

**IN THE HIGH COURT AT CALCUTTA**

**(Constitutional Writ Jurisdiction)**

**Present:**

**The Hon'ble Subrata Talukdar**

**and**

**The Hon'ble Justice Krishna Rao**

**MAT 1436 of 2019**

**With**

**IA No. CAN 01 of 2019**

**(Old No CAN 11280 of 2019)**

**Bipasha Palta**

**Versus**

**State of West Bengal & Ors.**

For the Appellant : Mr. Samim Ahammed

Mr. Arka Maity

..... Advocates

For the State : Ms. Sonal Sinha

Mr. Prashant Kumar Tripathi

.....Advocates

Heard on : 13.12.2021

Judgment on : 23.12.2021

**Krishna Rao.:** The appellant had preferred the instant appeal against the order passed by the Hon'ble Single Judge in W.P. 16003 (w) of 2019 dt. 28.08.2019 wherein the Hon'ble Single Judge had dismissed the writ application filed by the appellant.

The respondents have published an advertisement inviting application for contractual appointment under Agriculture Technology Management Agency (ATMA) South 24 Parganas for the post of Assistant Technology Manager (ATM). In response to the said advertisement, the appellant had applied for the said post. Vide letter dt. 06.07.2017 the Project Director, ATMA, South 24 Parganas had informed that the appellant has been provisionally selected for Viva-voce Test by the ATMA Functionary Recruitment Committee for recruitment to the post of Assistant Technology Manager on the basis of the written examination held on 19.03.2017 and the petitioner was directed to appear before the Interview Board for the Viva-voce Test on 21.07.2017 at 10:00 A.M in the chamber of the Additional District Magistrate (Zilla Parishad) New Administrative Building, 2<sup>nd</sup> floor Alipur Kolkata.

On 07.08.2017 the Project Director, ATMA had published a memorandum along with the list of the selected candidates for appointment under Agriculture Technology Management but in the said memorandum, name of the petitioner was not appearing. The appellant had inquired about the same and on inquiry it was informed to the appellant that the name of the appellant is appearing in the waiting list but the appellant could not find any waiting list in which the name of the appellant was appearing. On

17.07.2019 the appellant had received a letter dt. 12.07.2019 sent by the Project Director ATMA through postal services wherein the appellant came to know that the letter dt. 12.07.2019 is relating to final verification of original document and execution of agreement of contractual appointment as Assistant Technology Manager (ATM). In the letter dt. 12.07.2019 it was also informed to the appellant that the appellant has been selected for appointment as Assistant Technology Manager on purely contractual basis under Agriculture Technology Management Agency, South 24 Parganas. In the said letter it was also informed to the applicant to report to the office of the Deputy Director of Agriculture (ADMN), South 24 Parganas on 16.07.2019 at 11:30 A.M positively along with the original documents and one self-attested copies of the said documents.

The appellant had received the letter dt. 12.07.2019 on 17.07.2019 but the date of appearance before the authority was on 16.07.2019 and as such the appellant could not appear before the authority along with the documents. On receipt of the said letter dt. 12.07.2019, immediately the appellant had sent a reply to the Deputy Manager Agriculture on 18.07.2019 informing the above facts with regard to receipt of the letter dt. 12.07.2019 only on 17.07.2019 and requested for consideration of her case for appointment in the post of Assistant Technology Manager. In spite of several request made by the appellant no opportunity was given to the appellant for appearing before the authority for submission of her original documents for appointment to the said post and accordingly finding no other alternative the appellant had preferred writ petition before the Hon'ble

Single Judge but the Hon'ble Single Judge without considering the prayer made by the appellant had dismissed the writ petition. The Counsel for the appellant prayed for setting aside the order of the Hon'ble Single Judge and prayed for a direction upon the authorities for her appointment in the post of Assistant Technology Manager.

