**IN THE HIGH COURT OF CALCUTTA**

W.P. No. 24433 (W) of 2010

Decided On: 03.07.2012

Appellants: **Prativa Biswas (Halder)**
**Vs.**
Respondent: **State of West Bengal, through Secretary Department of School Education (P.E)**

**Hon'ble Judges/Coram:**Hariah Tandon, J.

**JUDGMENT**

**Hariah Tandon, J.**

1. A short point involved in this writ petition, is whether the candidature, who is sponsored under the Exempted Category as Scheduled Caste Sub-Category, should be placed under the General Sub-Category of the said category if he obtained higher marks than the last successful candidate under the General Sub-Category of the Exempted Category. The concerned Employment Exchange was not treating the petitioner under the Sub-Category of Scheduled Caste of the Exempted Category which constrained the petitioner to move before this Court by filing a writ petition being W.P. No. 13255(W) of 2007 and the same was disposed of by directing the concerned Employment Exchange to sponsor the name of the petitioner under the Exempted Category (SC) to the concerned District Primary School-Council.

2. In compliance of the said order, the sponsorship was made under the said category and the petitioner was allowed to submit his bio-data and/or testimonial.

3. The name of the petitioner was not included in the panel of the successful candidates.

4. The petitioner prayed for an order of appointment in this writ petition. Initially the writ petition was founded on the allegation that the person who secured lesser marks than the petitioner and whose name was also sponsored under the Exempted Category, has been favoured with the appointment. But during the pendency of the writ petition, an information was received from the competent authority relating to the disclosure of the minimum cut-off marks in Exempted Category for Bengali medium School which is much lesser than the marks obtained by the petitioner. The said information, which was issued vide Memo No. 2308/RTIA dated 10.4.2012, is brought on record by way of supplementary affidavit.

5. The learned advocate, appearing for the Council, vehemently submits that the benchmark set for appointment under the Exempted Category for Bengali Medium School as disclosed in the said Memo is in respect of the Exempted Category (General) whereas the candidature of the petitioner is considered under the Exempted Category (SC) where the cut-off marks is much higher than the marks awarded to the petitioner.

6. The aforesaid submission, in my opinion, is not tenable. The District Primary School Council, being the creature of the statute, has to act and/or proceed within the precinct of the statute and cannot deviate and/or travel beyond it.

7. In exercise of the power conferred under section 106 and section 60 of the West Bengal Primary Education Act, 1973, the Government framed West Bengal Primary Teachers' Recruitment Rules, 2001.Thus, the said Rule partakes statutory character and operates with full rigour and force in the field of recruitment of a primary teacher by the respective District Primary School Councils.

8. The selection procedure is provided in Rule 9 thereof. It would be relevant to quote the said provisions which reads thus:

9. Selection Procedure.-- (1) After the names of candidates for the posts of teachers are obtained from the employment exchange all candidates shall be communicated in writing to produce testimonials/certificates for computation of their marks in the score sheets to be prepared for the purpose of such selection.

(2) Credit shall be given and computed in the following manner:

(a) there shall be 100 marks in total as full marks:

(b) Out of 100 marks, 90 marks shall be computed and allotted in the following manner.--



The remaining 10 (ten) marks shall be allotted for written test:

(c) The percentage of marks to the total full marks obtained by a candidate in School Final/Madhyamik Pariksha/Higher Secondary (XI class) shall be computed as percentage of 65 marks and to be recorded, in the score sheet.

(d) The percentage of marks to the total full marks obtained in Junior Basic Training certificate/Primary Teachers' Training Certificate Examination or equivalent shall be computed as percentage of 22 (twenty two) and recorded in the score sheet:

(e) Marks obtained in the written test shall be recorded in the score sheet;

(f) In awarding marks for co-curricular activities one-mark shall be credited for--

(i) a certificate that he represented the district in State level games or sports, issued by West Bengal School Sports Association;

(ii) the 'A', 'B' or 'C level certificate of National Cadet Corps:

Provided that the maximum of such marks to be credited shall not exceed three.

(3) The total marks obtained by each candidate for academic qualification, training and co-auricular activities shall be computed in the manner specified in clause (c), clause (d) and clause (f), and a list of names of all candidates of each category, namely, general, Scheduled Castes, Scheduled Tribes, Other Backward Classes, Exempted Category, Ex-Servicemen and physically handicapped shall be prepared in descending order of total marks obtained by them.

(4) The Selection Committee in its meeting, shall finalise the total number of candidates, from the top of the list of each category mentioned in sub-rule (3), to be called for written test. The number of candidates to be called for written test shall be five times the number of vacancy unless the total number of candidates is insufficient for such written test.

(5) The candidates selected for written test shall be intimated the date, time and place of either written test.

(6) If any of the candidates called for written test as per provision of sub-rule (5), does not appear at the written test or does not comply with the instructions issued by the Council for the district or the sub-division, as the case may be, his candidature may be cancelled by the Selection Committee.

(7) After the written test all the marks, obtained by a candidate for academic qualification, training, co-curricular activities and written test, shall be added up and the names of candidates shall be arranged according to total marks obtained, in a descending order.

(8) After the process as laid down in sub-rule (7) is completed, the Selection Committee shall at first repair a panel of candidates under General category only, with all the General, Scheduled Castes, Scheduled Tribes and Other Backward Classes candidates and shall be arranged serially according to heir merit. This is because the number of Scheduled Castes, Scheduled Tribes or Other Backward Classes candidates qualifying on merit for appointment to any unreserved vacancy in a service or post in any establishment to, be filled up by direct recruitment shall not be deducted from the quota reserved in service or post for such candidates. Thereafter the Selection Committee shall prepare separate panels for Scheduled Castes, Scheduled Tribes and Other Backward Classes candidates in the respective category as per statutory reservation rules, from amongst the remaining candidates of such categories.

