

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No.14519/2019
(Arising out of impugned final judgment and order dated 29-03-2019
in WPST No. 57/2013 passed by the High Court At Calcutta)

PUBLIC SERVICE COMMISSION, WEST BENGAL & ANR. Petitioner(s)

VERSUS

DR. TAPAS KUMAR MUKHOPADHYAY & ORS. Respondent(s)
(IA No. 105719/2020 - ADDITION / DELETION / MODIFICATION PARTIES
IA No. 95154/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT, IA No. 131470/2022 - INTERVENTION/IMPLEADMENT, IA No.
30098/2021 - MODIFICATION OF COURT ORDER AND IA No. 105724/2020 -
MODIFICATION OF COURT ORDER)

WITH

SLP(C) No. 15205/2019 (XVI)

(FOR ADMISSION and I.R.IA No. 106389/2021 - PERMISSION TO FILE
ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 19367-19368/2019 (XVI)

(IA FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON
IA 113395/2019)

SLP(C) No. 19867/2019 (XVI)

(FOR impleading party ON IA 182624/2019)

Date : 19-01-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Parties : Mr. Pijush K. Roy, Adv.
Mr. Pradip Kr. Roy, Adv.
Ms. Kakali Roy, Adv.
Mr. Dinesh Kumar Bhati, Adv.
Ms. Ankita Sharma, Adv.
Mr. Uday Prakash Yadav, Adv.
Mr. Rajan K. Chourasia, AOR

Mr. Sanpreet Singh Ajmani, Adv.
Mr. Kuldeep Rai, Adv.
Mr. Ankur Jain, Adv.
Ms. Yaksha Sharma, Adv.
Ms. Nandini Rai, Adv.
Mr. Sandip Ray, Adv.
Mr. Robin Khokhar, AOR

Mr. Sarthak Choudhury, Adv.
Mr. Pawan Kumar, Adv.
Mr. Dinesh Kumar, Adv.
Mr. Parshuram Paswan, Adv.
Mr. Digant Mishra, Adv.
Mr. Saurabh Sharma, Adv.
Mr. Nageshwar Kumar, Adv.
Mr. Jaskaran Singh Bhandari, Adv.
Mr. Ayush Panwar, Adv.
Mr. Randhir Kumar Ojha, AOR

Mr. Kuldip Singh, AOR

Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Soumitra G. Chaudhuri, Adv.
Mr. Chanchal Kumar Ganguli, Adv.
Ms. Vandana Tiwari, Adv.
Ms. Simram Singh, Adv.
Mr. Chanchal Kumar Ganguli, AOR

Mr. D.N.Ray, Adv.
Mr. Sanka Ghosh, Adv.
Mr. Dillip Kumar Nayak, Adv.
Ms. Disha Ray, Adv.
Mrs. Sumita Ray, AOR

Sheo Kumar Gupta, Adv.
Sadhan Kumar Halder, Adv.
Mr. Shekhar Kumar, AOR

Mr. Soumya Chakraborty, Sr. Adv.
Mr. Prakash Ranjan Nayak, AOR
Mr. M.C. Somipam, Adv.

Mr. K. Radhakrishnan, Sr. Adv.
Mr. Ayan Banerjee, Adv.
Mr. Sunando Raha, Adv.
Mr. Anupam Raina, Adv.
Mr. Piyush Malik, Adv.
Mr. Nishant Kumar, Adv.
Mr. Saurabh Trivedi, AOR

Mr. Vishal Arun Mishra, Adv.
Mr. Ujjwal Bhardwaj, Adv.
Ms. Harshita Nigam, Adv.
Mr. Hitesh Shahi, Adv.
Ms. Shalu Sharma, AOR
Mr. Firoz Shaifi, Adv.
Mr. Avinsh Kr. Saurabh, Adv.

Mridula Singh Chauhan, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. Akhileshwar Jha, Adv.
Ms. Niharika Dwivedi, Adv.
Ms. Shweta Sand, Adv.
Mr. Ravish Kumar Goyal, Adv.
Mr. Narendra Pal Sharma, Adv.
Mr. Vijay Pal, Adv.
Dr. Vipin Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard learned senior counsel and other counsel for the parties in these petitions.

Application (IA No. 131470/2022) in SLP (C) No 14519/2019 is filed by the applicant(s) seeking to implead themselves as party to these proceedings and to put forth their contentions.

The reason assigned in the application is that the Writ Petition filed by them before the High Court has been kept pending awaiting result in this petition(s) that by itself, is no reason to allow this application for impleadment herein since, in any event, the decision rendered by this Court will be taken note by the High Court subsequently.

Therefore, the application (IA No. 131470/2022) in SLP (C) No 14519/2019 seeking impleadment is dismissed.

At the outset, it is noted that in SLP (C) Nos. 14519/2019 and 15205/2019 filed by the Public Service Commission West Bengal it is assailing the judgment dated 29.03.2019 passed by the High Court at Calcutta in WPST No. 192/2015 and related petitions. Since the consideration herein is was with regard to the correctness or otherwise of the judgment passed by the High Court,

any additional relief which is sought in the connected petitions being SLP (C) Nos. 19367-368/2019 and SLP (C) No. 19867/2019 does not arise for separate consideration herein. No additional will arise except the benefit that would arise when the order of High Court is implemented, to persons are not part of the benefit given therein.

