
(2024) 01 CAL CK 0031

In the Calcutta High Court

Case No : MAT No. 991, 994, 995, 996, 1008, 1010, 1037, 1094, 1119, 1154, 1312 Of 2023, I.A. No.: CAN 1, 3, 4 Of 2023

Rittwik Joardar & Others

APPELLANT

Vs

State Of West Bengal & Others

RESPONDENT

Date of Decision : 11-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 309

Citation : (2024) 01 CAL CK 0031

Hon'ble Judges : Tapabrata Chakraborty, J;V. M. Velumani, J

Bench : Division Bench

Advocate : Uday Sankar Chattopadhyay, Rajashree Tah, Subir Sanyal, Ratul Biswas, Somesh Kumar Ghosh, Anindya Lahiri, Puspall Chakraborty, Arkadipta Sengupta, Samrat Dey Paul, P. Ganguly, S. Nath, S. Sarkar, Aayushi Mukherjee, Bikash Ranjan Bhattacharya, Samim Ahammed, Arka Maity, Saloni Bhattacharji, Ambiya Khatoon, Arka Ranjan Bhattacharjee, Gulsanwara Pervin, Sayan De, Kaustuv Shome, Sayan Kanjilal, Pantu Deb Roy, Subrata Guha Biswas, Shamik Chatterjee, Amit Bikram Mahata, Aditya Bikram Mahata, S. Bhaja, Sahil Kabir, Vivekananda Bose, Ratikanta Pal

Final Decision : Allowed

Judgement

V.M. Velumani, J

1. All these appeals are disposed of by this common judgment since the facts and the issues involved are one and the same.
2. A notification dated 22nd July, 2020 was issued for engagement of 2000 "Bana Sahayaks" on contractual basis for the vacancies notified in the following five administrative divisions – (a) Presidency Division, (b) Medinipur Division, (c) Burdwan Division, (d) Malda Division, and (e) Jalpaiguri Division.
3. The following eligibility criteria and selection process are fixed in the said notification:

i. A candidate is to be between 18 years and 40 years of age as on 1st January of the year of application, i.e., date of birth should be from 01.01.1980 to 31.12.2001.

ii. Five years age relaxation in the upper age limit for SC/ST candidates.

iii. The candidate must be resident of the locality and if the candidate satisfies the locality criteria, then the candidate will be screened for other qualifying criteria.

iv. The eligible candidates will be called for evaluation-cum-interview by the respective Engagement Board to verify original certificates for age, residence proof, educational qualification and photo ID.

v. The Engagement Board will consist of three members. Each member will award marks out of 100 to the candidates for ability to read Bengali, write Bengali, ability to read English or Hindi, General Knowledge Oral Test and Personality fitness for forestry works.

vi. The marks awarded by three members will be added and merit list will be prepared in descending order. Elaborate procedure is contemplated to fix seniority in the selected list of candidates if more than one candidate is awarded the same marks.

4. Number of persons applied for engagement as "Bana Sahayaks" on contractual basis. The Engagement Boards, after verifying residential criteria, called the eligible candidates for evaluation-cum-interview. The respective Engagement Board following the procedure, selected the candidates and issued appointment orders. The selected candidates joined duty in December, 2020.

5. Five unsuccessful candidates filed the writ petition being WPA No. 8506 of 2021 for the following relief:

"(a) A Writ in the nature of Mandamus commanding the respondent their men, agent, associates or each one of them particularly Respondent No 1 and 2 to publish a Merit List and/ or panel of successful candidates for recruitment of 2000 Bana Sahayak Post in connection with the Notification being No. 828-For/FR/0/N/18R-02/2018 dated 22.07.2020 and further direct to give fresh appointment in 2000 Bana Sahayak Post after publishing the merit list forthwith.

(b) A Writ in the nature of mandamus commanding the respondent their men, agent, associates or each one of them particularly Respondents No. 1 and 2 to fill up the vacancies after publishing the Merit List and/ or panel of the successful candidates by considering the representation of the petitioners, forthwith....."... and other reliefs.