*Per Contra*, the Counsel for the respondents have submitted that the respondents have decided to fill up 44 vacancies of Assistant Technology Manager under various Blocks of South 24 Parganas through written test and interview. In pursuance to the decision taken by the respondents, applications were invited from eligible candidates by publishing the recruitment notice in the newspaper. Altogether 670 candidates have applied for the post of Assistant Technology Manager. The authorities have conducted written test in which the appellant has also participated in the said written test and after the written test the name of the appellant was placed at Sl. No. 79 in the merit list.

On 01.08.2017, the respondents have decided that 45 candidates from the merit list shall be offered for contractual engagement for one year as per existing vacancy in the post of Assistant Technology Manager. The authorities further decided that the panel shall remain valid for two years from the date of approval i.e, 01.08.2017. In the decision it was also decided that if any candidate fails/declines to accept the engagement of offer then the next candidate of the panel shall be taken into account for offering engagement. It was further submitted that the list of first 45 candidates was published and it was decided to inform the candidates through E-mail

and SMS alert for reporting to the office of the Project Director, ATMA, South 24 Parganas positively scheduled date and time for final verification of the documents and for execution of contractual agreement. It was further submitted that the result was published with the above mentioned instructions in the District Website.

The Counsel for the respondents further submitted that on 25.07.2018 a proposal was further moved for filling up 12 nos. of vacancies of Assistant Technology Manager (ATM) from the existing panel of successful candidates. It was further decided, if any post remains vacant due to the absence of the candidates at document verification venue or his own unwillingness to accept the appointment letter within due date of joining, the next candidate of the panel may be taken into account for offering the engagement. It was further decided the candidates will be informed through E-mail and SMS alert for reporting to officer of the Project Manager.

It was further submitted that on 03.07.2019 again a proposal was moved for filling up further nine vacancies of Assistant Technology Managers (ATM's) from existing panel which was valid till 31.07.2019. This time also decided that if any post remains vacant due to the absence of the candidate at document verification venue or his unwillingness to accept the appointment letter within the due date of joining, the next candidate of the panel should be taken for offering of the engagement.

Pursuance to the above mentioned decision, notices were issued to the several candidates including the appellant herein through E-mail as well as SMS alert and several calls were also made to the registered mobile number

of the appellant on 12.07.2019 with the direction to appear before the authority on 16.07.2019 for verification of her original documents and execution of an agreement for contractual appointment as Assistant Technology Manager (ATM). It was further submitted that a letter was also sent to the appellant by speed-post by informing the appellant to appear before the authority on 16.07.2019.

The Counsel for the respondents further submitted that in-spite of receipt of the Email, SMS alert and the speed post letter the appellant failed to appear before the authority along with original documents for signing the contract agreement for her engagement.

The Counsel for the appellant further submitted that as the appellant failed to appear on 16.07.2019 before the respondent authorities for verification of original documents and execution of agreement for her contractual agreement and accordingly, the respondents have given offer of appointment to the next available candidate.

This Court has considered the rival submissions of the parties, pleadings and the documents available on record. The Project Director, ATMA, South 24 Parganas issued notice inviting application for contractual appointment under Agriculture Technology Management Agency for different posts including the post of Assistant Technology Manager on contract basis. In terms of the recruitment notice the appellant had applied for the post of Assistant Technology Manager and accordingly, the appellant was declared successful in the written test and the name of the appellant was placed at Sl. No. 79 of the merit list. Initially on 01.08.2017, the authorities have

decided to issue offer of appointment to only 45 candidates for contractual engagement in the post of Assistant Technology Manager (ATM) for one year and the authorities have further decided that they will keep the panel remain valid for two years with effect from 01.08.2017. The authorities have also decided that if any candidate declines to accept the engagement of offer then the next candidate of the panel shall taken into account for offering engagement.

On 25.07.2018 the respondents have moved further proposal for filling up 12 vacant posts of Assistant Technology Manager (ATM) from the existing panel and accordingly, the said 12 posts were filled up through the said panel.

