

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble P. Ramesh Kumar,
Member (A)**

J U D G M E N T

-of-

Case No. O.A. - 536 of 2018

Firoj SkApplicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. F. Rahaman,
Mr. M. Islam,
Advocates.**

**For the State Respondent No. 2:- Mr. A.L. Basu,
(P.S.C., W.B.) Advocate.**

Judgment delivered on : 07.09.2018

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

“(a) Do issue mandamus upon the respondents and/or their subordinate to take appropriate step to quash the notice dated 9th April, 2018 which is illegal arbitrary and violative of the Provision and/or rules and regulation made by the commission. The law is well settled in this regard that the criteria for selection can not be altered by the authorities concerned in the middle or after the process of selection has commenced.

(b) Directing the concerned respondent to allow the applicant to participate the interview which is going on from 23rd April, 2018 and it would be closed on 18th July, 2018 for the post of Krishi Prayukti Sahayak, in the District of Malda.

(c) Directing the respondent to produce the record connecting the case before the Hon’ble tribunal so that conscionable justice may be done.

(d) To file and prosecute this application jointly under Rule 4(s)(a) of Administrative Tribunal (procedure) Rules 1997 since all of them pray for same relief arising out of same cause of action.”

2. The case of the applicant is as follows:

- (i) The West Bengal Staff Selection Commission vide their Advertisement No. 04/WBSSC/2016 had invited application for the post of 'Krishi Prayukti Sahayak' (Annexure A/4). In the said Notification, scheme and syllabus of the recruitment process have been stipulated, wherein candidates have to appear in the written examination of 150 marks consist of Part – I (120 marks) and Part – II (30 marks). Part – I will consist of multiple choice objective type questions with negative marking and Part II will consist of single descriptive type question (writing of a precis from a given English passage). As per the said notification, final merit list for written examination will be prepared by aggregating marks of Part – I and Part – II and the candidates must secure qualifying marks fixed by the Commission in Part – I and Part – II.
- (ii) As per the applicant, he applied against the said Notification and being BCA candidate, his candidature ought to be considered against the 84 posts out of total 818 vacancies. It is further stated that for BCA candidate, qualifying marks for Part – II was fixed as 10 marks out of 30.
- (iii) The applicant was thereafter called for written examination, which was held on 18.12.2016 and he appeared in the written examination and also declared qualified for Part – II examination.
- (iv) In the mean time, the West Bengal Staff Selection Commission was repealed vide Gazette Notification dated 16.06.2017 and subsequently Public Service Commission, West Bengal took the charge of recruitment vide

Notification dated 09.04.2018 (Annexure A/3), whereby the Commission declared that they may fix qualifying cut-off-marks for all the categories of vacancies in each level of the examination i.e. Part- II, Interview, aggregate.

- (v) As per the applicant, the said notification is illegal, arbitrary and violative and principle of natural justice as it would amount to change of Rule of game since the examination had already started and in the midst of the examination, the Public Service Commission cannot alter the cut-off-marks of Part – II, interview etc. Being aggrieved with, the applicant send demand justice letter dated 07.05.2018 but with no effect. Thereafter, the applicant invoked RTI, in order to know the qualifying marks of Part – II and how much marks he actually obtained in the said examination but the authority did not provide any information to the applicant.
 - (vi) Thereafter, being aggrieved with, he preferred a Writ Petition No. 6273(W) of 2018 before the Hon'ble High Court however vide order dated 15.06.2018, the application was dismissed on the ground of want of jurisdiction with liberty to the applicant to approach appropriate Tribunal. Hence the instant application has been filed by the applicant.
3. During the course of the hearing, the counsel for the applicant has vehemently submitted that this impugned Notification dated 9th April, 2018 is liable to be set aside since the action of the Public Service Commission amounts to change of Rules of the Game, which is not appreciable as per the Apex Court's observation reported in

“(2001)10 SCC 51 - Maharashtra State Road Transport Corporation –Vs- Rajendra Bhim Rao Mandve”.

As per the counsel for the applicant, in the instant case, this is not only change the Rule of games but the Public Service Commission has changed the games, which have already been played and the result of the games is being awaited. He has further prayed for direction to the respondent authority to allow the applicant in the interview, which is going on from 23rd April, 2018 and would be closed on 18th July, 2018.