6. The respondents resisted the same. The learned Single Judge, considering the materials placed and judgments relied on by the respective counsels, disposed of the writ petition with the following directions:

"42. Therefore, this Court directs that the selection process for the post of "Banasahayaks" will be freshly conducted within a period of two months from the date on the basis of the eligibility criteria (without any alternation thereof) and in terms of the selection process advertised on July 22, 2020 within a period of two months from the date. 3 members of CEBs will conduct the process. The selected candidates from the list of eligible candidates will be published in the official website of the State. The engagement of the under-aged candidate shall be terminated with immediate effect.

43. Upon completion of the process of selection for "Banasahayaks" within a period of two months from date, the previous extension granted to the candidates will be terminated."

7. Challenging the said order, selected candidates filed the present appeals. Some of the selected candidates got themselves impleaded in the writ petition and others have filed appeal after obtaining leave from this Court.

8. The learned counsel appearing for the appellants contended that:

i. The reliefs granted by the learned Single Judge are beyond the scope of the writ petition and prayer as contended in the writ petition.

ii. The respondents/writ petitioners, who are unsuccessful, have no locus standi to challenge the selection process after participating in the selection and after completion of selection process.

iii. There is no discrimination in the selection of candidates. The respondents/writ petitioners belong to only three districts and order setting aside the entire selection process is not correct.

iv. By notification dated 15th September, 2020, the number of members of Engagement Board was reduced to two and it is known to all including respondents/writ petitioners.

v. No prejudice was caused to the candidates who participated in the selection by reducing members of the Engagement Board from three to two.

9. The learned counsels appearing for the appellants further contended that merit list was published on November, 2020. Selected candidates joined duty in December, 2020. The writ petition was filed only on 31st March, 2021 much after selected candidates joined duty. Therefore, the learned Single Judge ought to have dismissed the writ petition. The respondents/writ petitioners have secured marks below the cut-off marks. The notification was not issued under Article 309 of the Constitution of India. The notification was issued only on administrative and/or executive power and the same does not have rigidity in relation to rules. The list of selected candidates was not notified but published in the notice board of relevant local Circle offices. The notification dated 15th September, 2020 was placed before this Court and the failure to publish the same in the website will not be a ground for issuing direction in the order dated 3rd May, 2023. There is

no illegality, arbitrariness or caprice in the selection process. The learned Single Judge ought to have directed publication of the list instead of issuing direction to conduct selection afresh. The learned Single Judge disposed the writ petition without giving opportunity to the selected candidates, who were not parties before the Court. The learned counsel appearing for the appellants referred elaborately to the impugned order, two reports filed by the learned counsel for the State before this Court in WPA 8506 of 2021.

10. Learned counsel appearing for the respondents/writ petitioners submitted that selection was not conducted in a fair and transparent manner. The list of selected candidates was not published. Selected candidates were informed through WhatsApp message. As per the advertisement, the Engagement Board must consist of three members to conduct evaluation and interview but only two members conducted evaluation and interview. If three members conducted interview, the result would have been different. As per the advertisement, the engagement on contractual basis was only for 1 year but it was extended up to 31st December, 2023. Three ineligible candidates namely - two over-aged candidates and one under-aged candidate, were engaged. The list of selected candidates was not published and the respondents/writ petitioners could not implead the selected candidates. When selection process was not done as per the publication and it is not fair and transparent, notice to selected candidates is not necessary. The learned counsel appearing for the respondents/writ petitioners relied on the information received under RTI Act and submitted that there are discrepancies in number of vacancies and same unique ID was given to more than one person. The learned counsel for the respondents/writ petitioners further submitted that only in the additional report, for the first time, they annexed the merit list of Burdwan district. The order of the learned Single Judge does not suffer any illegality. The learned counsel for the respondents/writ petitioners contended that in the advertisement dated 22nd July, 2022, the maximum marks is only mentioned and no cut-off marks was mentioned which vitiate the selection process. The learned Single Judge considered all the materials in proper perspective and by giving valid reasons, issued directions and prayed for dismissal of all the appeals.