On 03.07.2019 again a proposal was moved for filling up further 09 vacancies of Assistant Technology Managers (ATM's) from the existing panel which is valid until 31.07.2019 while filling up the said 09 vacancies, an offer of appointment was sent to the appellant through the SMS in her mobile no. 9038758524 on 12.07.2019 at 01:57 P.M which was duly received by the appellant. The respondents have also sent E-mail to the appellant on 12.07.2019 at 01:34 P.M in the Email Id of the appellant namely [bipasha.palta15@rediffmail.com](mailto:bipasha.palta15@rediffmail.com) which was also duly received by the appellant. The respondents have also sent a notice to the appellant by speed post informing about appearance of the appellant before the respondents with original documents on 16.07.2020. The notice which was sent by the respondents dt. 12.07.2019 to the appellant was received by the appellant on 17.07.2019 and after receipt of the said notice the appellant

had sent a reply to the respondents informing that the appellant has received the letter of offer of appointment on 17.07.2019 though the appearance of the appellant was fixed on 16.07.2019 and as such the appellant could not appear before the authority and requested for consider her case for appointment in the post of Assistant Technology Manager (ATM).

As the respondents failed to consider the request made by the appellant on 18.07.2019, the appellant preferred a writ application before the Hon'ble Single Judge being W.P 16003(w) of 2019 and the Hon'ble Single Judge had dismissed the said writ application assigning the reason that the respondents cannot be put to blame if the petitioner did not accept the phone call or did not check her Email account and her SMS. This Court perused the SMS sent by the respondents to the appellant in her mobile no.9038758524 on 12.07.2019 at 01:57 P.M which reads as follows:

*"You are hereby instructed to report yourself on 16.07.2019 at 11:30 am positively in the O/o to Project Director, ATMA, South 24 Parganas, New Administrative Building (6<sup>th</sup> floor), Alipur, Kol-700021 for final verification & appointment as ATM. Please Check your email for details, PD, ATMA, South 24 Parganas."*

*12 Jul 2019, 1:57 PM [1]*

This Court has also perused the Email sent by the respondents to the appellant on 12.07.2019 at 01:34 P.M at the Email address [bipasha.palta15@rediffmail.com](mailto:bipasha.palta15@rediffmail.com) which was duly received by the appellant but the appellant has failed to appear before the respondents authorities with all the original documents for verification and execution of contractual

agreement. The appellant relied upon the judgment passed in *Civil Appeal No. 6983 of 2021 (Arising out of SLP (C) No. 18995 of 2021)*, *Prince Jaibir Singh -versus- Union of India*:

*“5. Having regard to the facts of the case noted above, it would be a grave travesty of justice if a young Dalit student, who had to move this Court, is turned away without considering the difficulties he has encountered in acquiring the funds and to pay the fee for admission for the B. Tech Degree Course at IIT-Bombay and, thereafter, in ensuring that the payment is processed is online. If the petitioner were not to be admitted during the current academic year, he will be ineligible to appear after two consecutive attempts. Though technology is a great enabler, there is at the same time, a digital divide. Hence, we are of the view that this is a fit and proper case where the exercise of the jurisdiction under Article 142 of the Constitution is warranted at the interim stage in the facts as they appear before the Court.*

*6. We accordingly direct the first and second respondents to ensure the appellant is admitted to IIT-Bombay pursuant to the allocation of the seat to him. This shall not entail disturbing any other student who has already been admitted. The creation of a supernumerary seat, in the facts of the present case, shall be subject to the admission of the appellant being regularized in the event that any seat falls vacant as a result of exigencies which may arise in the course of the admissions process. Otherwise, the continued studies of the appellant for the B. Tech Degree Course in Civil Engineering shall be against the supernumerary seat. The parties shall act on a certified copy of this order and implement these directions on or before 24 November 2021.*

*7. There shall be an interim order in the above terms pending the disposal of the appeal.”*

The Hon’ble Single Bench while passing the impugned order had called the Project Director of Agriculture Technology Management Agency with all records. The Project Director personally appeared before the Hon’ble Single Bench along with all records and the Hon’ble Single Bench had perused the records produced by the Project Director and recorded the following:

*“It appears from records produced before this court that the SMS was sent to the registered Mobile number of the petitioner and email communication was also made to the petitioner. There*

*was no response from her side. The communication sent via speed post may have reached the petitioner at a delayed stage but other communications were received by the petitioner. The petitioner does not deny that communication was not made over e-mail and SMS. On the contrary the petitioner submits that as the phone was damaged accordingly the phone calls remained unanswered.”*

Recently, the Hon’ble Supreme Court in *Civil Appeal No. 6860 of 2021 (Arising out of SLP (C) No. 5006 of 2020) State of Uttar Pradesh & Others – versus- Pankaj Kumar* held as follows:

*“7. In the light of the rival contentions, having perused the order passed by the learned Single Judge as also the conclusion reached by the Division Bench of the High Court, it would indicate that the High Court has not granted the relief to the respondent by recording a finding with regard to the non-compliance of any requirement envisaged under the Rule or procedure provided in the advertisement calling for applications. The Rule as referred to by the learned counsel for the respondent mentions that the intimation is to be provided by postal communication or any other mode. In that view, there is no bar in intimating the candidates through SMS, more particularly when large number of candidates had to appear in the subsequent process and majority of the candidates have appeared for document verification and physical fitness test pursuant to intimation by SMS. Even, so far as the respondent is concerned, it is not his case that he had not received the SMS. It is only a technical contention that he ought to have been intimated through postal communication. When requirement is stated in the application to provide the mobile number, it is with a purpose to communicate and in the instant case, the appellants have sent the SMS to the very number which had been furnished by the appellant.*

*8. Though, the learned counsel for the respondent vaguely contended that a person may not retain the same number after a long lapse of time, no material has been brought on record to indicate that the respondent did not possess the said mobile connection as on the date the SMS was sent. Further, the argument as put forth by the learned counsel for the respondent that one may not retain the same number after lapse of long time would hold good even for the address which is furnished for issue of postal communication. In a given case, the person may not reside in the same address which is furnished for communication as it existed when the application is made. In*

*such circumstances, it is for the candidate to intimate any change to the authorities, since such change would be within the knowledge of the candidate and it is in his or her own interest such intimation is to be made. In the instant case, when there can be no dispute that the respondent was in possession of the same mobile connection, the detail of which was furnished in the application and the SMS had been sent to the respondent, the respondent having not acted on the same cannot at his own convenience make request to be permitted to participate in the selection process which has sent to the respondent, the respondent having not acted on the same cannot at his own convenience make request to be permitted to participate in the selection process which has already concluded, not having utilized the opportunity which was available to him."*

As per record, the respondents herein have given intimation to the appellant through SMS, E-mail as well as phone call and the SMS as well as the E-mail was duly received by the appellant on the same day but the appellant failed to act in terms of the SMS and E-mail by appearing before the authority on 16.07.2019 by producing original documents for verification and for execution of agreement for contractual engagement.

The facts of the judgment referred by the appellant is different from the facts of the instant case. The judgment of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh & Others -versus- Pankaj Kumar (supra)* is squarely applicable in the instant case. The Hon'ble Supreme Court has categorically held that the details of which was furnished in the application and the SMS had been sent to the respondent, the respondent having not acted on the same cannot at his own convenience make request to be permitted to participate in the selection process which was already concluded, not having utilized the opportunity which was available to her.

In the instant case also the appellant has received the SMS as well as E-mail within time i.e, on 12.07.2019 though the appellant had to appear before the authority along with her original documents on 16.07.2019 but the appellant has not acted on receipt of the said SMS and E-mail and thus this Court finds that the Hon'ble Single Bench while passing the order did not commit any error. The order dated 28.08.2019 therefore requires no interference.

**MAT No. 1436 of 2019** with **CAN No. 1 of 2019** stand accordingly **dismissed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**I agree.**

**(Subrata Talukdar, J.)**

**(KrishnaRao, J.)**