

16 **19.01.
2022**

Ct. No. 04

Ab

WP.ST 30 of 2017

Amalesh Ghosh

Vs.

The State of West Bengal and others.

Mr. Ranjit Jaiswal.

... for the petitioner.

Mr. Tapan Kumar Mukherjee,

Ms. Debjani Mitra.

... for the State.

The instant writ petition has been filed against the judgment dated 8th September 2015 passed by the West Bengal Administrative Tribunal in OA 163 of 2014.

At the outset, when Mr. Ranjit Jaiswal, learned Advocate for the writ petitioner, moves the instant writ petition, we invited his attention to the ultimate relief granted by the tribunal and enquired about the prejudice being caused thereto. In order to have more clarity to the aforesaid expressions, it is necessary to recapitulate the undisputed facts of the case.

Pursuant to the recruitment process initiated in the year 1995 for filling up the posts of Lower Division Clerk (LDC), the writ petitioner offered his candidature and participated in the written examination held on 9th July 1995. The first list published in the month of July 1997 did not include the name of the writ petitioner, which came to be included in the second list published on 4th February 1999. The writ petitioner offered his candidature under the physically handicapped category and the authorities thereafter directed the writ petitioner to appear for type test. A plea was taken by the writ petitioner that since he is physically handicapped and the relevant rules does not permit the type test, he should not be insisted for the same.

However, the authorities did not adhere to such request and the writ petitioner moved the tribunal application being 1199 of 1997, which was finally disposed of on 17th December 2003 directing the authorities not to insist for the type test, as it has been forbidden under the relevant rules/statute with further direction to give an appointment upon verification of his certificates and testimonials. Ultimately, the appointment letter was issued on 1st November 2006 but his seniority was directed to take effect from 3rd November 2009. The writ petitioner thereafter made several representations; that because of the negligence and the lackadaisical attitude of the respondent authorities the appointment letter was issued belatedly for that the writ petitioner should not suffer and, therefore, his seniority should be counted on the basis of his position in the merit list published in the year 1999. Since the said prayer was rejected, the writ petitioner moved another tribunal application being OA 163 of 2014 praying twofold reliefs; firstly, the authorities should not have directed the seniority be counted from 2009 when, in fact, the writ petitioner was found eligible when the list was published by including the name of the writ petitioner and, secondly, the damages to the tune of Rs. 10,00,000/- for agony, pain and sufferance, which the writ petitioner had undergone.

By the impugned order the tribunal granted substantial relief directing the authorities to place the writ petitioner in the gradation list with reference to the position in the selection list published in the year 1999.

Since the substantial relief had already been granted, we invited the attention of Mr. Jaiswal to satisfy whether his client is a person aggrieved. Mr. Jaiswal submits that the main relief has already been granted to the writ petitioner but the tribunal omitted to

grant the compensation as claimed therein. However, he emphasized that although the substantive relief has been granted but till date it has not been implemented. Since the aforesaid submission came in course of the dictation of this order, we need to consider the same in the perspective of law.

A person can be said to be an aggrieved if the reliefs claimed in the original proceeding are either rejected or partially allowed. If the substantive reliefs have been granted, the higher forum should not be moved that the order of the tribunal has not been implemented by the authorities as yet. There is a specific provision provided in the Central Administrative Tribunals Act empowering the tribunal to punish for contempt in case of the violation of its order and if such power is already conferred merely because the order has not been implemented, the higher forum should not usurp the power of the original authority or to act as an executing court. The power of judicial review is never construed by the framers of the Constitution to convert the High Court in an executing court nor it was ever intended to exercise such power in such fashion or in derogation with the substantive provision of law.

Reverting back to the core issue, the writ petitioner cannot be said to be an aggrieved person as the substantive relief was already granted. However, the writ petitioner can still maintain the writ petition if the other reliefs, which are independent, have been denied by the tribunal. The right to claim damage is inherent to the aggrieved person but such claim must be corroborated with sufficient pleadings and evidence to be produced at the time of the hearing of the main proceeding. Mere using the expression that he has suffered damages because of the agony, pain and sufferings does not invite the Court to pass an order.

Furthermore, from the impugned order, it does not appear that the learned Advocate for the writ petitioner pressed such point nor any argument was advanced in this regard and, therefore, there is no infirmity on the part of the tribunal in not considering such relief. Right to abandon the relief is within the wisdom of the writ petitioner and if the same has been abandoned having not pressed at the time of argument, we do not find any justification in interfering with the order of the Tribunal.

The writ petition is, thus, dismissed

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)