In case of candidates belonging to Exempted Category, Ex-Servicemen and physically handicapped (PH) category, a separate panel shall be prepared for vacancies reserved for the respective category, Additional panel of 5% of General, Scheduled Castes, Scheduled Tribes, Other Backward Classes, Exempted Category, Ex-Servicemen and Physically Handicapped candidates shall be prepared in the same manner as referred to above in sub-rule (7).

The additional panel for General category shall not include candidates from Scheduled Castes, Scheduled Tribes and Other Backward Classes category. In case of non-availability of a suitable qualified Exempted Category candidate belonging to general, scheduled castes, scheduled tribes, other backward classes and physically handicapped, the said vacancy of exempted category candidates shall be filled up by a non-exempted category candidate belonging to general, scheduled castes, scheduled tribes, other backward classes and physically handicapped category as the case may be.

Moreover, in case of non-availability of suitable qualified Ex-Servicemen candidate belonging to General, Scheduled Castes, Scheduled Tribes, Other Backward Classes, the said vacancies of Ex-Servicemen category shall be filled up by non-Ex-Servicemen candidates belonging to General, Scheduled Tribes, Other Backward Classes respectively.

(9) Thereafter all the panels thus prepared shall be placed in the meeting of the Council for passing and the total number of eligible candidates included in the panel shall be the same as the number of vacancies plus 5% of such existing vacancies.

9. On meaningful reading of the said provisions, it is gathered that the concerned Council would invite all the candidates whose names are sponsored by the concerned Employment Exchange to produce testimonials/certificates for computation of their marks in the score-sheets.

10. Sub-rule (2) of Rule 9 provides the methodology for computation of the marks on 100 points roster where 65 marks are allotted for academic qualifications, 22 marks for training, 3 marks for co-curricular activities and 10 marks for the written test.

11. Sub-rule (3) thereof further provides that the list of the names of all candidatures of each category, namely, General, Scheduled Castes, Scheduled Tribes, Other Backward Classes, Exempted Category, Ex-Servicemen and Physically Handicapped shall be prepared in the descending order of the total marks obtained by them in academic qualification, training and co-curricular activities.

12. Sub-rule (4) makes imperative on the selection committee to finalize the total number of candidates from the top of the list of each category for written test in 1:5 ratio.

13. The total marks so obtained by the candidate out of 100 point roster to be arranged in a descending order under sub-rule (7) of Rule 9 thereof. However, sub-rule (8) mandates selection committee to prepare a panel of the candidates under the General Category only with all General, Scheduled Castes, Scheduled Tribe and Other Backward Classes candidates and to arrange the same according to their merit.

14. The reason for preparation of one list is that the number of vacancies Scheduled Caste, Scheduled Tribes, or Other Backward Classes candidates qualifying on merit for appointment to an unreserved vacancy in a service or post, shall not be deducted from the quota so reserved.

15. After filling up the total number of vacancies fixed under the General Category, the selection committee has to prepare a separate panel of each category from the candidate reserved category who secured higher position in the panel prepared on merit, his appointment should be considered under the General Category so that the quota reserved for such category should remain intact and be filled up with the candidate of such category who could not find place in the merit list.

16. Similarly under the Exempted Category, one list, is required to be prepared on the basis of the merit and after filling up the entire post reserved under Exempted Category (General), subsequent vacancies under the said category of the Exempted Category is required to be filled up amongst the candidate of the said category.

17. The information disclosed under Right to Information Act, 2005 reveals the minimum bench mark under the Exempted Category for Bengali Medium to be 25.41 whereas the petitioner has obtained 30.41 marks. Even if the submission of Mr. Dey is accepted that the marks disclosed in the said information relates to an Exempted Category (General), the petitioner having obtained higher marks than the minimum benchmark, should have been placed under the Exempted Category (General) instead of giving in Exempted Category (SC). The process adopted by the selection committee is contrary to the statutory rules, as indicated above, and, therefore, cannot sustain.

18. I am not oblivion of the fact that large number of appointments have already been given. Any order to cancel and/or upset the panel prepared under the Exempted Category would have a larger impact as it would make the appointments of the candidates liable to be cancelled. Furthermore, such order, if passed, without affording an opportunity of hearing to the successful candidates, would also offends Articles 14 and 16 of the Constitution of India.

19. I am also not unmindful that a fence sitter should not be allowed to reap the benefit of the order obtained by other candidate.

20. Therefore, to mitigate the situation, I am of the view that since the petitioner, who is litigating since long have been found to have proved that the action of the authority in denying the appointment is illegal and contrary to the provisions contained under statutory Rules, the Chairman of the District Primary School Council is, therefore, directed to recommend the name of the petitioner to the Director of School Education, West Bengal for necessary approval to the appointment of the petitioner. Such exercise shall be completed within four weeks from the date of communication of this order.

21. The Director of School Education, West Bengal, in turn, would take decision relating to the approval within two weeks from the date of receipt of such communication.

22. It is needless to mention that such recommendation and/or approval shall be turned upon due satisfaction of the other formalities and requirements under statutory Rules.

23. This writ petition is thus, disposed of.

24. There shall be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be given to the parties as early as possible.