

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Sen

FMA 563 of 2024

Priyanka Dam
-Versus-
West Bengal State Electricity Distribution Company Ltd. Ors..

For the Appellant : *Mr. Pradip Kumar Tarafdar, Sr. Adv.,*
Mr. Sambuddha Dutta,
Mr. Aritra Palit.

For the WBSEDCL : *Mr. Sumit Kumar Panja,*
Mr. Sujit Sankar Koley.

For the respondent : *Mr. Saibal Kumar Acharya,*
nos. 9 & 10 *Ms. Susmita Chatterjee,*
Mr. Masum Tarafdar.

Hearing is concluded on : *6th February, 2025.*

Judgment On : **18th March, 2025.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging a judgment dated 07.09.2022 passed by the learned single Judge in the writ petition being WPA 26657 of 2014 preferred by one Priyanka Dam (hereinafter referred to as Priyanka) *inter alia* praying for issuance of necessary direction upon the

respondents to give her appointment and to allow her to join in the post of Assistant Manager (Human Resource and Administration) [hereinafter referred to as AM (HR&A)] under the West Bengal State Electricity Distribution Committee Ltd. (hereinafter referred to as WBSEDCL).

2. Priyanka's case is that while she was pursuing her post-graduation degree in the Indian Institute of Social Welfare and Business Management (in short, IISWBM), campus interviews were conducted by WBSEDCL on 05.03.2013 and 06.03.2013 for the purpose of recruiting students to the post of AM (HR&A) under WBSEDCL. Thereafter *vide* memo dated 04.04.2013, the final result of the campus interviews was intimated to the Placement Manager IISWBM by the General Manager (Human Resource and Administration) [hereinafter referred to as GM (HR&A)]. In the said memo, her name was at serial no. 7 and as directed, she submitted her certificates on 27.08.2013. Thereafter, a list of five candidates was published calling them for medical test. No reason was furnished as to why she had been left out though admittedly there were a large number of vacancies. Aggrieved thereby, she submitted repeated representations but in vain and as such she was constrained to prefer the writ petition.

3. Records reveal that by an order dated 31.03.2015, the writ Court directed WBSEDCL to file a report. Pursuant thereto, a report was filed on 10.04.2015 stating *inter alia* that the Board of Directors of WBSEDCL in its meeting held on 12.11.2011 approved fresh intake of 2378 vacancies. Thereafter, a decision was taken to fill up thirty posts of AM (HR&A) – ten to be filled up through campus recruitment and twenty to be filled up from the

open market. For such campus recruitment one Special Selection Committee (in short, SSC) was constituted to decide the mode and parameters of selection. In its meeting dated 29.01.2013 the said SSC finalized the modalities for conducting recruitment through off campus selection and *vide* memo dated 13.02.2013, the GM (HR&A) requested IISWBM and four other institutes to depute their candidates who meet the eligibility criteria. Thereafter, a three-layered selection process namely, written test (in short, WT), group discussion (in short, GD) and personal interview (in short, PI) rounds were held and the SSC recommended twenty-two candidates, who had secured cut-off marks. All the twenty-two recommended candidates belonged to general category. Priyanka's name featured at serial no. 12 in the merit list. As there were ten vacancies, she did not come within the zone of consideration and could not be appointed.

4. Thereafter the writ petition was again heard on 13.08.2015 and a second report was filed on behalf of the respondents on 26.08.2015 stating *inter alia* that by a memo dated 13.02.2013 the selection process was initiated. The layers of selection stated to be '*1st layer of selection: written test*', '*2nd layer of selection: group discussion*' and '*final layer of selection: personal interview*' were detailed in the said report. In paragraphs 9 and 10 of the said report, marks secured by twenty-two candidates, who participated in the PI and the status of appointment, joining and confirmation of the ten candidates were detailed.

5. As per leave granted by the Court, the IISWBM and two candidates, namely, Arijit Mitra (in short, Arijit) and Partho Sarathi Mallik (in short,

Partho) were added as party respondents to the writ petition and the same again came up for hearing on 22.04.2015 and pursuant to the Hon'ble Court's direction a 3rd report was filed reiterating the contents of the earlier reports and stating *inter alia* that as per merit list top ten candidates were issued the letters of appointments and that the candidates, namely, Arijit and Partho were not related with any senior functionaries in WBSEDCL.

6. On behalf of WBSEDCL an affidavit-in-opposition was affirmed on 15.11.2015 stating *inter alia* that Priyanka participated in the selection process being completely aware that the same was a three layered one. As detailed in the memo dated 13.02.2013 total fifty-nine candidates were nominated by the institutions. The layers of selection and the marks obtained in the PI, as disclosed in the second report were reiterated in the affidavit-in-opposition. It was further stated therein that members of the SSC individually gave marks to each candidate who appeared in the PI. The total score given by the interviewers were aggregated to arrive at the average score secured by each candidate in the PI and thereafter the final list containing names of twenty-two candidates, who secured pass marks in the PI, was prepared. In paragraph 10 of the said affidavit, it was stated *inter alia* that work order was placed to M/s Nicco Ventures Ltd. for providing services in conducting recruitment *vide* memo dated 13.09.2012. In clause-f of the said memo it was categorically stated that '*institution wise final merit list will be prepared based on the performance in personal interview only*'. In paragraph 11 of the affidavit-in-opposition it was *inter alia* stated that the candidates who qualified in the 1st layer of selection (WT) went to the second layer of

