondent No. 1	: Mr. Nilay Chakraborty, Adv. Mr. Sourav Lohani, Adv.
For the respondent No. 2	: Ms. Momenur Rahman, Adv. Ms. B Bose, Adv.
For the respondent Nos. 3 & 4	: Mr. Bikramaditya Ghosh, Adv. Ms. Supriya Singh, Adv.

Heard on : 15.05.2024

Judgment on : 15.05.2024

Joymalya Bagchi, J. :-

1. Appellant had appeared in a selection process initiated in 2019 by the second respondent i.e District Judge, Darjeeling for filling up vacant posts in Gr. D category namely Night Guard, Farash and

Karmabandhu. Appellant scored 80.25 marks and was appointed as a Night Guard. Relying on response of the second respondent to a query under the RTI Act that posts of Farash were filled by the top four selected candidates, petitioner claimed he ought to have been appointed as Farash in preference to 3rd and 4th respondents who had lower scores in the test.

2. During hearing before the learned single judge, 2nd respondent clarified that incorrect response was made to the query under RTI Act. All the posts were in the same cadre and appointments have been made chronologically and not as per merit.

3. In light of such clarification the learned Judge held appellant had not been prejudiced and dismissed his plea. The learned single Judge, however, issued directions with regard to incorrect reply of respondent no. 2 under RTI Act.

4. Learned counsel contends incorrect reply under the said statute attracts penal liability. But no direction for criminal prosecution had been given. He also submits the learned Judge failed to consider another issue raised in the writ petition i.e. combined examination and interview had been held with regard to two selection processes commencing in 2016 and 2019 respectively for filling the vacant posts. Hence, the *inter se* seniority of the selected candidates ought to have been considered as if there was one selection process.

5. With regard to the first issue namely initiating criminal prosecution for incorrect response under RTI Act, I am of the opinion

incorrect response by the second respondent was inadvertent and not an intentional one. More so, the response has not caused prejudice to the appellant as he had been appointed as a Night Guard which is in the same cadre as Farash and Karmabandhu.

6. The other issue raised also does not merit favourable consideration. Two selection processes for filling up vacant posts in Gr. D category had been undertaken. First selection process was initiated in 2016 and the other in 2019. Both the selection processes had separate cut off dates for making applications. Candidates applied in separate batches in 2016 & 2019 respectively. Due to administrative reasons a common examination and interview was conducted for both of the selection processes. Mere holding of a common examination/interview does not result in combining the selection processes which had been initiated separately particularly with regard to *inter se* seniority of the selected candidates.

7. Accordingly, I am not inclined to interfere with the order passed by the learned single judge.

8. The appeal is accordingly dismissed.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

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