

September 3, 2020.

(3)

MNS.

F.M.A. No. 31 of 2019

With

I.A. No :CAN 1of 2020(CAN 873 of 2018)

and

I.A.No: CAN 2 of 2020(CAN 4350 of 2020)

and

I.A.No: CAN 3 of 2020(CAN4 622 of 2020)

(Via video conference)

Shri Sarbeswar Ghosh and others

Vs.

State of West Bengal and others

Mr. Haradhan Banerjee,

Mr. Arif Ali

... for the appellants.

Mr. Joytosh Majumder,

Mr. Biswabrata Basu Mallick

...for the State-respondents.

By consent of the parties, the appeal and the connected applications are taken up together for hearing and disposed of by this Court.

The appeal is directed against an order dated November 29, 2017 in connection with a writ petition filed by the aspirants for the post of Home Guards in the District of Murshidabad. They were empanelled for the posts. In the earlier round of litigation they expressed their

grievance about the failure on the part of the State respondents to complete the selection process.

It appears that the learned Single Judge in the earlier round of litigation had called for a report from the Director General (Home Guard) and the said report was filed. From the said report the learned Single Judge observed that the complaints were received by the District Administration with regard to the appointment of Home Guard Volunteers and enquiry was initiated and after considering the report of enquiry, the Governor had been pleased to cancel the entire selection process for enrolment of Home Guard Volunteers for the District of Murshidabad. It was also observed that a fresh advertisement would be issued for fresh recruitment of the Home Guard Volunteers for the said district through the appropriate authority.

The learned Single Judge also recorded that the appellants were also willing to submit themselves to the recruitment process as and when the same would start.

This order was taken up to the appeal court. The appeal court by an order dated October 26, 2017 disposed of the appeal and the

connected applications with the following observations:

“Be that as it may, since the enquiry report and the order passed by the Government cancelling the entire selection process remain unchallenged and the said order is still in operation, the relief which the writ petitioners have claimed in the writ petition cannot be granted in the changed circumstances. Accordingly, we refuse to interfere with the impugned order.

Mr. Bhattacharya, however, craves leave to file a fresh writ petition for challenging the correctness of the enquiry report and/or the ultimate decision of the Government for cancellation of the earlier selection process. We, thus, make it clear that the appellants may seek appropriate relief in appropriate forum in accordance with law.”

It appears from the order of the Hon'ble Division Bench that despite the enquiry report and the order passed by the State Government cancelling the panel having been disclosed by the State respondents in their affidavits before the learned trial Judge but the writ petitioners did not take any step either to amend the writ petition or to file a fresh writ petition either for challenging the veracity and/or correctness of the enquiry report and/or the legalities of the order passed by the Government cancelling the entire selection process.

On reading of the order of the learned Single Judge, as well as of the Hon'ble Division Bench, it appears that when the writ petition was

filed the enquiry report and the decision of the Government recalling the panel were not born and in existence. The appellants undoubtedly could have filed the fresh writ petition challenging the said orders or to amend the existing writ petition by bringing on record the subsequent facts. However, that does not mean that if the fresh cause of action arises and if the amendment has not been made in the original writ petition, the writ petitioners cannot file a fresh writ application challenging such enquiry report and the order recalling the panel. There has been no decision on merits on the enquiry report and the decision to recall in the earlier round of litigation.

In our considered opinion, the appellants could not be deprived of the right to seek an adjudication on the merits of the cancellation. The learned Single Judge did not consider the challenges thrown to the veracity of the enquiry report as well as the decision to recall the panel. There cannot be any doubt that an empanelled candidate has no vested right to seek an appointment and the only right available to him is to make a claim for consideration, however, it can be stated without any hesitation that such power

of cancellation and/or recalling should be on certain basis and in bona fide exercise of power.

The learned Single Judge has not gone into the merits of the matter. We feel that the writ petition should be heard on merits after exchange of affidavits. However, it appears from the earlier orders that the State Government assured the different Benches in relation to the appointment of Home Guards in the District of Murshidabad and the recruitment process would be initiated shortly and in the event, any fresh recruitment is initiated, the case of the appellants would be considered upon condoning the age bar, if necessary.

It *prima facie* appears that the appellants are the empanelled candidates, which creates a presumption that they had the requisite qualification at the time of selection. In the recruitment process, if initiated by the State of West Bengal in the District of Murshidabad, the appellants may participate in the selection process without prejudice to their rights and contentions in the writ petition.

Mr. Haradhan Banerjee, learned senior advocate appearing on behalf of the appellants have submitted that in view of the pendency of the appeal, the appellants did not submit their

applications for the post of Home Guards, which was expired on August 31, 2020.

In view of the fact that we have given liberty to the appellants to participate in the fresh recruitment process without prejudice to the rights and contentions of the parties, time to apply for the said post by the appellants only in the given circumstances of the case is extended by ten days from date.

It is made clear that the observations made in this order are only for the purpose of deciding the appeal and shall not influence the learned Single Judge in deciding and disposing of the writ petition on merits.

Mr. Joytosh Majumder, learned Government Pleader has prayed for four weeks time to file affidavit-in-opposition.

Let affidavit-in-opposition be filed by the State of West Bengal within four weeks from date. Reply thereto, if any, be filed within three weeks thereafter. The matter may be mentioned before the learned Single Judge, having determination, upon completion of affidavits.

The appeal is allowed and the connected applications are disposed of accordingly.

We make no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)