selection (GD) and those who qualified in GD went up to the third layer of selection (PI) and that the final merit list was prepared '*on the basis of average marks at the interview*'. It was also stated that the score sheet annexed at page 34 of the 1st report was inadvertently prepared by M/s Nicco Ventures contrary to the work order dated 13.09.2012. The said document was not signed by any member of the SSC. It was further stated that '*final merit list has been prepared on the basis of the marks obtained at the interview*' and the said final merit list had been signed. In paragraph 12 also the respondents admitted that '*the final merit list should be prepared based on the performance in the interview only*' and it was further stated that from the said score sheet it would appear that '*the candidates have been placed in order of their respective scores in the interview only and not the total marks*'.

7. Mr. Tarafdar, learned senior advocate appearing for the appellant submits that the WBSEDCL authorities have committed glaring illegalities in conducting the selection process. Subsequent to declaration of the prescribed procedure for selection *vide* memo dated 13.02.2013 and after commencement of the selection process, WBSEDCL had introduced a provision to the effect that interview would be the sole determining factor for selection of the candidates. Such act amounts to alteration of the selection process after the same had commenced and that as such it cannot be argued that having participated in the selection process, the appellant could not have challenged the same. The right of the appellant to be tested on the basis of the procedure as laid down in the memo dated 13.02.2013 had been

arbitrarily taken away. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Raj Kumar and Ors. Vs. Shakti Raj and Ors.*, reported in (1997) 9 SCC 527, *Sub-Inspector Rooplal and Anr. Vs. Lt. Governor Through Chief Secretary, Delhi and Ors.*, reported in (2000) 1 SCC 644 and *Hemani Malhotra Vs. High Court of Delhi* reported in (2008) 7 SCC 11.

8. He argues that the learned single Judge while passing the impugned order failed to appreciate that had it been the intent of the WBSEDCL authorities that the marks obtained in WT and GD would be excluded and only the marks obtained by the candidates in the PI would be the sole criteria for selection, it was incumbent upon the said authorities to the incorporate such specific condition in the memo dated 13.02.2013. Thus, the marks obtained in the WT and the GD could not have been written off. In the event the interview was the sole criteria and the WT would be treated as qualifying test or screening test, WBSEDCL ought to have clearly stated that upon completion of the WT, selection would be made on the basis of the PI. In support of such contention reliance has been placed upon the judgment delivered in the case of *Praveen Singh Vs. State of Punjab & Ors.*, reported in (2000) 8 SCC 633.

9. He contends that there is always a room for suspicion if PI is taken up as the sole criteria for selection. In respect of a post of AM (HR&A) carrying high responsibilities, the method of recruitment could not have been restricted only to PI. The memo dated 13.02.2013 and the panel produced at page 165 would reveal that WT was of sixty marks, proficiency test was of

ten marks, GD was of thirty marks and PI was of hundred marks. Marks towards WT and marks towards GD were not taken into consideration. The candidates were selected only on the basis of PI of hundred marks. Such act on the part of the WBSEDCL authorities would clearly reveal that they were not abreast of judicial pronouncements which had determined that unless a selection process carries a maximum of 20% for subjective assessment, the selection process would not stand the scrutiny of judicial review. Adding the marks in WT, GD and PI, the appellant obtained 129.8 marks in the selection process against 129 and 129.7 marks in the aggregate obtained by Arijit and Partho, who were at the fifth and seventh position in the list. The appellant thus came within the zone of consideration and appointment since she secured more marks than the fifth and seventh candidates in the list.

10. According to Mr. Tarafdar, after the infirmities in the selection process were pointed out, the respondents sought to incorporate fresh reasoning in the reports called for by the Court. It is fairly well settled that the legality or otherwise of an order passed by a statutory authority must be judged on the face thereof, as the reasons contained therein cannot be supplemented by an affidavit. No formal order having been passed by the authorities altering the conditions as incorporated in the memo dated 13.02.2013, the respondents were bound to strictly follow the same. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Bachhittar Singh Vs. State of Punjab and Anr.*, reported in 1962 SCC OnLine 11, *Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner, New Delhi and Ors.*, reported in (1978) 1 SCC 405 and

Chandara Singh and Ors. Vs. State of Rajasthan and Anr., reported in (2003) 6 SCC 545.

11. Mr. Panja, learned senior advocate appearing for WBSEDCL argues that having participated in the selection process without any demur, the appellant cannot turn back and challenge the selection process since the result is not palatable to her. The memo dated 04.04.2013 also did not confer any indefeasible right towards appointment.

12. He argues that the appellant challenged the selection process after a considerable delay. The selection of other candidates was completed in the year 2013 whereas the petitioner waited till the year 2014 to approach the Court. In the midst thereof, rights crystalized in favour of all the candidates who were given appointment and the clock cannot be set back.

