

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Abhijit Gangopadhyay

WPA 5287 of 2021

Sumana Layek

-Versus-

The State of West Bengal & Ors.

For the petitioner	:	Mr. Dilip Kumar De
	:	Mr. Arunava Pati
	:	Mr. S. C. Dhara
For the State	:	Mr. Pinaki Dhole
	:	Ms. Ananya Neogi
For the School Service Commission	:	Dr. S. K. Patra
	:	Ms. Supriya Dubey
For W. B. B. S. E.	:	Ms. Koyeli Bhattacharya

Heard On: 24.11.2021 & 03.01.2022

Judgment On: 10.01.2022

Abhijit Gangopadhyay, J.

Pursuant to the order passed by this court on 24.11.2021, an order dated 15.12.2021 passed by the Chairman of the West Bengal Central School Service Commission was sent to the petitioner, which the petitioner has disclosed through her supplementary affidavit affirmed on 6th January, 2022.

On 24.11.2021 it was observed by this court that the allegation of the petitioner is that she is a waitlisted candidate in respect of First State Level Selection Test IX-X Level 2016. Her rank in the waiting list is 149. Her

allegation is that some candidates of the same category i.e. General Category in waiting list rank number 159, 181, 196 and 198 have been given appointment letters, but no appointment letter was issued to her being a waitlisted candidate above the candidates against those rank numbers.

2. The operative part of the order passed by the Chairman is as follows:

“The relevant date in the system, as available, was examined. It transpired from record that the petitioner was informed to attend West Bengal Central School Service Commission Office on 03.08.2020 sending message to her Mobile No.8001901414 on 30.07.2020 like all candidates cited in the application dated 13.02.2021. The petitioner did not turn up on 03.08.2020 and failed to receive the recommendation but the candidates whose names were cited in the application dated 13.02.2021 attended and received recommendations. Therefore, there was not fault on the part of the Commission.”

3. The Rule for Recruitment for Assistant Teachers, namely, West Bengal Central School Service Commission (Selection for Appointment to the Posts of Teachers for Classes IX and X in Secondary and Higher Secondary Classes) Rules, 2016 is relevant for the present purpose.

4. The petitioner's case as has been pleaded in paragraph 12 of the writ application is that the Commission proceeded with the counselling process for 1st, 2nd, 3rd, 4th, 5th and 6th phases of counselling along with empanelled candidates in the merit list even then the petitioner was not called for even 6th phase of counselling. Some other candidates as has been mentioned in paragraph 15 of the writ application got their recommendation letters on 08.02.2021.

5. In the order of the Commission it has been stated that the petitioner was not present in the West Bengal Central School Commission Office on 03.08.2020 but has not been stated what was happening in the Commission's office on 03.08.2020. It has been mentioned in the report that the petitioner failed to receive the recommendation but other candidates attended and received the recommendations. A responsible officer like the Chairman of the West Bengal Central School Service Commission has tried to hoodwink the court by sending such an incomplete order dated 15.12.2021 without mentioning what was happening in the Commission's office as aforesaid on 03.08.2020. The petitioner has submitted that she never knew what happened there on 03.08.2020 as no intimation as to the event that was held on 03.08.2020 was given to her.

6. In Rule 16 of the above Rule of 2016 it has been provided how the recommendation letter is to be sent but it has not been provided how the intimation as to counselling would be sent to the candidates. However, from Schedule IV of the said Rules (Vide paragraph 3 thereof) it is found that the empanelled candidates for the post of teachers for the classes XI and XII in a selection test qualified for counselling shall be informed about different particulars (as mentioned in the said paragraph 3) through speed post mentioning the date, time and venue of counselling and such notice shall be deemed to have been served as soon as it has been sent to the candidates by speed post.

7. It does not stand to any reason as to why the date of counselling would not be intimated to the candidates who are called for counselling for the post of teacher for Classes IX and X through speed post. The recommendation letter is

to be sent by speed post or by other mode to both types of candidates i.e. candidates for Classes IX and X and candidates for Classes XI and XII. For counselling there is a provision for sending intimation of counselling to the empanelled candidates for the post of teachers for Classes XI and XII through speed post, what is absent is how the letter of counselling or intimation as to counselling would be sent to the candidates who would be invited for counselling for the post of teachers for Classes XI and X.

