

19.03.2021.
Item no. 18.
Court No.13
pk

W.P.A. No. 6222 of 2020
With
I.A. No. CAN 1 of 2020 (Old CAN 4585 of 2020)
And
I.A. No. CAN 2 of 2020
I.A. No. CAN 3 of 2020
(Through Video Conference)

Radhagobinda Das & Ors.
Versus
The State of West Bengal & Ors.

Mr. Samim-ul-Bari,
Mr. Atarul Hoque Molla.

...For the petitioners.

Mr. Tapan Kumar Mukherjee,
Mr. Arjun Samanta.

..For the State.

Since a short question of law is involved as raised by the parties, the writ petition itself is taken up for hearing by consent of the parties.

The State has used a report by way of affidavit.
An objection has been filed by the writ petitioners.

The subject matter of the instant writ application is a recruitment notice dated 29th March, 2018 by the Health and Family Welfare, Ministry of Government of West Bengal.

By the said notice, the Government proposed to engage on contract, Pharmacists under “Rashtriya Bal Swasthya Karyakram” (RBSK). The essential qualifications prescribed for the post of Pharmacists was two years Diploma in Pharmacy from the Institute approved by Pharmacy Council of India/AICTE.

It was further stipulated that the persons holding Bachelor in Pharmacy (B-Pharma) and Masters in Pharmacy (M-Pharma) from any Institute approved by Pharmacy Council of India (PCI)/AICTE would be given additional marks.

The State received 3943 applications for the post of 512 Pharmacists to be engaged on contract basis. 712 of such applications were from candidates with B. Pharma Degree and 129 applications with candidates having M. Pharma Degree.

The State found that the persons, who pursue regular Graduation Qualifications, do not necessarily go for Diploma Courses.

As a consequence of the above Notification, the State found that an abnormal situation may arise where for the same post there are candidates with both Diplomas as well as Regular Graduate qualifications.

The State consulted and received legal opinion. Terms of reference were initially framed and subsequently modified by a decision of the State, inter alia, dated 23rd September, 2019, 17th January, 2020 and finally on 7th August, 2020. The State had decided to scrap the recruitment process dated 29th March, 2018 and commence a fresh process after amending qualifications and eligibility criteria.

It further transpires that a large number of applicants to the post have, in terms of the notice of

withdrawal of the recruitment process, taken refund of the application fees.

Counsel for the petitioners would argue while it is true that the State may withdraw any recruitment process and no vested rights accrue to the applicants, withdrawal must be informed with reasons. Reference in this regard is made to the decision of the Hon'ble Supreme Court in the case of **Manoj Manu & Anr. – Vs. – Union of India & Ors.** reported in **(2013) 12 Supreme Court Cases 171** particularly paragraphs 10, 11 and 12 thereof which are set out below :

“10. We are conscious of the legal position that merely because the name of a candidate finds place in the select list, it would not give him/her indefeasible right to get appointment as well. It is always open to the Government not to fill up all vacancies. However, there has to be a valid reason for adopting such a course of action. This legal position has been narrated by this Court in Neelima Shangla v. State of Haryana. In that case:

“The appellant was the candidate for appointment to the post of Subordinate Judge in Haryana. Under the scheme of the Rules, the Public Service Commission was required to hold first a written test in subjects chosen by the High Court and next a viva voce test. Unless a candidate secures 45% of the marks in the written papers and 33% in the language paper, he will not be called for the viva voce test. All candidates securing 55% of the marks in the aggregate in the written and viva voce tests are considered as qualified for appointment. The appellant though secured 55% of the marks was not appointed as her name was not sent by the Public Service Commission to the Government. The Supreme Court in such fact situation found that the Public Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the name of any qualified candidate. The duty of the Public Service Commission is to make available to the Government, a complete list of qualified candidates arranged in order of merit.

How should the Government, act is stated by the Supreme Court in the following words: (Neelima Shangla v. State of Haryana, SCC pp.271-72, paraa 2)

‘2 ...Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are then to be entered in the register maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is, of course, open to the Government not to fill up the vacancies for a valid reason. The Government and the High Court may, for example, decide that, though 55% is the minimum qualifying mark, in the interests of higher standards, they would not appoint anyone who has obtained less than 60% of the marks.’

11. The Court after making reference to the decision of the Supreme Court in State of Haryana v. Subash Chander Marwaha further observed as under: (Neelima Shangla case, SCC p.272, paraa 2)

“2. ...However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. There must be a conscious application of the mind of the Government, and the High Court before the number of persons selected for appointment is restricted. Any other interpretation would make Rule 8 of Part D meaningless.”

12. It is, thus, manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once it is found that the decision of the Government is based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies.”

It follows from the above that no vested right accrues to any applicant in a recruitment process and the same can be withdrawn. However, a decision to

withdraw or cancel such recruitment process must indeed be just and reasonable.

The report by way of affidavit and the various communications annexed thereto and referred to hereinabove, indicate just and fair reasons for modifying the selection criteria and the Terms of Recruitment (TOR).

The withdrawal and cancellation of the recruitment process dated 29th March, 2018 is not arbitrary or devoid of reasons.

This Court finds that the modification of the TOR is, in the interest of securing, the best candidates for the post of Pharmacists under the Rashtriya Bal Swasthya Karyakram (RBSK) Scheme of the State.

If the State Authority wishes to modify selection criteria in the best interest of the post to which recruitment is sought, the same does not call for any interference.

Counsel for the State, Mr. Mukherjee, relies upon a decision of the Hon'ble Supreme Court in the case of ***Shankarsan Dash v. Union of India*** reported in **(1991) 3 SCC 47** particularly paragraph 7 thereof. Paragraph 7 of the said decision is set out hereinbelow:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates

to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] , Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] , or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] .”

The Court relies upon the aforesaid decision in support of its views as above.

In view of the above, the instant writ application must fail and is hereby dismissed.

In view of dismissal of the writ petition, all connected applications stand disposed of.

No order as to costs.

Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)