

1 22.4.19
akb Ct. No. 2

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

W.P.A. 30 of 2019

Soma Jana @ Payra

-Versus-

The State of West Bengal & Ors.

**Mr. Saurabh Guhathakurata
Mr. Saktibrata Majumder ...For the Petitioner**

**Mr. Joyjit Dutta
Mr. Bikramaditya Ghosh
Ms. Bedashruti Bose ...For the State**

**Mr. Amalesh Roy
Ms. Suman Sehanabis
Ms. Deborshi Dhar ...For the Respondent Nos. 3 & 4**

This writ petition has been filed challenging a notification dated 25.08.2017 (page 67 of the writ petition) and an advertisement issued by the government on 01.03.2019, which is a corrigendum originated from post creation G.O. No. 971-Edn (CS) 4E-02/2018 dated 20th August, 2018 (page 71 of the writ petition). The petitioner has prayed to set aside those notifications and to prohibit the respondent/authorities from giving effect and/or further effect to those notifications.

The prayers so made in the writ petition are quoted herein below :-

“a) To issue a writ in nature of Mandamous to declare that the notification dated 25.08.2017 is bad in law and to be struck down;

b) To issue a writ in nature of Mandamous commanding the respondents to set aside, cancelled and rescind the notification dated 01.03.2019 in respect of the posts in question;

c) To issue a writ in the nature of Prohibition restraining the Respondent Authorities from giving any effect/further effect to the notification dated 25.08.2017 and appointment notification dated 01.03.2019;

d) To issue a Writ in the nature of Certiorari directing the respondents to transmit all

relevant records into the Hon'ble Court so that conscionable justice may be rendered by looking into the same;

e) To issue Rule NISI in terms of the prayers (a) to (d) above;

f) Ad-interim order of injunction restraining the respondent from initiating the selection process in respect of the notified vacancy on the basis notification dated 01.03.2019 until further order;

g) And to pass such order or further order or orders, direction or directions so as to Your Lordship may deem fit and proper.”

The attack by the petitioner against the said notification is based on grounds that by the impugned notification at page 67 of the writ petition issued on 25.08.2017 by the Government of West Bengal, some clarification has been sought to be given by providing relaxation to the requirement on the provisions of the Sub-section (1) of Section 10 of the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017 (hereinafter referred to as the said Act of 2017) for recruitment of non-teaching employees in the government-aided colleges. By the said notification it has been mentioned that the governing body/administrator of all government-aided colleges, including colleges run by minorities, shall obtain prior permission from the State Government for filling up posts in writing for each and every posts including promotional posts, and in every case such permission shall remain valid for a period of one year from the date of issuance of the said post filling permission within which the college authorities shall complete the selection process. In this regard Section 10 of the said Act is set out herein below:-

“10. (1) Notwithstanding anything contained in any other law for the time being in force or in any custom or usage

to the contrary, appointment of all teachers, librarians and other employees of every college, except the colleges run by minorities, shall be made by the Governing Body, on the recommendation of the Service Commission.

(2) A recommendation of the Service Commission shall not automatically confer any right upon the candidates for appointment and shall be subject to satisfactory completion of verification of his personal testimonials including proof of age and educational qualifications along with all antecedents and medical examination report from the appropriate authorities.

(3) If any discrepancy is found during verification of a candidate as stated under sub-section (2), his candidature shall be liable to be cancelled.

(4) The terms and conditions of service including the manner and procedure of holding disciplinary proceedings and punishment thereof, of all the employees of the colleges shall be such as may be prescribed.”

Section 10 deals with appointment of teachers, librarians and non-teaching employees. The provision says that appointment of all teachers, librarians and other employees of other college, except the colleges run by minorities, shall be made by the governing body on the recommendation of the Service Commission. The grievance of the petitioner is that the notification contradicts the provision of Section 10 by way of removing the portion “on the recommendation of State’s Service Commission” in regard to appointment of teachers, librarians and non-teaching employees.

Mr. Amallesh Roy, learned Advocate appearing for the authorities submits that the petitioner has no locus standi to file this writ petition as she has not offered herself as a candidate for being recruited against the post advertised. I shall deal with this issue later but I intend to decide the scope of the petitioner’s challenge to the impugned notifications first and the State’s constitutional authority on the anvil of the provisions of the said Act of 2017.

On perusal of Sections 19 and 20 of the said Act it appears that those provides that the State Government shall have the power to remove the defects as may arise in applying the provisions of the Act to any college or university covered under this Act and further that the decision of the State Government shall in every case be final in regard to any dispute in between State Government and the colleges or the universities in effecting the provisions of this Act. Section 20 of the said Act also provides for power to relax meaning thereby the State Government shall have the power to relax any of the provisions of the said Act or any rule, notification, order, schemes or by laws made thereunder in relation to any college or any university in the interest of public service.

Mr. Roy further submits that since no rule has yet been framed under the said Act of 2017 and since vacancies are to be filled up without waiting for the recommendation of the Service Commission, power under Sections 19 and 20 have been invoked and the State Government has issued the aforesaid notification dated 25.08.2017 in the larger public interest.