11. The learned counsel appearing for the State submitted that the appointment for filling up 2,000 posts, 6,77,643 applications were received. By oversight one under-aged candidate was selected which was subsequently cancelled. As far as two over-aged candidates are concerned, on verification of age certificate, one of them is not over-aged and another person has not joined. The learned counsel for the State elaborately referred to the report and additional report filed and submitted that the respondents/writ petitioners have obtained marks far below the cut-off marks and far below the ranks obtained by the last candidate appointed. The respondents/writ petitioners have not alleged any mala fide against the State respondent. The learned Single Judge on erroneous consideration directed to conduct fresh selection. The respondents have followed the procedure and reducing the member of the Circle Engagement Board from 3

to 2 does not prejudice the candidates. The said modification was issued by the notification dated 15th September, 2020 and the same was published in the Notice Board and it was made known to all the candidates including the respondents/writ petitioners. The respondents/writ petitioners knowing fully well that only two members are conducting interview, participated in the interview and after being unsuccessful, it is not open to them to file writ petition alleging lack of fairness and transparency. The learned Single Judge travelled beyond the scope of the reliefs sought for and directed the respondents to conduct the selection afresh by forming three members in the Circle Engagement Board.

12. Heard learned counsels appearing for both the parties and perused the entire materials on record.

13. From the materials on record, it is seen that notification dated 22nd July, 2020 was issued for engagement of 2000 "Bana Sahayaks". Necessary criteria for selection have been mentioned in the notification. The respondents/ writ petitioners along with others participated in the selection but they were unsuccessful. As per the notification, five administrative divisions were notified for filling up the vacancies. Nine Circle Engagement Boards were constituted and after due selection process, 1878 candidates were selected and appointment orders were issued in November, 2020 and they joined duty in December, 2020. The grievance of the respondents/writ petitioners mainly is that instead of three members in the Engagement Board, only two members conducted evaluation and interview which is contrary to the notification dated 22nd July, 2020. The contention of the learned counsel for the respondents/writ petitioners is that had three members conducted evaluation and interview, then the result would have been different is only an assumption and presumption which cannot be accepted. Only two members committee conducted evaluation and interview for all the candidates including the writ petitioners and the appellants. It is not the case of the respondents/writ petitioners that they were discriminated and due to mala fide intention, they were not selected. The respondents/writ petitioners did not allege illegality, arbitrariness and caprice in the selection process conducted by the Circle Engagement Boards. The learned counsel appearing for the State contended that list of selected candidates was published in the notice board of the respective Offices which was not denied by the respondents/writ petitioners. By the notification dated 15th September, 2020, reduction in the number of members of the Circle Engagement Boards from three to two was also published in the notice board of respective Offices. Non-publication in the website or in newspapers after reduction of number of members, merit-list as well as list of selected candidates will not be a ground for setting aside the entire selection list. The respondents/writ petitioners have not impleaded selected candidates. Further they alleged that three ineligible candidates were selected. The learned counsel appearing for the State clarified the same by submitting that selection of the under-aged candidate was cancelled, one of the over-aged candidates did not join and the other candidate was not over-aged. There is no denial of the contention of the learned counsel for the State. The learned counsel appearing

for the State contended that 6,77,643 or so applications were received for filling up 2000 posts and by oversight, one under-aged and one over-aged candidate was selected. When the mistake was pointed out, the same was rectified immediately. The said contention is acceptable.

14. The contention of the learned counsel for the appellants that the impugned order is beyond the scope of the writ petition and the prayer in the writ petition is valid and acceptable. The respondents/writ petitioners main relief is to publish the merit list and/or panel of successful candidates for recruitment of 2000 "Bana Sahayaks" posts and to give fresh appointment after publishing the merit-list. The learned counsel for the State had produced the merit-list of the respondents/writ petitioners' division and also list of selected candidates. The conclusion of the learned Single Judge that non-publication of notification issued for reduction of number of members from three to two had affected the selection process cannot be accepted. Further, the respondents/writ petitioners having participated in the selection process and being unsuccessful, had no locus standi to challenge the selection process and filing the writ petition, three months after joining of selected candidates. It is pertinent to note that the judgment in the case of The State of West Bengal & Others vs. Chandra Kanta Ganguli reported in 2017 SCC OnLine Cal 3799, a Co-ordinate Bench, has held that the candidates having participated in the fair selection process and having become unsuccessful has no locus to challenge the selection. The above ratio is squarely applicable to the facts of the present case.

