
(2022) 07 CAL CK 0061
In the Calcutta High Court
Case No : WPA No. 16090 Of 2019

Panchami Das

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 20-07-2022

Acts Referred:

Citation : (2022) 07 CAL CK 0061

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya, G. Patra, Subrata Mukherjee, ManasKundu, Prativa Ghatak, Milan Bhattacharjee, Sulagna Bhattacharjee

Final Decision : Disposed Of

Judgement

Amrita Sinha, J

The petitioner is a graduate and has obtained primary teachers' training under the West Bengal Board of Primary Education and has also completed Primary Teachers Training (PTT) bridge course of one year. She is a member of the exempted category.

In response to an employment notice dated 11th May, 2017 published by the Baranagar Municipality inviting applications from eligible candidates for filling up the post of teacher, Group C, the petitioner applied for being appointed as such in the post reserved for exempted category candidates.

She appeared in the written test and she claims to have performed very well in the said examination. The petitioner was thereafter not permitted to appear in the interview allegedly on the ground that she failed to qualify in the written test. She approached this Court by filing the present writ application praying for a direction upon the respondents to allow her to participate in the interview process.

When the writ petition was moved, this Court was pleased to pass an order on

26th August, 2019 by directing the respondent authority to hold the interview scheduled to be held on 28th August, 2019 but not to publish the result of the interview without the leave of the Court. The Court further directed that the result of the interview shall abide by the result of the writ petition.

It is the specific contention of the petitioner that in the unreserved exempted category she is the only candidate who has the requisite junior basic training from a government recognized institution. It has been submitted that the petitioner possesses all the educational qualifications as required for providing appointment to the post in question. She relies upon the communication made by the Secretary of the West Bengal Board of Primary Education under the Right to Information Act, 2005 that one year PTT or two year PPTTI is equivalent to junior basic training.

The petitioner has annexed the certificate issued in her favour by the West Bengal Board of Primary Education certifying that she passed the Primary Teachers' Training Examination, 2006. She has also annexed the certificate for the PTT/ PPPTT Examination, one year bridge course, ODL mode issued in her favour by the West Bengal Board of Primary Education. The said course is approved by NCTE. The petitioner has annexed the identity card issued in her favour by the department of labour mentioning that she belongs to the exempted category.

It is the specific case of the petitioner that the respondent Municipality has adopted pick and choose method to permit candidates to appear in the interview. She alleges that she has been illegally discriminated.

The petitioner submits that the selection procedure mentioned in the employment notice includes written test and interview. Selection of the candidates is to be made on the basis of the marks obtained both in the written test as well as the interview.

It has been contended that there is no cut off marks mentioned in the advertisement to be obtained in the written test for being eligible to participate in the interview process. Only with the view to eliminate the petitioner from the selection process, the Municipality has resorted to the idea of fixing a cut off mark which is essential for being eligible to participate in the interview.

It has been argued that the sole reason mentioned by the Municipality for not permitting the petitioner to participate in the interview is that she failed to come within the zone of consideration to be called for the interview.

The Municipality, in the affidavit in opposition affirmed on 26th February, 2021, mentions that for unreserved EC category, twenty-two applicants applied for the job against two vacancies. Out of the twenty-two applicants only twelve appeared in the written examination. The entire selection process was conducted by an agency who prepared a list of candidates in order of merit on the basis of the marks obtained in the written examination. Out of twelve candidates the

petitioner ranked in the eleventh position in the merit list by securing twenty-four marks in the written examination. Candidates who secured up to twenty six marks have been permitted to appear in the interview.

It is the further contention of the Municipality that the Primary Teachers' Training Certificate relied upon by the petitioner is not equivalent to the junior basic training certificate. The Municipality, after verifying the educational certificates relied upon by the petitioner, was of the opinion that she is not properly qualified by having junior basic training but even then she was called to appear in the written test.

The affidavit in opposition further mentions that out of the twenty-two applicants only four applicants, including the petitioner, are trained candidates. The list of candidates who are considered to be trained by the Municipality is disclosed in paragraph 3 (k) of the affidavit in opposition affirmed by the Municipality on 26th February, 2021. It appears therefrom that apart from one Rajesh Roushan, none of the candidates fall in the unreserved exempted category.

The Municipality contends that mere holding of qualification or fulfilling the eligibility criteria is not enough for recruitment. A candidate has to succeed in the written test first by securing marks which is fixed at twenty six. As the petitioner failed to obtain twenty-six marks, as such, she has rightly not been permitted to participate in the interview.

It has been submitted that the petitioner has participated in the selection process strictly being aware of the selection criteria and being unsuccessful in the written test she cannot turn around and challenge the selection procedure.

