

15.09.2021
Item No.01
Court No.16
Avijit Mitra

W.P.S.T. No. 72 of 2021 (through video conference)

In re: An application under Article 226 of the
Constitution of India;
And

**In re: Mr. Soumitra Roy & ors.
- Versus -
State of West Bengal & ors.**

Mr. Siddhartha Banerjee,
Mr. Dyutiman Banerjee
For the Petitioners
Mr. Tapan Kumar Mukherjee, Sr. Adv.,
Mr. Pinaki Dhole,
Mr. Sayan Ganguly
For the State respondents
Mr. Pradip Roy,
Ms. Shraboni Sarkar
For the Respondent nos. 4, 8 & 9

The present writ petition has been preferred challenging an order dated 10th September, 2021 passed by the learned West Bengal Administrative Tribunal in O.A. No.60 of 2020 with M.A. No.79 of 2020. The affidavit of service filed by the petitioners be kept on record.

Mr. Banerjee, learned advocate appearing for the petitioners submits that an advertisement being advertisement no.5/2020 was published by the Public Service Commission, West Bengal (in short, PSC) on 22nd January, 2021 inviting applications from eligible candidates for appointment to the posts of Instructor

in various Government Industrial Training Institutes. The training qualification under Craftsman Instructorship Training Scheme (in short, CITS) was not incorporated in the said advertisement as an essential qualification for the posts of Instructor in spite of a specific mandate of the Recommendation Committee under Government of India, Directorate General of Training (DGT), Ministry of Skill Development and Entrepreneurship and as a consequence thereof, the petitioners, who have such training, have been seriously prejudiced since they have to compete with candidates, who do not have such training qualification and are not eligible for appointment to the posts of Instructor.

Mr. Banerjee submits that the Recommendation Committee had mandated CITS qualification for recruiting Instructors at the Industrial Training Institutes and such decision is binding upon the State Government. The orders passed by the Union Parliament or executive order by the Central Government would occupy the field for recruitment of Instructors at Industrial Training Institute and the same would remain outside the domain of the State legislature in view of the approval of the Recommendation Committee under the Central Government. The Parliament has prescribed rules for recruitment of Instructors at Industrial Training

Institute and thereby the State Government cannot initiate any recruitment process without adhering to such rules. In support of such contention Mr. Banerjee has drawn the attention of this Court to Articles 246 and 254 of the Constitution of India and has also placed reliance upon the judgments delivered in the cases of *State of Kerala & ors. vs. Mar Appraem Kuri Company Limited* reported in (2012) 7 SCC 106, *Rajveer Singh Kumawat & ors. vs. Union of India & ors.* reported in 2018 (3) RLW 2201 (Raj) and *Sarthak Ghosh vs. State of West Bengal* reported in 2017 SCC OnLine Cal 357.

He further submits that the dissatisfaction of the Recommendation Committee towards non-inclusion of the said training qualification as an essential qualification for recruitment of Instructors would be explicit from the subsequent memoranda dated 25th February, 2019, 3rd December, 2019, 9th January, 2020 and 31st January, 2020 issued on behalf of the Ministry. The last memorandum has been brought on record by a supplementary affidavit. Let the same be kept on record.

As the preliminary examination has been scheduled on 18th December, 2021, Mr. Banerjee prays for an interim order to restrain the respondents from declaring the final result and from filling up the posts of Instructor.

Drawing the attention of this court to the memo dated 26th July, 2019 issued by the Deputy Director General (C.P. & Admn.), Mr. Mukherjee, learned senior advocate appearing for the State respondents submits that the Recommendation Committee under the Directorate General of Training, Government of India has only requested the State to revise recruitment rules and to consider the CITS as essential qualification while recruiting vocational instructors in Government and Private ITIs (Govt. & Private). Such recommendation has no force of law and is not binding upon the State. As per the existing recruitment rules, the advertisement no.5/2020 has been published and the selection process has been initiated. The existing recruitment rules are also not under challenge in the original application filed by the petitioners.

Mr. Roy, learned advocate appearing for the PSC submits that 80 applicants preferred the original application and out of them 23 applicants are the writ petitioners in the present writ petition. From the averments made in the present writ petition, particularly, in paragraph 2 it would be evident that some of the writ petitioners are still waiting to avail the National Trade Certificate copies. The petitioners on one hand have challenged the advertisement and on the other hand they have applied for participation in the said selection process pursuant to the

advertisement no.5 of 2020. Having applied for participation, the petitioners cannot turn back and challenge the selection process. The petitioners also did not challenge the earlier order dated 13th February, 2020 passed by the learned Tribunal in the original application refusing the interim order, as prayed for by the petitioners.

In reply, Mr. Banerjee denies the contention of the respondents and submits that upon applying for participation the petitioners have agitated the plea as regards non-incorporation of an essential qualification in the advertisement, contemporaneously. After 13th February, 2020, the date of examination was scheduled on 18th September, 2021 and such information was uploaded in the *website* on 4th September, 2021. In view thereof, the petitioners filed a miscellaneous application in connection with the original application seeking appropriate directions.

Records reveal that the petitioners fulfil the essential qualification, as incorporated in the advertisement and are all eligible to participate in the selection process. Out of 80 applicants, who jointly preferred the original application, only 23 applicants have approached this Court. In the memo dated 26th July, 2019 issued on behalf of Directorate General of Training the State has been requested to revise the recruitment rules. The advertisement has been

published by the PSC on the basis of the existing recruitment rules in force. It further appears that the original application was first taken up for hearing on 13th February, 2021. The interim order, as prayed for, to restrain the respondents from giving effect or further effect to the advertisement no.5/2020 dated 22nd January, 2020 was refused, however, it was observed that *'the action taken by the authority shall abide by the result of the application'*. The said order was not challenged by the applicants.

In the said conspectus and prior to final determination of the issue as to whether the decision of the Recommendation Committee is binding upon the State, it would not be proper to stall the selection process or to restrain the respondents from publishing the result and from filling up the posts since the advertisement has been published in consonance with the existing recruitment rules. In view thereof, petitioners' prayer for such interim orders is refused, more so when, it has already been directed by the learned Tribunal that *'the action taken by the authority shall abide by the result of the application'*.

It is, however, made clear that we have not decided the issue as regards repugnancy between parliamentary legislation and State legislation, as argued on behalf of the petitioners and the same is left open to be decided by the learned Tribunal at the time

of final hearing of the original application. It is also made clear that the observations made in the present order are only restricted to the issue as regards grant of the interim order, as prayed for.

We have been informed that in spite of direction of the learned Tribunal, the State respondents have not yet filed any affidavit. In view thereof, the State respondents are directed to file their reply to the original application positively within a period of two weeks. Rejoinder, if any, be filed by the applicants within a week thereafter. Upon exchange of such reply and rejoinder, the parties would be at liberty to approach the learned Tribunal for final disposal of the original application.

It is expected that the learned Tribunal shall finally decide the original application, as expeditiously as possible, preferably by the end of December, 2021.

With the above observations and directions, the writ petition is disposed of.

There shall be no order as to costs.

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

(Hiranmay Bhattacharyya, J.) (Tapabrata Chakraborty, J.)