13. He submits that from the very inception, it was made clear to the institutes that the selection was to take place in layers. In view thereof, the allegation that the objective criteria for selection had been altered or modified is absolutely unfounded. The candidates were well aware of the modalities and a careful scrutiny of the memo dated 13.02.2013 would make it clear that only after the WT, for which a pass mark was given, would the candidates be eligible for the next stage, so on and so forth. In view thereof, the learned single Judge rightly arrived at the finding that when a test is conducted in a multi-layered format and if one is to qualify a preliminary examination and then sit for a final test, the authorities may decide that the preliminary test would only take place for the purpose of screening and the

marks obtained in the final test would actually decide about who get selected among all those after qualifying in the preliminary test.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record.

15. Primarily two contentious issues arise for adjudication in the present appeal. The first issue is as to whether the appellant having participated in the selection process could have challenged the same and as to whether the selection process could have been conducted only on the basis of the marks as obtained in the interview bereft of summation of the marks obtained by the respective candidates in the WT of 60 marks and GD of 30 marks.

16. It is well settled that principle of estoppel cannot override the law. To non-suit the appellant at threshold would hardly be reasonable particularly when the alleged deficiencies in the process could be gauged only by participating in the selection process. By agreeing to participate, a candidate only accepted the prescribed procedure and not the illegality in it. The Court in several judgments has stressed the importance of an objective standard for recruitment and emphasized that the process of direct recruitment should be through a written test and viva voce examination. The procedure adopted by the respondents in conducting the selection process only upon taking into consideration the marks obtained in the interview and altering the procedure and parameters towards selection subsequent to commencement of the selection process reek of irrationality inasmuch as such procedure as adopted has led to exclusion of the appellant from the zone of consideration and appointment though she secured more marks in

the written test than the private respondents. In view thereof, participation does not debar the appellant from challenging the selection process. [See the judgment delivered in the case of *Abhimeet Sinha and Ors. Vs. High Court of Judicature at Patna and Ors.*, reported in 2024 (4) Supreme 449].

17. Initially a work order was placed to M/s Nicco Ventures Ltd. By WBSEDCL for providing services in conducting campus recruitment *vide* memo dated 13.09.2012. In clause-f of the said memo it was stated that '*institution wise final merit list will be prepared based on the performance in personal interview only*'. Subsequent thereto, by a memo dated 13.02.2013 the selection process was initiated stating *inter alia* that there shall be a WT of 60 marks for which pass marks for general candidates was stipulated to be of 30 marks. Thereafter, the candidates qualifying shall participate in GD of 30 marks in which pass marks for general candidates was stipulated to be 21 and finally the candidates successful shall appear in a personal interview of 100 marks in which qualifying marks for general candidates was stipulated to be 60 marks. Without following the said procedure as prescribed, the final merit list was prepared '*on the basis of average marks at the interview*'. Such fact stands admitted in the affidavit-in-opposition filed on behalf of WBSEDCL.

18. A perusal of paragraph 12 of the judgment impugned would reveal that the Court having observed that '*if a single test comprises of different parts or even an examination comprises of different tests, it is elementary that the result of the test would be a summation of the marks scored in those tests*', arrived at an opposite finding that such procedure would not apply in

a test conducted in the multi layered format. However, no reason in support of such finding was disclosed. The Court ought to have set forth the reasons, howsoever brief, in the judgment in support of such finding.

19. The learned single Judge delivered the impugned judgment being oblivious of the fact that there was no categoric rider in the memo dated 13.02.2013 that the selection would be solely on the basis of PI. In the admitted absence of such condition in the said memo dated 13.02.2013, the WBSEDCL authorities could not have selected the candidates only on the basis of the interview marks.

20. The WT was of sixty marks. The GD was of thirty marks whereas PI was of hundred marks. The spread of marks in the PI being enormously large compared to the spread of marks in WT & GD, the PI tended to become a determining factor in the selection process. Even if a candidate secured the highest marks in the WT, he could be easily knocked out of the competition by the awarding him lower marks in the PI and correspondingly, a candidate who obtained lowest marks in WT could be raised to the top most position in the merit list by an inordinately high marking in the PI.

21. The document annexed at page 101 of the paper book would reveal that the appellant scored 38 marks in WT. Such score was more than that of Arijit and Partho, who scored 32 and 34 marks respectively in the WT. However, the appellant was elbowed out as both Arijit and Partho were given more marks than the appellant in PI. Such discriminating consequences had been glossed over by the learned single Judge and no finding had been returned on the said issue. Such infirmity in the decision-making process

warrants interference of this Court. At this stage interference with the appointment of Arijit and Partho would be iniquitous, however, as there are existing vacancies, the appellant can be accommodated without disturbing the appointment given to others.

22. For the reasons discussed above, the judgment impugned in the present appeal is set aside and the respondents are directed to grant appointment to the appellant in the post of AM (HR&A) within a period of four weeks from date.

23. With the above observations and directions, the appeal being FMA 563 of 2024 is, accordingly, disposed of.

24. There shall, however, be no order as to costs.

25. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Sen, J.)

(Tapabrata Chakraborty, J.)