

10.08.2021
SL No.35
Court No.16
(gc)

WPST 34 of 2020

**Sk. Rezwanur Rahaman
Vs.
The State of West Bengal & Ors.**

(Via Video Conference)

Mr. Abhisek Banerjee,
...for the Petitioner.
Mr. Swapan Kr. Datta,
...for the State.

On the basis of the Police Verification Report dated 22nd February, 2014, the appointment of the petitioner on a temporary basis was terminated by the respondent authorities, this has resulted in an original application being filed before the Tribunal challenging the order dated 1st January, 2016.

The learned Counsel for the petitioner submits that at the time of his appointment, he has disclosed a document regarding pendency of the criminal case against the petitioner and the respondent authorities after due consideration of such disclosure found the petitioner suitable for appointment as Constable in the Excise Department. It is submitted that the petitioner has not suppressed any material fact. The respondent authorities being satisfactory about the fitness of the petitioner for the said post appointed the petitioner on a temporary basis and without giving any opportunity to the petitioner, the appointment was terminated.

Mr. Swapan Kr. Datta, learned Counsel appearing on behalf of the State respondents submits that a tainted person cannot be appointed as a Constable in the Police Department. Our attention is made to the Memorandum dated 27th February, 2014 and 22nd December, 2014 to show that his initial appointment on a temporary basis was part of a special recruitment process initiated by the Excise Department and while the recruitment process was on, it was made clear that no final appointment letter shall be issued without prior satisfactory to the Police Verification Report. The Excise Department after having received the Police Verification Report on 22nd December, 2014 decided to terminate the service of the writ petitioner with effect from 1st January, 2016.

In reply, the learned Counsel for the writ petitioner contended that even after 22nd December, 2014, he was assigned various jobs and on 2nd January, 2015, he was asked to join the post of Excise Constable on transfer from Nadia. Thereafter, he continued to discharge his function without any blame. The learned Counsel has relied upon a decision of a Coordinate Bench in ***Sandip Garai Vs. State of West Bengal & Ors. (WPST No.129 of 2016) dated 26th August, 2016*** and submits that the employer is required to exercise his discretion in a reasonable manner and in totality of circumstances to arrive at a finding whether it is desirable to allow the petitioner to continue in the said post.

We have heard the learned Counsel for the parties. The initial letter of appointment clearly states that the final letter of appointment shall be issued only upon Police Verification Report. It is true that on 22nd December, 2014, the Administration was informed about the pendency of the criminal matter but the said report does not indicate anything about the desirability of further continuation of the petitioner in the said post. It is also a fact that the petitioner on his own volition has disclosed that a criminal proceeding is pending against him. The Court in exercise of its jurisdiction cannot step into the shoes of the administrative authority or the Executive to determine as to the desirability of the petitioner to continue in the service as a temporary employee during the pendency of the criminal proceeding. As observed in **Sandip Garai** (supra), the employer is required to exercise its discretion in a reasonable manner and in totality of circumstances to arrive at a finding as to whether a person is fit to be appointed. Such exercise is to be left to the employer since assessment is to be made in respect of each parameter that are in place and applicable to the writ petitioner. Such exercise cannot be undertaken by the Court. In **Sandip Garai** (supra), the Coordinate Bench found that the Executive should have given an opportunity to the petitioner whose appointment was cancelled in view of a pending criminal proceeding.

Keeping in mind that the suitability and desirability of the candidate has to be assessed by the Executive

applying the parameters that are in place and applicable to the writ petitioner, we permit the writ petitioner to make a representation against the order of removal with a direction upon the Additional Excise Commissioner, Alipore Excise Division to consider the said representation upon granting an opportunity of hearing to the petitioner and pass a reasoned order taking into consideration the orders and instructions applicable to the writ petitioner and in accordance with law within a period of eight weeks from date uninfluenced by the observation of the learned Tribunal made in the impugned order.

All points are left open to be considered by the Additional Excise Commissioner at the time of consideration of the said representation.

With the aforesaid observation, the writ petition being WPST 34 of 2020 stands disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)