It has been submitted that the writ petition is liable to be dismissed on the ground of non-joinder of necessary parties as the candidates who were successful in the written examination have not been impleaded as parties in the present writ petition. Any order passed herein will adversely affect the candidates who appeared in the interview after emerging successful in the written test.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of Dilip Kumar Ghosh & Ors. Vs. Chairman & Ors. reported in 2006 (1) CLJ (SC) 27 paragraph 11 wherein the Court held that the term 'trained candidate' would mean a candidate who possessed JBT/ PTTC. For appointment of teacher in primary school only the candidates who possess the academic qualification prescribed under the rules JBT/ PTTC shall be considered and the candidates who possess higher academic qualification like BA/ B. Ed shall not be given any credit.

Learned senior advocate representing the respondent Municipality distinguishes the ratio laid down in the aforesaid judgment and submits that there is no bar to engage candidates with higher qualification. As the educational qualification of the petitioner does not match the requisite qualification as per the

advertisement, accordingly, the petitioner cannot get the benefit of the judgment under reference. It has been submitted that the entire selection process is over, but in view of the restraint order passed by the Court, the final result cannot be declared.

Prayer has been made for dismissing the writ petition.

I have heard and considered by the rival submissions made on behalf of both the parties.

The advertisement pursuant to which the selection process was initiated mentions that for recruitment as teacher Group-C, the candidates must have passed Madhyamik or equivalent examination from any Board recognized by the Government and shall have junior basic training from a Government recognized institution.

The petitioner is a candidate in the unreserved exempted category. She has annexed the certificate issued by the West Bengal Board of Secondary Education mentioning that she passed the Madhyamik examination held in March, 2000 and was placed in the First Division.

The petitioner has also annexed the certificate issued by the West Bengal Board of Primary Education certifying that she completed the Primary Teachers' Training Examination, 2006 held in the month of February, 2011 and was placed in the First Division.

The petitioner has annexed a communication dated 14th March, 2022 obtained under the Right to Information Act from the Secretary of the West Bengal Board of Primary Education clearly mentioning that the Primary Teachers' Training Examination is equivalent to Junior Basic Training.

From the documents annexed to the writ petition the contention of the Municipality that the petitioner does not have the requisite qualification for recruitment as teacher Group-C cannot be substantiated.

On one hand, the Municipality avers in the affidavit in opposition that out of twenty-two candidates, four including the petitioner, are trained candidates; whereas on the other hand, it is averred that the petitioner is not properly qualified by having Junior Basic Training. The two statements are contradictory to each other.

If it is the contention of the respondent Municipality that the petitioner did not possess the requisite qualification, then the petitioner ought not to have been permitted to appear in the written examination. The fact that the petitioner was permitted to appear in the written test implies that, the authorities checked her educational credentials and being satisfied that the petitioner possessed the requisite qualification for recruitment permitted her to appear in the written examination.

The Municipality contends that as per the advertisement, if no trained candidate

is available then untrained candidates having the prescribed qualification may be selected for the post. The aforesaid means that first opportunity of recruitment has to be offered to trained candidates and if trained candidate is unavailable, then only there is scope for selecting untrained candidates.

As it appears that the petitioner does possess the requisite training qualification accordingly, there is no reason not to permit the petitioner to participate in the interview. Certificate issued by the West Bengal Board of Primary Education certifying that the petitioner completed the Primary Teachers' Training Examination, 2006 coupled with the information provided under the Right to Information Act by the Secretary, West Bengal Board of Primary Education, mentioning that the Primary Teachers' Training Examination is equivalent to Junior Basic Training is enough to conclude that the petitioner is a trained candidate. In terms of the recruitment notice the West Bengal Board of Primary Education is competent to certify the equivalence of the training qualification obtained by the petitioner.

The next hurdle put forth by the Municipality is that the petitioner scored twenty-four marks in the written test. The cut off marks fixed by the Municipality for appearing in the interview is twenty-six.

The advertisement pursuant to which the selection process is conducted does not disclose any cut off marks to be obtained by a candidate in the written examination for being eligible to participate in the interview. The selection process as mentioned in the advertisement speaks about the written test and interview. There is neither any cut off marks mentioned nor is it mentioned that interview will be conducted from those candidates who secure more than the cut off marks.

It is always open for the employer to fix a cut off mark to be obtained by the candidate to proceed in the next level of the selection. Since it is a method of elimination, the said criteria ought to have been disclosed at the initial stage so that a candidate can face the selection process in an informed manner and does not suffer from an ill-feeling that the subsequent process has been adopted only to eliminate him/her from proceeding further in the recruitment process.