Mr. Roy also submits that government has published the advertisement for recruitment for the non-teaching posts and for the posts of librarians. Such notification was made on 20.08.2018 under Memo No. 971-EDN (CS)/4E-02/2018. Subsequently, a corrigendum has also been issued by the State Government on 01.03.2019. Mr. Roy, however, submits that the process for selection has already been completed and only the appointments are to be issued. However, the petitioner is not a party to the process and she

never made any claim to participate in the selection process as she never applied for the said posts pursuant to the advertisement made in the newspaper. Initially, the petitioner submitted that by virtue of the old Act, namely The West Bengal College Service Commission Act, 2012 (hereinafter referred to as the 'Said Act' of 2012) the appointment of non-teaching employees of government-aided colleges vested to the Service Commission. It was mentioned in Section 13 that it shall be the duty of the Commission to select persons and to recommend for appointment to the post of non-teaching employees of government-aided colleges in West Bengal and it has been further mentioned that the members of the commission was to advise the Chairperson in preparing panels of selected candidates for appointment to the posts of non-teaching employees in various government-aided colleges in such a manner as to be provided by regulation. This provision of Section 13 of the Said Act of 2012 had got an overriding effect. In fact this provision has been followed in the subsequent Act of 2017 and which is Section 21 of the 2017 Act. In case of any contradiction or conflict the provisions of 2017 Act shall prevail. The petitioner raised objection primarily based on the fact that the Act of 2017 contained arbitrary provisions contrary to the 2012 Act, with regard to the appointment of non-teaching staffs. She, however, has not challenged vires of the Act of 2017, and there this submission does not make any sense. Petitioner further submits that according to Section 10 the governing body has the authority to appoint but since the notification does require for recommendation of the Service Commission, it should be held illegal and offending Section 10 of the said Act. On going through various provisions of the Act particularly that of Section 10(1) and (2) it is clear

that the recommendation of the Service Commission does not have any pivotal role on the appointments in question. Sub-section (2) of Section 10 makes it clear that recommendations of the Service Commission shall not automatically confer any right upon the candidates for appointments and shall be dependent on various other subjective satisfactions. Therefore, the contention that the notification at page 67 makes the provisions of Section 10 nugatory, is not acceptable. It thus cannot logically be construed that the decision of a recommending authority shall have a compulsive force to fill up or not to fill up vacancies through competent authority namely, Governing Body.

On going through the writ petition I have repeatedly asked the petitioner about the locus and whether the two notifications dated 25.08.2017 and 01.03.2019 cause any prejudice directly or indirectly to her. Practically the petitioner fails to answer save and except that she claims to be an aspiring eligible candidate to make an application for the post of Group-C and Group-D. Had it been so it is not understood while the notification dated 25.08.2017 was issued by the government of West Bengal long before the vacancy notification saw the light of the day on 01.03.2019, it is reasonably expected that if a candidate apprehends to suffer prejudice because of the said notification dated 25.08.2017 she must make a move against the same and at least demand of justice or to make a protest against such illegality before the authority. She got sufficient time since August, 2017 to 1st March, 2019 when the vacancies were notified. The petitioner never raised any protest before the government.

On going through the Writ Petition it does not appear

that the petitioner personally feels aggrieved or that she is prejudiced by the said notification in any manner. Therefore, she cannot be said to be an aggrieved party. Thus, on the issue of locus I do not see any reason for the petitioner to be aggrieved by the notification dated 25.8.2017, because the same does not exclude the Group-D posts. Paragraph (5) of the said notification creates an exception that computer knowledge would not be a must for the Group-D candidates, whereas computer knowledge is desirable for other groups. If this be the position, taking into consideration of the statements in paragraph (3) of the petition petitioner cannot be said to be a person aggrieved rather more benefited by the relaxation so made by the notification in question. With prior permission to fill up posts, Government has made the advertisement to which the petitioner has not made any attempt. Therefore, it is apparent that the petitioner is espousing not her cause but case of others unknown to this Court.

In my view the petitioner has hopelessly failed to make out any case for her for interference of this Court as sought for. Therefore, the writ petition must fail. At the time of hearing one decision has been referred to before me by the petitioner in the case of *Nayan Pramanik Vs. State of West Bengal and Ors.* (unreported) decided by a Division Bench of our Court. The Division Bench has also held that the contention of the writ petition that if by virtue of a notification an aspiring candidate is excluded to apply for the post, the petitioner should be considered to be an aggrieved person. The Division Bench held if a person is deprived of in offering his candidature for recruitment certainly it infringes the fundamental right guaranteed under the Constitution and therefore, the writ petition should be held to be maintainable

on such ground alone.

The case which was a subject matter in dispute in the appeal is based upon the exclusion of Group-D post pursuant to a notification issued by the Government in respect of which the petitioner said to have aspiration as a future candidate. Question arose whether by exclusion of Group-D post of the notification under challenge the petitioner could be said to be a person aggrieved even though no demand of justice was made. In fact, said decision is different from one which we are dealing at present. We are only concerned with the notification by which the clarificatory order has been issued by the Government laying down a policy guidelines to initiate process for recruitment in respect of teachers, librarians and non-teaching staffs by the governing body of the colleges even without recommendation of the Service Commission, which in my view does not at all contradict Section 10 of the said Act of 2017. The recommendation as I have already discussed earlier itself cannot be construed to be a mandate. Therefore, the challenge to the notification by which requirement of all recommendation is excluded cannot itself be held to be *ultra vires* to the Act, particularly, Section 10 when other provisions of the said Act sufficiently authorized Government to do so. The notification so issued is nothing but a clarification issued by the government, in absence of Rules and Regulations.

The writ petition is accordingly, dismissed both on ground of locus and also for the reasons that the impugned notifications do not offend any of the provisions of the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017.

There will be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

(*Sahidullah Munshi, J.*)