

21.05.2025
SI No.90
Court No.8
(gc)

FMA 1655 of 2015

Manobihari Biswas
Vs.
The State of West Bengal & Ors.

Mr. Lakshmi Kanta Pal

...for the Appellant.

Mr. Jayanta Samanta, Jr. Govt. Adv,

Mr. Sadhan Halder

...for the State

1. The appeal is arising out of an order passed by the learned Single Judge on 27th January, 2015 in which an order of the District Magistrate, Murshidabad dated 2nd April, 2013 was assailed. By the impugned order, the claim of the writ petitioner for appointment to the post of academic supervisor was turned down.
2. The writ petitioner proceeds on the basis that he is one amongst other eligible candidates in the cadre of 'Sahayikas' and, in fact, he was initially empanelled as the first candidate and subsequently his rank was reduced to fourth position. This decision was under challenge.
3. It appears that the advertisement in which he has proceeded has failed to take into consideration the G.O. namely, SP-213-03(18) dated 24th March, 2003 which lays down clearly that the academic supervisors were to be engaged from Sahayikas (female). Advertisement seems to have issued

overlooking the said Notification and the Guideline which forms the basis of the recruitment. The learned Judge has taken into consideration the anomaly in the advertisement and relying upon the decision of the Hon'ble Supreme Court in ***Mallik Mazhar Sultan & Anr. Vs. U.P. Public Service Commission & Ors.*** reported at ***(2006) 9 SCC 507*** and ***Indian Institute of Technology & Anr. Vs. Parasnath Tiwari & Ors.*** reported at ***(2006) 9 SCC 670, Paragraph 12*** wherein it has been held that the recruitment in a service can only be made in accordance with Rules and any error in the advertisement notifying applications for recruitment to the service cannot overwrite the Rules and create a right in favour of the candidate and that whatever recruitment is ordained by the Rules must be read into the advertisement if such requirement is not indicated in the advertisement has found the writ petitioner ineligible as the advertisement could not have prevailed over the Guideline of 2003 issued by the Secretary.

4. It cannot be disputed that the Guideline dated 24th March, 2003 issued by the Secretary, Department of Panchayats and Rural Development, Government of West Bengal,

insofar as the academic supervisor is concerned clearly provides the qualification of academic supervisor as “those sahayikas who have minimum graduate degree and have at least one year’s teaching experience”. The advertisement was issued pursuant to the said Guideline, however, inadvertently it has included Sahayak (male) not contemplated under the Guideline dated 24th March, 2003 and an otherwise eligible candidate has been made eligible. The purpose of the said advertisement is for recruitment of Sahayika (female) and not Sahayak (male). Moreover, the learned Single Judge has recorded that there are serious disputes with regard to the petitioner’s claim that he was the first empanelled candidate as it would reveal from record that the Commission finds that there are lot of anomalies in the entire process of preparation/publication/cancellation of the panel and it was not possible for the Commission to arrive at a decision with regard to the bona fide of the said panel having regard to the nature of irregularity that surfaced during investigation.

5. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

6. The appeal fails.
7. Accordingly, the appeal is dismissed.
8. However, there shall be no order as to costs.
9. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)