On the contrary, the selection procedure contemplates selection on the basis of the written test and the interview, that is, the total marks obtained by the candidates in the written test as well as the interview, both. The expression 'and' is conjunctive, meaning thereby, that the combined marks obtained in the written test and interview would be the basis for assessing the comparative merits of the participating candidates.

The Municipality has annexed to the affidavit in opposition a list of twelve candidates in the unreserved exempted category with their marks obtained in the written test. It appears therefrom that out of twelve candidates ten have obtained the marks of twenty-six or more. There is no valid ground to disallow the last two merit listed candidates to appear in the interview.

The basis and the rationale for fixing twenty-six as the cut off marks in the midst of the selection process are not disclosed in the affidavit in opposition. It has been argued that the same is the policy decision of the Municipality and is not required to be disclosed.

It is settled law that in the matter of public employment there has to be transparency and fairness in the recruitment process. Vital information relating to the recruitment process and the selection procedure cannot be withheld by the employer or its recruitment agency on the garb of 'policy decision, not required to be disclosed'. The same is contrary to the fundamental rights as enshrined in the Constitution of India and the law settled by the Hon'ble Supreme Court in this regard.

It is also settled that the rules of the game cannot be changed after the game is over. The candidates who participated in the recruitment process were made aware of the fact that the selection process would include the written test as well as the interview. After completion of the written test, the Municipality cannot change the selection process and disallow a candidate to participate in the interview, allegedly on the ground that she failed to secure the cut off marks which was never made known to the participating candidates. The same amounts to changing the rules of the selection procedure in the midst of the selection, which is impermissible in law.

The Municipality has tried to shrug off their responsibility by contending that the selection process was outsourced to an independent recruitment agency and the Municipality did not have any control over the said recruitment agency. It cannot be denied that the agency was engaged by the Municipality and must have been paid by the Municipality for conducting the selection process. Moreover, the said agency is an absolute private body and its conduct cannot be taken to be as sacrosanct.

The aforesaid stand of the Municipality cannot be accepted by the Court. The relationship of principal and agent is based on the Latin maxim, "Qui facit per alium facit per se", meaning, "he who acts through another is deemed in law to do it himself". It is elementary principle of law that the principal is always responsible for any act performed on his behalf by his agent. The recruitment agency merely acts as an agent of the Municipality and the Municipality will be held responsible for any action or non-action on the part of the said agency.

Assuming that the petitioner does not possess the requisite training qualification but she can always be treated as an untrained candidate and be permitted to participate in the interview. Whether the petitioner will ultimately succeed in the selection process or not, is an entirely different question all together and that stage has not yet arisen, but she ought not to be stopped in the middle of the race relying upon an alleged policy which never existed at all or was not made known to the participants prior to the selection process.

The Court cannot brush aside the submission of the petitioner that the agency

acted on the dictates of the Municipality and did not permit the petitioner to appear in the interview. As it appears that there is no valid ground to support the stand of the Municipality with regard to the fixing up of the cut off marks accordingly, it was improper for the respondents to not permit the petitioner to participate in the interview.

There is no issue with regard to the contention of the respondents that there is no bar to engage candidates with higher qualification but then it is also settled that no extra benefit can be given to the overqualified candidates.

With regard to the issue regarding non joinder of necessary parties as raised by the respondents, it can be said that the selection process is yet to be over. No right has accrued in favour of any party which would be infringed or curtailed if all the candidates are permitted to appear in the interview. None of the parties, including the employer, will be prejudiced in any manner if the rest two candidates are interviewed and the selection process is concluded. On the other hand, the petitioner will be seriously prejudiced if she is not permitted to participate in the interview.

Only two candidates are left to be interviewed. The Municipality is suffering a restraint order and the selection process cannot be finalized. The process which was initiated by the recruitment notice dated 11th May, 2017 ought not to be kept in a suspended state for an indefinite period and ought to be concluded at the earliest.

In the fitness of things, the Municipality ought to take steps for concluding the selection process by conducting interview of the rest two candidates who participated in the written exams and select the candidates who secure the highest marks in aggregate combining the marks obtained in the written test and the interview.

In view of the discussions made herein above, the instant writ petition is disposed of directing the Municipality to hold interview of the candidates who were restrained from participating in the same and to assess the comparative merits of the candidates by adding the marks obtained in the written test as well as the interview and thereafter select the best candidates for the job. The interview of the remaining candidates be conducted at the earliest but positively within a period of four weeks from the date of communication of this order. After the interview of the remaining candidates is over, the Municipality will proceed to conclude the selection process without any unnecessary delay.

The writ petition stands disposed of.

No costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.