

29-01-2021
Item no.11
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction

WP.ST No.7 of 2021
Sahim Hossain & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Subir Sanyal, adv.
Mr. Dibyendu Chatterjee, adv.
Ms. Jhuma Chakraborty, adv.
Ms. Reshmi Ghosh, adv.
Mr. Siddhartha Roy, adv.
Ms. Piyali Paul, adv. ...for the petitioners

Mr. Susovan Sengupta, adv.
Mr. Subir Pal, adv. ...for the State

Mr. Pradip Kumar Roy, adv.
Ms. Shraboni Sarkar, adv.for the PSC

We have perused the impugned order of the tribunal dated 18th January 2021.

The only ground on which the tribunal could not hear out the proceedings was that at present no division bench was available in the tribunal. Since questions of law and fact were involved, according to the Hon'ble Chairman of the tribunal, only the division bench would take up the matter. Therefore, the Hon'ble Chairman was unable to pass any "further order".

In this jurisdiction, we cannot address the merits of the disputes between the parties. Therefore, only the West Bengal State Administrative Tribunal can resolve their disputes.

Mr Sengupta, learned advocate for the State, submits that this court should not entertain the present application, as no substantive order has been passed by the

tribunal.

Mr Roy, learned advocate for the West Bengal Public Service Commission, adopts this submission.

We are unable to accept this submission for the reason that this application is in the nature of a writ under Article 226 of the Constitution of India. The impugned administrative order dated 18th January 2021 of the tribunal, in our view, can be challenged in this jurisdiction.

Mr Sanyal, learned advocate appearing for the petitioners, has shown us section 5(6) of the Administrative Tribunals Act, 1985. It is set out herein:–

“S.5. Composition of Tribunals and Benches thereof. –

(1).....

(2)

(3).....

(4).....

(5).....

(6) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify:

Provided that if at any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two members, the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to, such Bench as the Chairman may deem fit.”

Under this section, in our opinion, the Chairman or any other Member authorised by the Chairman in this behalf can function as a single-member bench to hear out any matter of any class which includes the original

application. We are further of the opinion that the petitioners should not suffer because of the prevailing situation in the tribunal.

We request the Hon'ble Chairman of the tribunal to exercise his powers under this section and constitute a bench so that the original application filed by the applicants before the tribunal is heard out, not later than three months of communication of this order.

Let this order be communicated by the Registrar General of this court to the Hon'ble Chairman, West Bengal State Administrative Tribunal immediately.

We also direct that for a period of two weeks from date, the respondents shall not take any further steps with regard to the notified appointments in question in relation to the posts of Sub-Inspector, Food & Supplies Department, Government of West Bengal and also shall not take any further action with regard to the notification without obtaining express leave of the tribunal.

WP.ST No.7 of 2021 is disposed of accordingly.

[I.P. Mukerji, J]

[Md. Nizamuddin, J]

