

OD-2

WPO/786/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

GOBINDA DEY AND ANR.

-VERSUS-

STATE OF WEST BENGAL AND ANR.

Appearance:
Mr. Debdutta Basu, Adv.
...for the petitioners.

Ms. Deblina Chattaraj, Adv.
Ms. Poulami Chattopadhyay, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE PARTHA SARATHI CHATTERJEE

Date : 1st May, 2025

The Court: The dispute involved in this writ petition has its origin in a selection process initiated by West Bengal Transport Corporation to fill up 16 (sixteen) posts of Traffic Superintendent by way of promotion from the in-service candidates holding rank not below the Traffic Inspector/Inspector-cum-Starter who were in 5 (five) years satisfactory service.

Mr. Basu, learned advocate representing the petitioners, has alleged that solemnity of the selection process has been compromised by changing the rule of game in the mid-way. Drawing my attention to the notice inviting application from the eligible candidates for the post, he argues that the notice indicated that the mode of selection would be written test and interview and the eligibility of a candidate should be assessed based on the marks secured by them in written test and interview.

As the petitioners met the prescribed eligibility criteria, they submitted their candidature for the post and duly participated in the selection process. The petitioners appeared in the written examination and, having emerged successful, were awaiting a call to appear for the interview. However, during this period, a Circular dated 6th January, 2023 was issued by the Joint Managing Director, introducing a new scoring pattern which included allocation of additional marks for experience and seniority.

According to the petitioners, the respondent authorities lacked the jurisdiction to introduce such modifications mid-way through the selection process. Mr. Basu, learned counsel for the petitioners, submits that had this revised scoring system, particularly the provision for awarding marks for seniority, not been implemented at that stage, both petitioners would have secured their places in the final list of selected candidates. In support of this contention, reliance is placed on an unreported judgment of a Hon'ble Division Bench of this Court in *WPST No. 120 of 2019 (Avijit Das & Ors. vs. The State of West Bengal & Ors.)*.

In response, Ms. Chattaraj, learned advocate appearing on behalf of the respondents, defends the introduction of the revised scoring pattern and the inclusion of marks for experience and seniority in the selection process. She submits that the notice inviting applications clearly stipulated that the selection would be conducted on a *merit-cum-seniority* basis. According to her, consideration of seniority is essential for assessing the eligibility of candidates for the promotional post in a fair and effective manner. Without taking seniority into account, it would not be possible to evaluate the suitability of candidates for promotion in a comprehensive and proper manner.

Ms. Chattaraj further submits that, in order to identify the most suitable candidates from among the eligible applicants, a decision was taken to introduce the revised scoring pattern and to allocate marks for experience and seniority. She contends

that a candidate who has voluntarily participated in the selection process cannot subsequently be permitted to challenge its validity after failing to secure a favourable outcome. In support of her submission, she places reliance on the judgment of the Hon'ble Supreme Court reported in *2023 SCC OnLine SC 344 (Tajvir Singh Sodhi and Others vs. State of Jammu and Kashmir and Others)*.

Heard learned advocates for the parties and perused the materials placed before me.

Admittedly, it is a well-established principle that a candidate who has participated in a selection process and, upon being unsuccessful, cannot subsequently turn around and challenge the legality of that process. However, it is equally a settled proposition of law that mere participation in a selection process does not amount to an undertaking to accept any illegality that may have been committed during the course of that process. A candidate is not precluded from questioning the validity of the selection if the process is vitiated by illegality attributable to the actions of the selection committee.

When a selection committee or employer issues a notification inviting applications from eligible candidates to fill a vacancy, the terms and conditions stipulated in such a notice acquire binding force upon both the employer and the candidates who offer their candidature in response. Once the selection process is set in motion in accordance with the prescribed terms, neither party is entitled to unilaterally deviate from those terms mid-way through the process. This legal proposition has been consistently affirmed in a catena of decisions rendered by this Hon'ble Court as well as by the Hon'ble Supreme Court, including *Avijit Das & Ors. (supra)* and *Parimal Kumar & Ors. (supra)*.

In the present case, the eligibility criteria which have been prescribed for the posts is as follows:

- “1. *Minimum 5 years’ working experience in the post of Traffic Inspector/Inspector-cum-Starter.*
2. *Passed School Final/Madhyamik or equivalent course from a recognized Board (self attested supporting paper to be given)*
3. *Satisfactory Service – The intending employee should have a satisfactory record with no punishment awarded pursuant to a departmental proceeding leading to a lower Post/no debarring of increment(s)/no previous ban of promotion which is in force.*
4. *The successful aspirant will have to discharge duties and responsibilities of a Traffic Superintendent and will have to perform extensive indoor & outdoor duties.”*

The notice inviting applications clearly stipulated that candidates would undergo a written test, followed by a personal interview, conducted in the order of merit in the written test, with a ratio of 1:5, subject to securing the qualifying marks in the written test. Furthermore, the notice specified that the final selection list would be prepared based on the aggregate score of the written test and the interview. Notably, the notice did not reserve any right to alter the scoring pattern, the mode of selection, or any other aspect of the selection process during its course.

Admittedly, the conduct of the selection process falls within the domain of the employer, and the scope of judicial review is limited. However, it is important to note that if a Court, in exercising its power of judicial review, finds that there has been illegality or irregularity in the decision-making process, the administrative action or decision will be subject to judicial scrutiny. An administrative decision or action must withstand the tests of illegality, irrationality, and unreasonableness. While the ultimate objective of any selection process is to identify the best talent and the most suitable candidate for the position, this objective does not confer unfettered discretion upon the selection committee to alter the rules of the process, modify the mode of selection, or make any other changes mid-way through the selection procedure.

Therefore, I find no justification for the respondent's action in introducing the revised scoring pattern or in the decision to award marks for experience and seniority mid-way through the selection process. As a result, the outcome of the selection process cannot be considered lawful. Accordingly, the list of selected candidates, prepared after the completion of the selection process, cannot be deemed valid. The same is, therefore, set aside, and the Circular dated 6th January, 2023, which altered the rules of the selection process mid-way, is hereby cancelled. Respondent No. 4 is directed to compile a new list of selected candidates in order of merit, based on the aggregate marks obtained by the candidates in the written test and the interview, and to publish the same in accordance with the law.

There can be no dispute in accepting the binding proposition set forth in the decision of *Tajvir Singh Sodhi and Others vs. State of Jammu and Kashmir and Others (supra)*; however, the same is distinguishable on facts.

Accordingly, WPO/786/2023 is disposed of.

(PARTHA SARATHI CHATTEJEE, J.)

A/s./sm.