Therefore, it is made clear that the if petitioners in the said petitions become entitled to any relief based on the impugned order since this Court is considering the correctness or otherwise of the judgment passed by the High Court, if approved, they would be entitled to such relief when the Public Service Commission considers the matter in terms thereof provided they fall within the criteria laid down in the impugned order.

In that background we take note that the issue had arisen before the High Court in respect of a selection process which had commenced in the year 2010 to select the Homeopathy Doctors for the State Services. In respect of 193 posts which were advertised, the selection process was completed and 179 Homeopathy Doctors had been selected. It is at that stage, the grievance was raised by some of the candidates who had participated in the selection process but not selected by approaching the State Administrative Tribunal contending that the selection process whereby the marks obtained in the written test and the viva-voce test being considered in aggregate for preparing the selection list, was not justified. The contention which was put forth is that only the marks which are

assigned to the viva-voce test was required to be considered once the candidates had been tested through the written test and they had qualified for the viva-voce test. The said Administrative Tribunal through its order dated 30.11.2012 however dismissed the original application which was filed before it. It is against the said order, the applicants therein were before the High Court.

It is in that circumstance, the High Court has ultimately disposed of the petition alongwith connected petitions on 29.03.2019.

Similar contentions which had been urged before the State Administrative Tribunal and the High Court were urged before us. Insofar as assailing the judgment passed by the High Court, learned counsel for the petitioner sought to contend that the written test had been conducted as there were large number of candidates and the posts were limited.

In such circumstance, when the merit of the candidates had been tested and thereafter a list had been prepared, the ultimate list was to be considered keeping in view the minimum marks of 33.33% obtained in the viva-voce test alongwith the marks obtained in the written examination in aggregate. It is in that light contended that the High Court was not justified in its conclusion. Though on the said aspect, learned senior counsel for the State supported the contention of the learned counsel for the petitioner, the learned senior counsel for the private respondents, who are seeking selection, however sought to justify the order passed by

the High Court referring to the facts and circumstances based on which the impugned order was passed.

In that regard, limited to that aspect, a perusal of the judgment of the High Court would indicate that the High Court keeping in view the entire matter in perspective including the legal position with regard to the selection process has thereafter adverted to the peculiar circumstances that had arisen in the instant case. It is in that light the High Court had made specific reference to the Notification wherein under the sub heading 'information' where Clause-4 provided the procedure. While taking note of the said requirement in the advertisement the Division Bench has arrived at conclusion that in the circumstance where the Notification had provided a method for selection, that process could not have been deviated from once the selection process had commenced. Therefore, it is in that circumstance, the High Court has also arrived at the conclusion that in the peculiar circumstances of the present case, the relief as ordered is required to be granted. In that regard, we have also taken note of the Clause-4 as contained in the 'information' in the advertisement and find the High court has construed it in an appropriate manner.

In the circumstance that the petitioner Commission had adopted a different method in the matter, the High Court in the present fact, was justified in arriving at its conclusion, as otherwise the petitioners before it would have suffered injustice. Further, the selected candidates could not have been prejudiced at this distant

point of time. The relief granted by the High Court is in respect of the petitioners which were noted as W.P.S.T No. 31 of 2013 titled "Dr. Kallol Debnath & Ors. Vs. Public Service Commission & Ors." and W.P.S.T. No. 57 of 2013 titled "Dr. Tapas Kumar Mukhopadhyay & Ors. Vs. Public Service Commission & Ors." i.e. the writ petitions I and II noted by the High Court. In such circumstance when the High Court has referred to the peculiar circumstances in the case and has granted the relief in the peculiar circumstances limiting it to the issue under consideration, more particularly in a circumstance where having noted the deficiency in the process had also thought it not fit to disturb the selected candidates, we are of the opinion that the High Court has applied its mind to the fact situation and granted a limited relief in the facts and circumstances of this case to the aggrieved persons.

Further in the instant proceedings the State having filed its Counter Statement has also brought to the notice of this Court that the situation of creating supernumerary posts may not arise in a situation of the present nature due to the subsequent vacancies that have arisen. This aspect of the matter has also been taken note by us. Therefore, in the peculiar facts and circumstances of this case, we see no reason to interfere with the judgment passed by the High Court.

However, we make it clear that the consideration made therein shall relate to the selection process which was under consideration

and the question of law is left open if it is to be considered in any other selection process.

Considering that the selection process was of the year 2010 and insofar as the persons who have been granted the benefit by the High Court, they have been waiting for quite some time, the petitioner Commission shall take all steps to complete the process as directed by the High Court within a period of two months and recommend the names to the State Government. The State Government thereupon shall complete the process within one month thereafter. The entire process shall be completed within three months.

With the above observations and directions, the special leave petitions are disposed of.

Pending application(s) alongwith application(s) for implement stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(DIPTI KHURANA)
ASSISTANT REGISTRAR