

HIGH COURT OF SIKKIM
Record of Proceedings through Video Conferencing

WP (C) No. 07/2020

JINA MANGER & ORS

PETITIONER (S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT (S)

For Petitioner : Mr. Jushan Lepcha, Advocate.

For Respondents : Mr. Sudesh Joshi, Addl. Advocate General
Mr. Sujan Sunwar, Asst. Govt. Advocate
Mr. Zigmi Bhutia, Standing Counsel, Education
Department**Date: 07/07/2021****CORAM :**

HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.

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The petitioner has assailed the Notification dated 25.02.2020 for withdrawal of the advertisement dated 14.03.2018 which was under challenge in WP(C) No. 19/2019.

Heard learned Counsel for the petitioner as well the Additional Advocate General at length.

On perusal of the facts in the present case a writ in the nature of the mandamus or certiorari has been prayed for while challenging the withdrawal of the advertisement by the impugned notification. It is contended that the petitioners were eligible for appointment having qualification as per Rules. They have applied and faced the process of selection appearing in the written examination and oral interview. It is only the result is awaited at that time withdrawal of the advertisement by the impugned Notification is not permissible.

In such case it is to observe that a writ in the nature of mandamus can only be issued when the petitioners are having indefeasible right. It is a settled law that even selection does not confer right for appointment. It is also settled that the authority withdrawing the advertisement if not acted arbitrarily with

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mala fide intention, interference in exercise of the power under Article 226 of Constitution of India is not warranted.

On perusal of the pleadings of the Writ Petition it is nowhere averred that withdrawal of the notification is due to mala fide. In absence of having any pleading regarding mala fide for the reasons as stated in the notification for withdrawal of the Advertisement, in the considered opinion of this Court, interference is not warranted. More so, the petitioners who have faced the process of selection do not have any right to seek the writ in the nature of mandamus. Simultaneously, the Writ Petition No.19/2019 has already been dismissed as infructuous wherein the advertisement dated 14.03.2018 was assailed which has been withdrawn in the present case. Therefore, in the said facts, in the considered opinion of this Court, interference in exercise of power under Article 226 is not required. Accordingly, this petition is dismissed.

At this stage, learned Additional Advocate General has assured to this Court that in furtherance to the previous advertisement, the persons who have participated in the process of selection would be given due weightage granting relaxation of age while issuing the fresh advertisement.

Taking note of the said assurance the Writ Petition stands dismissed.

Chief Justice