

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A. 942 of 2022

Biva Chakraborty & Anr.

Vs

The University of Burdwan & Ors.

For the Petitioners : Mr. Allen Felix, Adv.

For the Respondents : Mr. N.C. Bihani, Adv.
Mr. Soumyajit Ghosh, Adv.
Mrs. P. Bihani, Adv.

Last Heard on : 05.04.2022.

Delivered on : 28.04.2022.

Moushumi Bhattacharya, J.

1. The petitioners have challenged a Notification issued by the University of Burdwan on 10.01.2022 inviting applications for the post of Junior Assistant or its equivalent cadre. According to the case made out in the writ petition, the petitioners are successful candidates who were empanelled at serial Nos. 23 and 28 of the preliminary panel for promotion to the post of Junior Assistant or its equivalent post after qualifying in the

written and viva-voce test. Learned Counsel appearing for the petitioners submits that two posts had become vacant by reason of retirement and death of two candidates but that these posts have been filled up by the respondents wrongfully. Counsel further submits that the previous panel was extended for a period of five years before it was cancelled on 22.09.2021. Counsel also submits that two candidates from the scheduled caste category have been accommodated against the unreserved category.

2. Learned counsel appearing for the respondent University, submits that the petitioners cannot claim any vested right to be appointed and particularly for having participated in the selection pursuant to the impugned Notification. Counsel submits that 56 persons were appointed to Group D posts pursuant to a selection process undertaken by the University in terms of an earlier Advertisement dated 10.02.2009. A Notification was issued thereafter on 16.11.2015 for Grade – IV in-service employees who had rendered at least six years continuous service in the University as on the date of the Notification. A selection process was undertaken pursuant to the Notification dated 16.11.2015 and a panel of 28 candidates was prepared in which the petitioners were empanelled at serial Nos. 23 and 28. Counsel submits that the incumbents who were appointed on 22.11.2010 but could not participate in the selection process pursuant to the Notification dated 16.11.2015 as they did not fulfill the eligibility criteria, were hence denied the promotional avenues to Group- C posts. Those candidates made a series of representations to the University as well as to the Government and hence the University was constrained to

take a resolution at the meeting of the Executive Council on 22.09.2021 not to extend the validity of the earlier panel beyond 27.09.2021. The submissions advanced by learned counsel appearing for the petitioners and the University contain the following admitted facts.

3. The petitioners were empanelled in the earlier panel after successfully clearing a written test, and a viva-voce test (performance appraisal). The said panel was cancelled by a resolution of the Executive Council of the University on 22.09.2021. The Resolution was pursuant to the representations made by the incumbents who were appointed pursuant to an earlier Advertisement dated 10.02.2009. The University thought it fit to provide promotional avenues to these incumbents for being promoted to Group – C posts since these incumbents could not be considered for the selection process undertaken following the Notification dated 16.11.2015. The Resolution of the Executive Council was also pursuant to the University being of the view that these incumbents had been deprived of an opportunity for promotion to Group – C posts.

4. The proposition that a person cannot claim any vested right to be appointed simply because he/she has been empanelled is well settled; Ref.: *Shankarsan Dash vs Union of India*; (1991) 3 SCC 47, *Vijoy Kumar Pandey vs Arvind Kumar Rai*; (2013) 11 SCC 611. The grievance of the petitioners in the instant case is the cancellation of the panel without assigning any reasons. It is evident from the impugned Notification dated 10.01.2022 that applications were invited from Grade – IV in-service employees of the University with the requisite qualification for filling up “some vacancies” in

Grade – III posts. The basis for the Notification appears to be the Resolution taken by the Executive Council on 28.05.2013. The impugned Notification does not indicate any statement, let alone any reason for cancellation of the earlier panel. The so called reason of “some vacancies” having arisen is not indicative of the fact of cancellation of the earlier panel. It is also admitted fact that the earlier panel was extended for a period of five years, which by any standards is a long time. The petitioners indeed have a right to know as to why the University all of a sudden cancelled the earlier panel and issued a fresh notification for recruitment.

5. The contention that the petitioners are estopped from challenging the impugned Notification after having participated in the selection process is not a credible objection. The University surely cannot expect the candidates to let an opportunity of participating in a selection process slip by and not come to court for relief. If the candidates failed to obtain relief then the candidates would have lost both the ways. It is particularly true that the University has ignored the empanelment of the petitioners altogether and has proceeded to call for fresh recruitments by way of the impugned Notification. Moreover, the petitioners have not sought any relief for appointment; the challenge is restricted to issue of the impugned Notification calling for fresh appointments.

6. It is also the stated position of the respondent University that the earlier panel was cancelled by reason of the representations made by certain incumbents as stated above. The position is that University settled for seniority-cum-merit to give opportunity to those incumbents, who

could not participate through the Notification dated 16.11.2015. This cannot be the basis for depriving the petitioners of a priority in the selection particularly when the petitioners were empanelled in the earlier panel whose term was extended for a period of five years before it was cancelled. *Shankarsan Dash* placed emphasis on the fact that the State cannot act in an arbitrary manner and that the decision not to fill up the vacancies has to be taken bona fide and for appropriate reasons and further that comparative merit of the candidates must be seen. *Madan Lal vs State of J & K; (1995) 3 SCC 486* dealt with a case where an unsuccessful candidate challenges the selection process. This case is factually different from the present case where the petitioners were successfully empanelled in the earlier panel. *Dhruba Sutradhar vs The State of West Bengal; 2015 SCC OnLine Cal 2725* referred to the proposition in *Shankarsan Dash*. The Court however noted in the said decision that the employer has no right to act arbitrarily. *Director, SCTI for Medical Science & Technology vs M. Pushkaran; (2008) 1 SCC 448* noted that the appointing authority cannot ignore the selected panel or decline to make appointments on its whims (*R.S. Mittal vs Union of India; 1995 Supp (2) SCC 230*). In *A.P. Aggarwal vs Govt. of NCT of Delhi; (2000) 1 SCC 600*, the Supreme Court quashed the fresh process of selection after noting the irregularities in the appointments. In *Pradip Gogoi vs State of Assam; (1998) 8 SCC 726* the Supreme Court noted the deleterious effect on the psyche of the people if the rights of an eligible candidate are violated.

7. By reason of the above, this Court is of the view that the respondents have not disclosed any legal or factual basis for inviting fresh applications to the posts described in the impugned Notification dated 10.01.2022 particularly after cancellation of the earlier panel where the petitioners had been successfully empanelled. The impugned Notification is arbitrary and unreasonable and fails to disclose any basis which would warrant invitation for fresh applications.

8. W.P.A. 942 of 2022 is accordingly allowed in terms of prayer (b). The respondent University is restrained from taking any steps in furtherance of the Notification dated 10.01.2022. The University shall call for fresh applications giving sufficient priority to the petitioners commensurate to their ranks in the earlier panel. The Writ Petition is disposed of in terms of this order.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)