

24.11.2022
Court No. 19
Items 889 & 890
CP

RVW 1 of 2022
In
WPA 15882 of 2017
With
CAN 1 of 2022

The Director of Local Bodies, West Bengal & Ex-Officio
Additional Secretary, Municipal Affairs Department,
Government of West Bengal
Vs.
Anindita Das & ors.

Mr. Subhrangsu Panda
Ms. Ina Bhattacharyya
Ms. Mithu Singha Mahapatra
... for the applicant.

Mr. Arunava Ghosh
Mr. Anant Kumar Shaw
Mr. Ravi Kr. Dubey

...for the respondent no. 1.

The Director of Local Bodies, Municipal Affairs
Department seeks review of the order dated
November 23, 2021, passed by this court in WPA
15882 of 2017 and CAN 8538 of 2018.

This was a case where an in-house candidate
who had crossed the age limit to participate in a
recruitment process initiated by the Garulia
Municipality had been prevented from putting in her
application. A writ petition was filed. The petitioner
had already put in 20 years of service in the said
municipality on contractual basis.

By an interim order dated June 20, 2017,
Garulia Municipality was directed to permit the

petitioner to appear at the selection process. The respondents were directed not to insist on the age criteria, in case the petitioner was found otherwise eligible.

The petitioner participated in the recruitment process. The court had directed that no equity would be created in favour of the petitioner and the selection would be subject to the final decision in the writ petition.

It is an admitted position that the recruitment process was initiated in 2017. At that relevant point of time, the municipal authorities were entitled under the law to recruit their own employees. In view of the pendency of the writ petition, the recruitment process was finalized, but the result was not published. An application was filed by the municipality recalling and/or modification of the interim order passed on June 20, 2017 being CAN 8538 of 2018.

It was specifically pleaded in paragraphs 4 and 5 of the application that the result of the entire selection process could not be published due to the interim order that was passed. The said paragraphs are quoted below for convenience:-

4. That further to the same, the process of the recruitment drive initiated by the Applicants in accordance with law, in which the writ petitioner had been allowed to participate pursuant to the solemn order passed by this

Hon'ble Court on June 20th, 2017, is now completed but in light of the interim order passed by this Hon'ble Court, the applicants herein are restrained to declare the same.

5. Your Applicants herein most respectfully submit that the recruitment of many persons who have participated are at stake and the public engagement of the same have been carried out in accordance with the requirements of law.”

The application and the writ petition were disposed of by this court by an order dated November 23, 2021 upon recording the submissions of the learned advocate for the Garulia Municipality. The court directed that the recruitment process to be completed within two weeks from the date of the order. The court did not pass any direction upon the municipality or upon the State authorities to appoint the petitioner. The only direction that was passed was that the candidature of the petitioner will be decided on the basis of the merit list.

The learned advocate for the Garulia Municipality had made a specific submission that they had no objection to finalize the recruitment process and they shall not insist on the age bar prescribed in the recruitment notice in case the petitioner fulfilled the other eligibility criteria and was successful.

In the concerned recruitment process from which the review application arises, the municipality

was the sole recruiting agency/authority. At the relevant point of time, the State of West Bengal did not have any role to play in respect of recruitment. Only formal approval was to be granted. Moreover, the State of West Bengal participated in the proceedings before the court, but did not make any submissions contrary to the submissions made by the municipality.

Today, a review has been sought on the ground that before the order of this court was passed, the West Bengal Municipal Service Commission Act, 2018 had already come into force and all recruitments were to be done in terms of the said Act. Although this court is of the view that the recruitment process which was initiated in 2017 and which continued at the time when the new Act had not come into force should be guided by the previous rules and regulations, the court deems it fit not to venture into an adjudication of this issue which is beyond the scope of the writ petition.

I do not find any grounds for review.

It is not a case of error apparent on the face of the record. It is also not a case where a settled principle of law has not been followed. Finally, it is not a case in which the applicant was not aware of the existence of the Act of 2018 when the writ petition was disposed of.

The municipality had completed the process on the basis of the 2017 advertisement. Final result was not published due to pendency of the writ petition. The employer had decided to condone the age limit for an in house candidate.

The learned advocate for the State respondents did not raise any objection at the relevant point of time. It is presumed that the learned advocate was conscious that a recruitment process which was initiated in 2017, could not be cancelled by retrospective application of a subsequent statute.

If the promulgation of the 2018 Act and the prohibition therein is a ground for review, in that case not only the selection of the petitioner but the entire selection process becomes invalid and the other candidates who were selected would suffer consequences. They are also not before the court.

Under such circumstances, the review application and other connected applications are disposed of without any orders.

The court has not expressed any opinion on the other avenues available to the applicant to assail the order of this court.

Learned advocate for the applicant is at liberty to take back the certified copy of the order of this court upon furnishing a photocopy thereof.

The office shall act accordingly.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)