

03-02-2021
ct no. 13
Sl.73
pk

**WPA 11121 of 2020
(Through Video Conference)**

**Goutam Sarkar
Versus
State of West Bengal and others**

**Mr. Soumitra Dasgupta,
Md. Hafiz Ali**

...for the petitioner

**Mr. Raja Saha,
Mr. Amit Kumar Ghosh**

... for the State.

The writ petitioner participated in the process of recruitment to the post of Farash under the District Judgeship of Uttardinaajpur. The post is reserved post and the petitioner being in the reserved category was empanelled as the first waitlisted candidate and the second on merit.

The panel was prepared on 21st August, 2019. It is clearly stipulated that the panel would have a life for one year. It transpired that first selected candidate did not at all join the post. The post should have been automatically offered to the writ petitioner. The writ petitioner also chose to wait until 26th August, 2020 to make a representation before the Authorities that his claim for appointment arose by reason

of failure on the part of the first empanelled candidate to join the post.

This Court sees that the intervening Pandemic from March 2020 may have delayed information to the petitioner that the first empanelled candidate did not join the post.

The District Judge of Uttardinajpur, appointing authority, also ought to have contacted the petitioner who was the next empanelled candidate to join the post.

This Court is of the view that the matter should be looked at from an equitable point. Admittedly, the first empanelled candidate never ever joined the post-in-question and the petitioner is the next person entitled to the same.

In those circumstances, despite the fact that panel itself has expired on 28.08.2020, the petitioner's cause of action shall be deemed to have arisen immediately upon failure and refusal on the part of the first empanelled candidate to join the post.

The petitioner should have been contacted immediately after refusal on the part of the first empanelled candidate to join the post.

This Court is, therefore of the view that the petitioner is entitled to be appointed in the post of Farash under the District Judgeship of

Uttardinajpur. The order is passed on the peculiar facts and circumstances of the case and shall not be treated as precedent.

It is clarified that the petitioner's tenure and service shall count from the day he joins and he shall not be entitled to any benefits prior to the date of joining.

In view of the above, the instant writ petition is allowed and disposed of directing the District Judge, Uttardinajpur to appoint the writ petitioner within a period of seven days from the date of receipt of a copy of this order.

No order as to costs.

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

(Rajasekhar Mantha, J.)