8. In the casual order passed by the Chairman of the WBCSSC it has not been stated that names of the wait listed candidates were published in the Commission's website well before the date of counselling. Thus, it is evident that there was no publication in the website of the Commission as to the date of counselling of the wait listed candidates like the petitioner. It has also not been mentioned in the said casual order of the Chairman from which Mobile No. the message was sent to the petitioner in her Mobile No. 8001901414. It has also not been stated by reference of any document to substantiate that any message was at all sent to the Mobile No. of the petitioner. A responsible officer of a statutory Body should know that sending message to one Mobile No. for the very vital stage of recruitment process i.e. counselling (if counselling was held on 03.08.2020) is always a very risky affair as to mode of communication. A message may not reach its destination for several reasons beyond the control of the receiver. The petitioner has stated that the Commission had the e-mail address mentioned in her application from which is at pages 17 and 18 of the writ application (vide page 18) but the Commission did not care to send an e-mail to the petitioner in her e-mail address for the event that was to be held on 03.08.2020 in WBCSSC's office.

9. In the said casual order passed by the Chairman of the WBCSSC it has also not been disclosed that any decision was taken in any meeting of the Commission that information/intimation as to date of counselling would be sent by message to the Mobile No. of the candidates and not to their e-mail address. In fact, the report of the Chairman dated 15.12.2021 is full of so such loopholes that it appears, unless the Chairman has relegated himself to a menial staff of the Commission and has passed the order, such order could not have been placed before a court of law like the High Court at Calcutta.

10. It is clear from the order that the order is an incomplete, suppressing and evasive one. The order is motivated to deprive the petitioner of her valuable accrued Right of counselling. The Commission is mandated under Rule 16 (1) of the above mentions Rules of 2016 to hold counselling. The order has deliberately tried to hoodwink the court and other persons, if possible, which has not been possible because of the scrutinizing eyes of the petitioners and of the court.

11. In the said report it has been recorded that many writ petitions filed by different candidates challenging the recommendations issued for classes IX and X are pending, the entire gamut of the matter is subjudice and the Commission as per the Commission's Rule is not in a position to consider the prayer of the petitioner dated 13.02.2021 i.e., the representation of the petitioner which is at page 33 of the writ application (Annexure p-6). This observation of the Chairman is devoid of all common senses. There may be other writ applications in respect of recommendation relating to 1st SLST (AT), 2016 for classes IX nd X, but that does not mean the relief cannot be granted to the petitioner when the Commission is clearly responsible for not giving real opportunity to the

petitioner for attending the counselling (what else on 03.08.2020?) which is evident from the observations elaborated above.

12. I do not know what kind and quality of person is now manning the post of Chairman of a statutory body, namely, WBCSSC. On the basis of the discussion made above, the report filed by the Chairman is quashed and set aside with a cost of Rs.20,000/- to be paid personally by the Chairman of the West Bengal Central School Service Commission from his own pocket to the petitioner by cheque and not from the fund of the WBCSSC within a period of 15 days from date.

13. Further, the Commission is directed to hold a counselling for the petitioner in respect of the undisputed vacancies declared in the said SLST if there is any and if there is no such undisputed vacancies, from any future vacancies in the region and at least five vacancies nearer to the residece of the petitioner are to be shown to her from the said future vacancies within a period of 30 days from date. Recommendation should be made within a period of 45 days from date. The time frame given above is mandatory.

14. The writ application is allowed. But before parting with the petition, I seriously doubt about the quality of the person who is manning the post of Chairman after perusing the order and it is for the Education Department of the Government of West Bengal to see whether such a Chairman can continue as the Chairman of WBCSSC or not.

15. It is expected that the Government of West Bengal in the Education Department will give due importance to this order and the Registrar General is directed to send a copy of this order to the Chief Secretary of this State and the

Principal Secretary of the Education Department, Government of West Bengal by
Friday, i.e., 14th January, 2022.

16. The writ application is allowed with the personal cost imposed upon the
Chairman of the Commission.

(Abhijit Gangopadhyay, J.)