

21.03.2025
Sl. No.1
Ct. No.15
S.A.

WPA 26725 of 2024

Subir Dutta
-vs-
The State of West Bengal & Ors.

Mr. Soumyadeep Biswas
..for the petitioner

Mr. Mrinmoy Mohan Barat
... for respondent no.5

Ms. Sabnam De Bardhan
Mr. P. K. Tripathi
..for the State

Mr. Srijan Nayak
Mr. Partha Sarathi Pal
..for respondent nos. 2 and 4.

Mr. Ankit Sureka
Mr. Biplab Das
..for respondent no.3.

A recruitment process was conducted by the Nadia District Cooperative Union (a Central Cooperative Society) to fill up a Group-D post. A selection committee was formed, and an advertisement was published in the newspaper inviting applications. A written test was followed by an interview. Upon completion of the selection process, a three-member panel was prepared, ranking the petitioner in the first position.

However, the petitioner could not be appointed due to the impugned order dated 24th June, 2024, passed by Additional Registrar of Cooperative Societies (Training), West Bengal. The primary reason for rejecting the petitioner's selection was the failure

to form the selection committee in accordance with Rule 105A of the West Bengal Cooperative Societies Rules, 2011.

The learned advocate for the petitioner argues that Rule 105A of the 2011 Rules does not apply in this case. The recruitment process was conducted in accordance with Rule 106 of the West Bengal Cooperative Societies Rules, 2011.

Mr. Srijan Nayak, the learned advocate for respondent no. 4, questions the maintainability of the writ petition. He contends that the petitioner cannot invoke the writ jurisdiction of this Court, and asserts that the selection committee should have been constituted in accordance with Rule 105A of the West Bengal Cooperative Societies Rules, 2011.

In contrast, Mr. Ankit Sureka, the learned advocate for respondent no. 3, submits that respondent no. 3 has already clarified that the relevant appointment should be made exclusively by the Board of the society.

The relevant provisions of the West Bengal Cooperative Societies Rules, 2011 are quoted below:

“105. Procedure for direct recruitment of staff by cooperative societies. –(1) Subject to the provisions of rule 104A, all cooperative societies shall notify their vacancies, other than those required to be reported to the Cooperative Service Commission, through publication of advertisement at least in one national daily newspaper, and to the Local Employment Exchange or to the Director, National Employment Exchange, as the case may be, and ask

for names of suitable candidates in terms of the qualifications required of such candidates.

(2) For selecting the candidates, the selection committee for selection of staff other than Group D staff may hold such test and interview or Viva Voce tests as it may consider expedient.

(3) In cases where the local Employment Exchange or the Director, National Employment Exchange, will not be in a position to furnish suitable names within two months from the date of notification of the vacancies, the concerned cooperative society may start recruitment process of applications received on the basis of advertisement in the newspaper.

(4) All cooperative societies shall maintain the same percentage of vacancies reserved for candidates of scheduled castes, scheduled tribes and other backward classes as may be specified by the State Government by general or special order from time to time.

(5) While calculating the vacancies to be filled up, all cooperative societies shall give due consideration to the principles regarding absorption of casual and seasonal workers as enunciated by the Labour Department of the State Government.

105A. Constitution of Selection Committee.

–Co-operative Societies other than mentioned in the Fifth Schedule of the Act and in regard to selection of Managing Director or the Chief Executive Officer of the West Bengal State Cooperative Bank Ltd. and all Central Cooperative Banks, the Selection Committee for assisting the cooperative societies in the matter of selection of candidates under rule 105 shall be constituted as follows :-

(a) Apex societies

- (i) The Chairman and the Vice-Chairman or in their absence any two Directors of the concerned society as decided by the board
- (ii) The Managing Director or the Chief Executive Officer of the society;
- (iii) Registrar or his nominee;
- (iv) One expert selected by the Society;
- (v) The Chairman of the State Cooperative Union or his nominee The Managing Director or the Chief Executive Officer or the Manager of the Cooperative Society shall be the convener of the meeting and its Chairman or in absence of the Chairman, the Vice-Chairman or in absence of both any of the two nominees of the concerned society as decided by the board shall be the Chairman of the Selection Committee.

