

17.03.2021

Item No. 02

Crt. No. 11

b.r.

MAT 48 of 2021

with

I.A. No. CAN 1 of 2021

Narayan Sardar.

-vs-

The State of West Bengal & Ors.

Mr. Yamin Ali

Mr. Subir Hazra

..... For the Appellant.

Mr. Biswabrata Basu Mallick

Mr. Sanjib Das

..... For the State.

Mr. Basu Mallick, learned State Counsel, produces the Report on Affidavit of the Commissioner-in-Charge, Panchayats and Rural Development Department, Government of West Bengal/the Respondent No.3 as directed by the previous order of this Court dated 9th March, 2021. A copy of the Report was also handed over to Mr. Ali, learned Counsel for the appellant.

From Paragraphs 7 and 9 of the said Report the following statements emerge.

“7. That as per report received from the Additional District Magistrate (ZP), Murshidabad, vide Memo. No. 339/P&RD, dated 02.03.2021 there are 56 (fifty Six) vacancies in G.P. Karmee post in the Murshidabad district as on 31.01.2021 though vacancy under Exempted Category (EC) was not mentioned.

Copy of the said Memo. is annexed thereto and marked as Annexure-“R-5”.

9. That in compliance of the solemn order of this Hon’ble Court, the Additional District Magistrate (ZP), Murshidabad furnished vacancy position and after collecting report from 3 (three) nos. of blocks in the district of Murshidabad and the said report are as follows:

Block wise vacancy report under exempted category (EC):-

<i>Name of the Block</i>	<i>Vacancy under E.C.</i>
<i>Murshidabad-Jiaganj</i>	<i>01(One)</i>
<i>Samserganj</i>	<i>04(Four)</i>
<i>Nabagram</i>	<i>01(One)</i>
<i>Total</i>	<i>06 (Six)”</i>

The complaint of the appellant/the writ petitioner is that his claim for compassionate appointment to a vacancy in the Exempted Category has been pending before the authorities for long. The Hon’ble Single Bench had denied appointment and left the matter to the Commissioner/the Respondent no.3 to act as the ultimate recommending authority.

However, today from the Report of the Commissioner/the Respondent no.3, it transpires that a total 6(Six) vacancies is reported from 3(Three) Blocks of Murshidabad as existing at present, out of which 4(Four) vacancies are in Samserganj Block.

It would be relevant to quote, also in full, ground VI of the Memo of Appeal filed by the appellant:

“VI. For that the Learned Single Judge ought to have directed the respondents, their men, agents and each one of them more particularly the respondent no.2 to forthwith issue letter of appointment to the appellant under died in harness category under Group-D post or any other menial post commensurating to his qualification in any Gram Panchayat under Samserganj Panchayat Samiti, District: Murshidabad and erred in not so doing.”

In the above view of the matter, this Court finds no impediment, having regard to the Report of the Commissioner/the Respondent no.3, directing that formalities in connection with the appointment of the appellant in any one of the vacancies as reported, preferably in Samserganj Block be completed not later than a period of eight weeks from this date.

Notice is also taken of the submission made by Learned State Counsel that the wait listed person No.1 in the Exempted Category of vacancies just above the appellant, who is the wait-listed candidate No.2 in such Category, has already been offered appointment.

The attention of this Court has been also brought to the Model Code of Conduct (MCC) connected to the election to the Legislative Assembly of the State to be held this year. From the MCC, learned State Counsel points out, that Clause- 3(vi) (d) thereof prohibits any *ad-hoc* appointments in Government, Public Undertakings etc.

which may have the effect of influencing voters in favour of the party in power.

Reliance is also placed on the Notification dated 29th September, 2014. Learned State Counsel submits that Clause –(vi) of the said Notification dated 29th September, 2014 provides, *inter alia*, that the recommendation to the appointment shall be sent by the Commissioner, Panchayats and Rural Developments to the Department of Panchayats and Rural Development for placing the case before the MOS/MIC for final approval.

Having noticed the above position of both the MCC and the Notification dated 29th September, 2014, this Court does not find that either of them create any impediment to the conferment of appointment in favour of the appellant. To the mind of this Court, the appointment of the appellant is part of a continuum and such would be evident from the Memo dated 14th February, 2020 addressed by the Joint Secretary, Government of West Bengal, Panchayats and Rural Development Department to its Director intimating the name of the appellant which provisionally appears at Sl. No.2 under the Exempted list of candidates in the District of Murshidabad. The Memo dated 14th February, 2020 is part of the said application connected to this appeal.

During this hearing, this Court has been provided with a Report in the Form of Affidavit by the Commissioner itself showing the vacancy position for the

District of Murshidabad. Balancing the vacancy position which is 4(four) with the wait listed position of the appellant which is present 1(one) since, this Court is informed by Learned State Counsel that the first wait listed candidate has been already appointed, this Court directs the appointment process of the appellant to be formalised not later than a period of 8(eight) weeks from this date.

It is made clear that the that the above direction is issued purely on the facts of this case as made available to this Court and discussed above.

MAT 48 of 2021 along with **IA No. CAN 1 of 2021** stand thus **disposed of**.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)

(Subrata Talukdar,J.)