

HIGH COURT OF CALCUTTA**Bench : Hon'ble Justice Hiranmay Bhattacharyya****Date of Decision: 1st May 2024**CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 21272 of 2007

I.A. No. CAN 6 of 2023

ABDULLA MOLLA ...PETITIONER**VERSUS****THE STATE OF WEST BENGAL & ORS. ...RESPONDENTS****Legislation:**

Not specifically cited

Subject:

Writ petition seeking a mandamus to approve the petitioner's selection as an additional para teacher in Geography and to prevent the appointment of others to the position.

Headnotes:

Writ of Mandamus – Selection as Para Teacher – Petitioner's claim for appointment as additional para teacher in Geography at Chouhata Adarsha Vidyapith based on participation and alleged top performance in relevant selection interview – Controversy over notice details and gender-specific reservation for the post – Discrepancies in documentary evidence regarding interview and selection processes highlighted – Factual disputes identified concerning the selection notice and interview process, requiring thorough trial, not suitable for determination via writ due to complexity and need for extensive evidence [Paras 1-19].

Judicial Review – Dismissal of Writ Petition – Court finds substantial factual disputes, particularly regarding whether petitioner was interviewed and the appointment of an expert in Geography – Issues necessitate full-fledged trial rather than resolution through affidavit exchange in writ proceedings – Writ petition dismissed, petitioner permitted to seek relief through appropriate forum [Paras 19-20].

Referred Cases:

None cited

Representing Advocates:

Mr. Abdulla Molla appearing in person

Hiranmay Bhattacharyya, J.:-

1. The petitioner has prayed for issuance of a writ of mandamus to command the respondents to accord approval to the panel for the post of additional para teacher in Geography of Chouhata Adarsha Vidyapith and to forbear the respondents from engaging any other person to the said post.
2. Petitioner claims to have applied for appointment as Additional Para Teacher in Geography pursuant to a notice published by the Chauhata Adarsha Vidyapith (for short "the school") on 10.07.2004. Petitioner claims to have participated in the interview on 24.07.2004. Petitioner also claims to have performed very well in the interview and accordingly expected to be appointed as a para teacher in the said school. Petitioner states that the school authority submitted the panel for different subjects before the concerned District Project Officer on 30.07.2004 but the said respondent sat tight over the matter.
3. The said writ petition was filed sometimes in the month of September, 2007.
4. The respondent nos. 1, 2 and 3 contested the writ petition by filing an affidavit-in-opposition denying the material allegations contained in the writ petition. It was specifically stated therein that a notice dated 10.07.2004 was issued for engagement of 6 para teachers by the school purely on contractual basis and 5th and 6th post in social science group was for History and Geography and both the posts were reserved for female candidates. It was further stated therein that as per the resolution dated 29.07.2004 a panel of 5 candidates were prepared for filling up two posts of History and the name of the petitioner was not there. It was specifically stated in the said affidavit that as both the posts of para teacher in Social Science group were reserved for female candidate, the petitioner was never interviewed.
5. In the affidavit-in-reply, the petitioner stated that he applied pursuant to the Bengali notice dated 10.07.2004 and the said notice did not contain any clause stating that the vacancies for the subjects History and Geography were both reserved for female candidates. It was also stated that the notice in Bengali language did not contain any clause stating that if Geography is not available both posts will be filled from subject History. A document dated 09.02.2005 purported to have been issued by the Expert certifying that he interviewed the petitioner and he was selected as first empanelled candidate was also annexed to the said affidavit.

6. By an order dated 07.06.2016, the respondents who filed the affidavit-inopposition were directed to file a supplementary affidavit stating whether the panel approved was the panel published pursuant to interview held on 24.07.2014.
7. Pursuant to the said order a supplementary affidavit was filed by the 3rd respondent. It was specifically stated therein that the office of the 3rd respondent never received any panel for the subject Geography from the school authorities in respect of selection of para teachers conducted on 24.07.2004. It was also stated therein that the panels in question appear to be prepared on the basis of interview held by the school authorities on 24.07.2004.
8. In spite of notice none appeared for the respondents.
9. Petitioner appeared in person and submitted that he was eligible for appointment to the post of additional para teacher. He applied for the said post pursuant to the Bengali notice dated 10.07.2004. He submitted that he appeared before the Selection Committee for the interview on 24.07.2004 and his performance in the interview was satisfactory and he was placed in the first position in the panel. In support of such contention, he placed reliance upon a document dated 09.02.2005 purported to have been issued by Expert who interviewed the petitioner.
10. Heard the petitioner appearing in person and perused the materials placed.
11. Petitioner claims to have applied for appointment as a para teacher in Geography and in support of such contention an acknowledgment dated 14.07.2004 has been annexed in the affidavit-in-reply. The said document appears to be an acknowledgment for receipt of the application from the petitioner. However, the said document does not specifically state the subject for which such application was received from the petitioner.
12. This Court further finds that the notice dated 10.07.2004 annexed as Annexure P-1 to the writ petition inviting applications from intending candidates for engagement as para teachers in the school bears the Reference no. SSA-01/2004 and the same was written in Bengali. On the other hand the notice dated 10.07.2004 annexed as annexure R-1 to the affidavit bears the Reference No. N-SSA-01/2004 and the same was written in English language.

13. The notice dated 10.07.2004 relied upon by the respondents contains a note stating that if Geography is not available both posts will be filled from the subject History. The notice dated 10.07.2004 relied upon by the writ petitioner, however, does not contain a similar clause.
14. After going through the notices dated 10.07.2004, one relied upon by the petitioner and the other by the respondent authorities this Court finds that the said notices are contrary to each other.
15. From the resolution dated 10.07.2004, it appears that external experts were appointed only for 5 subjects namely Bengali, English, History, Pure Science and Bio-Science. It does not appear therefrom that any external expert for Geography was appointed.
16. Petitioner, however, placed reliance upon a document dated 09.02.2005 purported to have been signed by one Anirban Biswas. The said document records that the writer of the said document was appointed as an expert for geography subject for the interview dated 24.07.2004 and he certified that he interviewed two candidates, one of whom being the petitioner and also that the petitioner was placed in the first position.
17. Though the writ petition was filed much after the issuance of the aforesaid document dated 09.02.2005, the same was not disclosed in the writ petition but was disclosed for the first time in the affidavit-in-reply which was affirmed only on 10.03.2014. The long delay in disclosing such a vital document, however, remains unexplained by the writ petitioner.
18. The Supplementary Affidavit of the 3rd respondent was restricted only to the issues indicated in the order of the co-ordinate bench dated 07.06.2016 and, therefore, the respondents did not get any opportunity to deal with the document dated 09.02.2005.
19. After going through the materials on record, this Court finds that there are serious factual disputes as to the notice on the basis of which the selection was initiated and also whether the writ petitioner was interviewed by the Selection Committee. Appointment of an expert in Geography subject also appears to be disputed. To the mind of this Court, such factual disputes cannot be decided in a writ petition by way of exchange of affidavits. Adjudication of the aforesaid factual disputes require a full-fledged trial on evidence.

20. For the reasons as aforesaid, this Court is not inclined to grant any relief to the petitioner. The writ petition fails and the same stands dismissed. Petitioner is left free to approach the proper forum for appropriate reliefs in accordance with the law. There shall be, however, no order as to costs. The application stands disposed of accordingly.
21. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

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