15. The learned Single Judge in the impugned order recorded that the respondents/writ petitioners have not argued that ineligible candidates were selected or members of Circle Engagement Board had no authority to conduct the interview. The learned Single Judge concluded that selection process is not transparent on the ground that merit-list was not published. The learned Single Judge further held that in view of reduction in number of members of the Circle Engagement Board from three to two, there is possibility of affecting the chance of the respondents'/writ petitioners' engagement. The learned Single Judge failed to appreciate that reduction of number of members to two of Circle Engagement Board will not vitiate the selection process and that marks obtained by the respondents/writ petitioners are far below marks obtained by the last selected candidates.

16. From the materials on record, it is seen that the notification dated 22nd July, 2020 was issued for engagement of 2000 "Bana Sahayaks" wherein, the eligibility of the candidate as well as selection process has been mentioned. As per the notification, three members will constitute Engagement Board, while vide notification dated 15th September, 2020, the number of members of Circle Engagement Board was reduced to two. Apart from this modification, no modification was made in the eligibility of candidates to be considered for engagement of "Bana Sahayaks". All the eligible candidates were called for evaluation and interview. No candidate was rejected based on the reduction in

the number of members in the Circle Engagement Board. The modification in the selection process by reducing number of members only without any modification of eligibility of candidate and allowing all the eligible candidates to participate in the interview will not amount to lack of transparency and vitiate the selection process. This issue along with other issues were considered by the Hon'ble Apex Court in the judgment in the case of State of Uttar Pradesh vs. Karunesh Kumar and Others reported in 2022 SCC OnLine SC 1706. In paragraph 32, the Hon'ble Apex Court held as follows:

"...A change was introduced for the first time after the entire process was over, based on the decision made by the Full Court qua the cut off. Secondly, it is not as if the private respondents were nonsuited from participating in the recruitment process. The principle governing changing the rules of game would not have any application when the change is with respect to selection process but not the qualification or eligibility. In other words, after the advertisement is made followed by an application by a candidate with further progress, a rule cannot be brought in, disqualifying him to participate in the selection process. It is only in such cases, the principle aforesaid will have an application or else it will hamper the power of the employer to recruit a person suitable for a job."

The above said ratio is squarely applicable to the facts of the present case.

17. The contention of the learned counsel for the respondents/writ petitioners that selection process is vitiated as no cut-off marks is mentioned in the notification is not acceptable. It is the contention of the learned counsel for the State respondents that 6,77,643 applications were received for engagement of 2000 "Bana Sahayaks". The State respondents after evaluation and interview, prepared the merit-list in descending order based on the marks obtained by the candidates in the evaluation and interview. They issued appointment order for first 1878 candidates placed in the merit-list. Such a method adopted by the State respondents does not suffer any illegality and the said method is valid and legal.

18. The respondents/writ petitioners have not alleged that:

- i. The entire selection process is sham and nominal.
- ii. The members of the Circle Engagement Board acted in a mala fide and discriminating manner and showed favouritism in selecting candidates.
- iii. The selected candidates misrepresented or played fraud.

19. When the respondents/writ petitioners have not made and proved any mala fide, discrimination or favouritism, the learned Single Judge erred in setting aside entire selection process and issuing directions to conduct fresh selection. The learned Single Judge had converted the writ petition as Public Interest Litigation without there being any material or reason to do so.

20. For the above reasons, the impugned order of the learned Single Judge made

in WPA No. 8506 of 2021 is set aside and the appeals are allowed.

21. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.