

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 8462 of 2020

Sri Ankur Bhattacharya & Anr.

Vs.

State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Partha Sarathi Bhattacharya, Sr. Adv. Mr. Uday Narayan Betal, Adv. Mr. Raju Bhattacharyya, Adv.
For the respondent no. 1	:-	Mr. Subrata Guha Biswas, Adv.
For the respondent nos. 3-4	: -	Mr. Pantu Deb Roy, AGP. Mr. Pannalal Bandhopadhyya, Adv.
Hearing concluded on	:-	06.01.2021
Judgment on	:-	13.01.2021

Amrita Sinha, J.:-

The petitioners pray for giving appointment to them in the vacant posts of Peshkar (Bench Clerk) in the Fast Track Courts in the Hooghly Judgeship.

In response to the employment notification no. 1/2015 dated 30th April, 2015 the petitioners applied for being recruited in the post of Peshkar (Bench Clerk) in the Fast Track Court of the Hooghly Judgeship. Initially the advertisement was made in respect of two sanctioned posts, but later on, by way of a corrigendum, the sanctioned

posts were enhanced to three. The employment was to be given on ad hoc basis, temporary and contractual in nature.

The petitioners participated in the recruitment process and were eligible for appointment. The name of the petitioners appeared in the list of selected candidates. It was notified on 22nd September, 2015 that the selected candidates will be intimated by post and/or by telephonic message to receive the appointment letters in person from the office of the District Judge, English Department, Hooghly.

In spite of being selected for appointment no appointment letter was issued in their favour. The petitioners made an application under the Right to Information Act, 2005 seeking reasons for non-issuance of the letter of appointment. The query of the petitioners was replied by the Public Information Officer, thereby intimating, that the office of the District Judge, Hooghly has sought approval of the Appointment Committee of the Cabinet, vide office memo dated 21st September, 2015, but the matter was pending before the Judicial Department, Government of West Bengal and no direction from the Judicial Department, Government of West Bengal has been received till date. The petitioners thereafter made a representation on 10th September, 2020 followed by a notice demanding justice through their learned advocate on 21st September, 2020.

According to the petitioners as they were successful in the selection process necessary direction may be passed upon the recruiting authority for issuance of appointment letter in their favour.

Referring to the report which has been filed by the respondents the petitioners submit that the District Judge is the appropriate authority to issue the letter of appointment in their favour. Reference has been made to the communication dated 23rd December, 2019 written by the Joint Secretary, Judicial Department to the District Judge, Hooghly that the matter of engagement of support staff in respect of the Fast Track Courts are guided by the Circular no. 6716-J dated 14th September, 2001 issued by the Judicial Department and the relevant District Judge is the authority for such engagement, subject to the observation of the norms as envisaged therein.

The petitioners also refer to the letter dated 15th January, 2020 issued by the District Judge, Hooghly to the Joint Secretary, Judicial Department seeking approval of the appointment of the selected candidates in various posts.

In reply to the stand taken by the respondents in their affidavit-in-opposition that the panel prepared on 22nd September, 2015 has lost its validity and the petitioners do not have any locus standi to claim appointment as the post in question is purely ad hoc, temporary and contractual, the petitioners submit that the respondent authorities are not entitled to improve or supplement their case by assigning fresh reasons by way of affidavit. Reliance has been placed on the decision delivered by the Hon'ble Supreme Court in the matter of ***Mohinder Singh Gill -vs- Chief Election Commissioner & Ors.*** reported in ***AIR 1978 SC 851.***

The learned advocate appearing on behalf of the respondents refers to the memo no. 7196/F(P) dated 2nd July, 2010 issued by the Principal Secretary, Finance Department, Audit Branch relating to the instructions regarding preparation, cancellation, appointment out of panels for filling up of the non-PSC posts, wherein it has been mentioned that the selection process is initiated for a particular number of vacancies against particular posts. A panel should not remain valid for more than a year. The panel will automatically stand cancelled when all the notified vacant posts are filled up from the panel within the one year validity period of the panel.

It has been contended that the panel prepared in the year 2015 cannot, under any circumstances, remain valid till 2021. It has been submitted that no appointment has been given from the said panel as the panel was not approved by the authority. It has been argued that the petitioners do not have a right of appointment even though their names appeared in the panel of selected candidates. Empanelment per se does not create any right in favour of the petitioners. The respondents pray for dismissal of the writ petition.

I have heard the submissions made on behalf of both the parties.

The policy relating to recruitment and fixation of pay of the staff of Fast Track Courts was published by the Secretary, Judicial Department by a Government Order dated 14th September, 2001. In the said Government Order it has been clearly mentioned that the supporting staff of Fast Track Courts will be recruited by the District and Sessions

Judge of each district from the persons who retired from service, subject to the condition that they are physically fit and mentally alert.

In continuation of the aforesaid Government Order a further Government Order was published on 27th November, 2001 wherein certain guidelines have been prescribed regarding recruitment and fixation of pay of the supporting staff of the Fast Track Courts. It has been mentioned that in the event of non-availability of retired personnel, a lower division clerk may be appointed, on contract basis, in place of Peshkar, since direct recruitment to the upper division level clerical post is not permitted under the existing recruitment policy. Both the Government Orders have been issued with the concurrence of the Finance Department.

In response to the letter of the District Judge seeking approval of appointment of the selected candidates, the Judicial Department has clearly mentioned that the engagement of the support staff in respect of the Fast Track Courts will be guided by the Government Orders dated 14th September, 2001 and 27th November, 2001.

From the employment notification published by the office of the District Judge, Hooghly on 30th April, 2015 it appears that applications have been invited from general public including retired government employees for filling up the post of Peshkar.

The petitioners being unemployed youth participated in the recruitment process and were successful in the same.

Without delving into the matter any further, at the face of the employment notification it appears that the same is an absolute illegal and arbitrary one. The policy regarding recruitment of staff in the Fast Track Courts does not permit unemployed youths to participate in the recruitment process of Peshkar. The recruitment is to be made from the persons who retired from service, and in the event of unavailability of retired persons, a lower division clerk may be appointed on contract basis. The guidelines specifically mention that direct recruitment of the upper division level clerical post is not permissible under existing recruitment policy. There is no provision for appointing a fresh candidate, by way of direct recruitment, in the post of Peshkar. In fact, there is a clear restriction to directly appoint any person in the upper division level clerical post, and in view of the aforesaid restriction application from general public could not have been invited by the District Judge for giving appointment in the post of Peshkar.

The parties have not been able to produce before the Court any document to show that there has been any relaxation in the aforesaid directives. Nothing has been shown before the Court that unemployed youth or the general public are eligible for appointment directly, in the post of Peshkar in the Fast Track Courts. The department has reiterated their stand that the appointment is to be guided by the aforesaid two Government Orders.

The initiation of the recruitment process not being made in accordance with the guidelines framed by the government, no direction can be passed for either proceeding or concluding the same. The petitioners could not have acquired any right, far less an indefeasible

right, for being appointed in a recruitment process which was void ab initio. The employment notification no. 1/2015 dated 30th April, 2015 issued by the District Judge, Hooghly is ex facie bad and not sustainable in law.

In view of the above no relief can be granted to the petitioners in the instant case. The writ petition fails and is hereby dismissed.

WPA No. 8462 of 2020 is dismissed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocate(s) on record expeditiously, on compliance of usual legal formalities.

(Amrita Sinha, J.)