4. The counsel for the respondent has submitted that since the examination is going on therefore Public Service Commission, as a policy matter, cannot provide/supply any marks to any of the candidates unless and until the examination process is over. The counsel for the Public Service Commission has also referred one judgement reported in

“(2017) 4SCC 357 and (2008) 4 SCC 171”.

It has been further submitted that the answer scripts to mere evaluated by the SSC earlier.

Mr. A.L. Basu on behalf of the respondent No. 2 i.e. Public Service Commission has submitted that the Public Service Commission has not changed the qualifying marks in Part – II. In the said Notification, the Public Service Commission has only stipulated that they may fix their own cut-of-marks but in fact there is no change in the cut-off-marks of Part – II rather the applicant himself got lesser marks than the originally fixed cut-off-marks, which is still valid presently.

5. Heard the parties. When the matter was heard on 18.07.2018, the counsel for the applicant had vehemently submitted that

impugned Notification has created an apprehension to the applicant as in the original Notification, 10 marks was stipulated for qualifying marks for BCA candidates in Part – II examination and subsequently the applicant was not called for interview. Therefore, according to the counsel for the applicant, the Public Service Commission must have increased the qualifying / cut-off-marks as per their Notification dated 9th April, 2018 and due to this the applicant has been deprived of being selected for the said post.

6. It is noted that the main grievance of the applicant is that Public Service Commission in their Notification dated 9th April, 2018 has reserved their authority to fix the cut-off-marks for Part – II exam, interview etc. Therefore, he apprehends that the Public Service Commission may have increased the cut-off-marks. In view of the situation, the counsel for the applicant prayed for interim order to allow the applicant in the interview. Therefore, to allow the applicant in the interview, it is required to know whether there is any change of cut-off-marks or not and what are the exact marks obtained by the applicant in Part – II. Accordingly, we directed the Public Service Commission to produce the cut-off-marks stipulated by them for Part – II examination as well as the marks obtained by the applicant in Part – II by the next date in sealed cover.
7. On 24.07.2018, the counsel for the Public Service Commission has brought one Note Sheet dated 23.07.2018 signed by the Chairman, Public Service Commission. We have gone through the documents and appraise the same. From the perusal of the documents, it transpires that there is no change of cut-off-marks for Part – II examination i.e. 10 marks for BCA candidate out of total 30 marks remains as it was and further the applicant has

secured much lower marks than the cut-off-marks. The aforesaid information was also read over to the applicant except the marks obtained though we disclosed that he secured much lesser marks than cut off marks. However, the counsel for the applicant has vehemently asked for perusal of the said document, which was called for in a sealed cover for the purpose of perusing the said documents by this Court only as the examination is still going on and as per the counsel for the respondent during pendency of the examination, no marks can be disclosed to any candidates, which may frustrate the entire examination process.

It is pertinent to mention that any document directed to be filed 'under seal' is a procedure allowing sensitive or confidential information to be filed with a Court without become a matter of public record. In the instant case, as the examination is under process, therefore any information regarding the said examination may frustrate the entire proceedings. Therefore, this Court had directed to bring certain information related to the examination under seal cover. However, we have already disclosed the facts / information that there is no change in cut off marks and the applicant had secured much lesser marks than the cut off marks, therefore there is no question of violation of natural justice by not allowing the counsel for the applicant to peruse the 'seal covered' documents.

8. Further from the perusal of impugned Notification dated 09.04.2018, it transpires that the Commission had only reserved the authority/ right that they may fix the qualifying cut-off-marks, which they may do or not. However, the Public Service Commission has clearly stated that no cut-off-marks has been changed by the Public Service Commission for the Part – II examination for BCA candidates, therefore, mere issuance of Notification cannot be termed as change of Rule of Games as

claimed by the applicant. Rather the applicant has got much lower marks than the cut-off-marks (10 marks) stipulated initially by the WBSSC vide their Notification in the year 2016. Accordingly, we are not inclined to interfere with the examination process, which was started in the year 2016, otherwise, other eligible candidates would suffer for no fault of their own. Further, in our opinion, no prejudice has been caused by issuance of Notification dated 09.04.2018, as the applicant was not able to qualify in the Part – II examination as per original Notification.

9. In view of the above, the O.A. is dismissed with the above observations with no order as to costs.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)