

28.09.2020
SL-07
Ct.11
(S.R.)
via video
conference

W. P.A. No.5877 of 2020
with
CAN No.1 of 2020 (Old No: CAN No.3972 of 2020)
Pinki Das & Ors.
v.
The State of West Bengal & Ors.

Mr. Malay Dhar		
Mr. Amar Nath Sen		... for the petitioners.
Mr. Debashis Sarkar		
Mr. Subhabrata Datta		... for the State.

The present writ petition has been preferred challenging *inter alia* an order dated 6th March, 2020 passed by the respondent no.7.

Records reveal that the matter was initially heard on 7th August, 2020 and the writ petition was admitted with a direction towards exchange of affidavits. Pursuant to such direction, the affidavits have been exchanged by the parties and the matter has come up for final hearing.

Mr. Dhar, learned advocate appearing for the petitioners submits that the petitioner nos.1 to 4 and 7 to 9 applied for the post of Aganwadi Helper (in short, AH) and the petitioner nos.5 and 6 applied for the post of Aganwadi Worker (in short, AW). Such selection process was initiated by an advertisement dated 4th December, 2017. The petitioners participated in the written test and the interview and were empanelled in the waiting list which was published on 12th October, 2018. As all the vacancies could not be filled up from the first list, the

petitioners in the waiting list were appointed on diverse dates in the month of September, 2019. In support of such contention, he has drawn the attention of this Court to the letters of appointment annexed at pages 15 to 36 of the writ petition. Upon such appointment, the petitioners were sincerely discharging their services in the concerned posts in the gram panchayats under the Patrasayer Integrated Child Development Scheme (in short, Patrasayer ICDS) and they were duly paid their honorarium till the month of March 2020. In a most illegal and *mala fide* manner such appointments were abruptly terminated retrospectively from their respective dates of appointment by an order dated 6th March, 2020 issued by the respondent no.7 referring to a resolution of the district selection committee held on 4th March, 2020.

Drawing the attention of this Court to a memo dated 8th August, 2019 issued by the respondent no.3, he submits that there was a conscious decision on the part of the authorities that pertaining to the earlier selection process of the year 2018, the candidates from the waiting list would be accommodated and the new vacancies would be filled up by a new selection process. Accordingly, in the month of August 2019 a fresh advertisement was published for filling up new vacancies in the posts of AH and AW. The said memo had been annexed at page 51 of the writ petition.

He argues that the vacancies in which the

petitioners were accommodated were pertaining to the first selection process, which was initiated by the advertisement dated 4th December, 2017. The said posts, having been filled up through the petitioners, cannot now be brought again under the purview of the new selection process. In view thereof, the impugned order dated 6th March, 2020 is not sustainable in law and the same needs to be set aside and the petitioners need to be accommodated in their respective posts.

Mr. Dhar further argues that the notice itself would reveal that the petitioners were not given any opportunity of hearing and no notice, as mandatorily required, was also served upon them.

Per contra, Mr. Dutta, learned advocate appearing for the State respondents submits that the petitioners were empanelled in the waiting list. By virtue of such empanelment, no indefeasible right was created in favour of the petitioners and in the absence of infringement of any legal right, the writ petition liable to be dismissed.

He submits that the petitioners were accommodated and appointed behind the back of the selection committee, as would be explicit from the contents of the resolution dated 4th March 2020, as annexed at page 23 of the affidavit-in-opposition.

In course of hearing, a memo dated 16th September, 2020 has been placed before this Court. Let a copy of the same be kept on record. From the said notice, it appears

that two candidates had been requested to report to the office of the respondent no.7 within 16th September 2020 for joining in two posts under Patrasayer ICDS project from which two petitioners were terminated. It appears that this Court passed on 7th August, 2020 in presence of the learned advocate appearing for the State respondents observing that the concerned respondents will not take any further steps in the matter until the writ petition is fully heard out. In view of such observation, the notice dated 16th September, 2020 could not have been issued by the respondent no.7. However, the rights of the candidates asked to report *vide* 26th September 2020 cannot be prejudiced and they should be accommodated by the respondents in any other existing vacancies under Patrasayer ICDS Project.

Indisputably, the petitioners were empanelled in the waiting list which was prepared on the basis of the selection process initiated by an advertisement dated 4th December, 2017. The resolution of the district level selection committee dated 8th August, 2019, annexed at page 9 of the affidavit-in-opposition, clearly reveals that a decision was taken to appoint the petitioners, whose names were appearing in the waiting list. It was also stated that new vacancies would be filled up on the basis of a new selection process. The contents of the memo 8th August, 2019 issued by the respondent no.3 also reveal that in presence of the Chairman of the committee a

decision was taken that persons will be appointed from the waiting list and that for the new vacancies fresh selection process have to be conducted. There is, thus, no dispute that the petitioners were accommodated in the vacancies within the purview of the first selection process. They were issued letters of appointment on the basis of which they were duly appointed in the month of September 2019 and even honorarium was disbursed in their favour till the month of March, 2020. The purported plea in the resolution dated 4th March, 2020 that the petitioners were appointed behind the back of the selection committee is not acceptable to this Court in view of the contents of the resolution of the selection committee dated 8th August, 2019 and the memo dated 8th August, 2019 issued by the respondent no.3. The petitioners were also not granted any opportunity of hearing prior to termination.

In view thereof, the impugned order dated 6th March, 2020 passed by the respondent no.7 and the decision towards termination of service of the petitioners contained in the resolution of the district selection committee dated 4th March, 2020 are set aside and quashed. The respondents are directed to allow the petitioners to join their respective posts and to disburse all consequential benefits within a period of four weeks from the date of communication of this order.

With the above observations and directions, the

writ application and the connected application being CAN No.1 of 2020 (Old No: CAN No.3972 of 2020) are disposed of.

There shall, however, be no order as to costs.

All the parties shall act on a server copy of this order.

(Tapabrata Chakraborty, J.)