(b) Central Societies

- (i) The Chairman and the Vice-Chairman, or in their absence, two Directors of the concerned society as decided by its board;
- (ii) A nominee of the Registrar;
- (iii) The Chief Executive Officer of the concerned cooperative society or the Manager as the board of the society may decide;
- (iv) A representative of the concerned apex society;
- (v) One expert selected by the Society. The Chief Executive Officer or the Manager of the Cooperative Society shall be the convener of the meeting and its Chairman or in absence of the Chairman, the Vice-Chairman or in absence of both any of the two nominees of the concerned society as decided by the board shall be the Chairman of the Selection Committee.

(c) Primary Society

- (i) The Chairman and the Secretary, or in their absence, two Directors of the concerned society as the board may decide;
- (ii) The Chief Executive Officer or the Manager, as the board may decide;
- (iii) A nominee of the Registrar;
- (iv) A representative of the concerned central society or the concerned Apex Society where there is no central society;

The Secretary, or in his absence, the Chief Executive Officer or the Manager, as the case may be shall be the convener of the meeting and the Chairman, or in his absence, the Chairman elected amongst the members of the Selection Committee shall be the Chairman of the meeting.

106. Method of recruitment and Conditions of service of the officers and employees of cooperative societies. –The method of recruitment and conditions of service of the officers and employees of cooperative societies shall, subject to the terms of specific contract enforceable by law and the provisions of any law for the time being in force, be as enunciated in the Appendix to this Chapter.

Provided that if any particular matter is not covered in the specific contract, the matter shall be guided by the method of recruitment and conditions of service as indicated in the Appendix to this chapter.

APPENDIX TO CHAPTER V
Method of recruitment and Conditions of Service

....

6. *Appointing Authority*

The board shall be the appointing authority of its employees and may, from time to time, delegate its powers in this regard to such authority as it may decide by a resolution in meeting.

7. *Appointment*

(1) All appointments by direct recruitment excepting the deputation shall be made on the basis of the result of a written examination and interview.

(2) Appointment in Group D shall be made by selection in such manner as the board may decide.

(3) Appointment by promotion shall be made on the basis of seniority-cum-fitness or in such manner as the board may decide.

(4) All appointments shall be temporary for a period of two years. Thereafter if there is any permanent post the appointment shall be on probation for one year. On satisfactory completion of probation and on completion of training or passing the examination, if any, an employee may be confirmed against any permanent post.”

A bare reading of Rule 105A makes it clear that the Cooperative Societies mentioned in fifth schedule of the Act of 2006 are kept outside the purview of the said provision. In other words, Rule 105A does not apply to a fifth schedule Cooperative Society.

The present Cooperative Society is a fifth schedule Cooperative Society being a Central Cooperative Society and therefore, in the matter of

recruitment of its employees, Rule 105A has got no manner of application.

Moreover, Rule 105(2) of the West Bengal Cooperative Societies Rules, 2011, clearly stipulates that the selection committee for staff selection, other than Group-D staff, may conduct such tests, interviews, or viva voce as it deems appropriate.

Clause 7(2) of the Appendix to Chapter-V of the Rules also clarifies that the appointment of Group-D staff shall be made by selection in such manner as the Board may decide.

Therefore, I conclude that the exclusive authority for appointing a Group-D staff member lies with the Board of the society. In this case, the selection committee was formed by the Board.

There are no other grounds raised by respondent no. 5, other than the composition of the selection committee.

Since I have held that the appointment of Group-D staff of the relevant society is not governed by Rule 105A of the West Bengal Cooperative Societies Rules, 2011, I hereby set aside the impugned order dated 24th June, 2024.

Respondent no. 5 is directed to issue the appointment letter to the petitioner within two weeks from the date of this order.

Before concluding, it must be noted that the petitioner's appointment is governed by statutory rules and that the impugned order was passed by a government official. Therefore, this writ petition is maintainable in light of the judgment passed by the Supreme Court reported at **(2004) 5 SCC 90 (Gayatri De v. Mousumi Cooperative Housing Society Ltd.)**. The issue of maintainability is thus decided in favour of the writ petitioner.

Accordingly, **WPA 26725 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)