

28.03.2022
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Sl. No. 09
Ct. No. 05

WPA 4684 of 2022

Sri Khokan Sarkar
-Versus-
The State of West Bengal & Ors.

Mr. T.P. Halder

..... for the petitioner

Mr. Supriyo Chattopadhyay
Mr. Sabyasachi Mondal

..... for the State

The petitioner is aggrieved by a communication of the Director of Public Instruction, West Bengal dated 21st February, 2022 by which the panel of Electrician-cum-Caretaker was not given approval on the ground that the recruitment procedure and the preparation of panel were completed after the issue of a G.O. dated 5th October, 2018.

The petitioner applied for the post of Electrician-cum-Caretaker in the concerned College pursuant to the post being created on 2nd July, 2018. The petitioner applied for the post and the selection for the post was initially to be completed within 17th September, 2018 as per a G.O. dated 18th September, 2017. Since the selection could not be completed within time, the College obtained approval for extension of time to

complete the post within 17th September, 2019. This would be evident from a letter dated 19th September, 2018 from the Deputy Secretary, Government of West Bengal to the Director of Public Instruction allowing the extension of time for filling up five non teaching posts within 17th September, 2019.

The petitioner appeared for the written test, the computer test as well as the interview in February, 2019 and the results were declared on 15th February, 2019 with the petitioner securing the first place in the selection. The panel was submitted for approval to the DPI on 11th March, 2019. An unsuccessful candidate however filed a writ petition before the Court in April, 2019 which was dismissed on 21st August, 2019 and the appeal from the said decision dismissed on 10th November, 2021. The College thereafter again wrote to the DPI on 17th November, 2021 and the impugned communication was issued by the DPI on 21st February, 2022.

The impugned communication cannot be sustained in fact or in law for the following reasons:

First, the Department of Higher Education allowed extension of time for filling up the post

until 17th September, 2019. The impugned Notification was issued on 5th October, 2018. The concerned Department hence was expected to be fully aware of the Notification. The DPI did not take any objection at any point of time from 5th October, 2018 to 17th September, 2019 within which the five non teaching posts were to be filled up by the College. The DPI cannot now change his position and revert to a Notification issued on 5th October, 2018 when the DPI and the concerned Department allowed extension of time for filling up the posts until 17th September, 2019.

Second, the Notification dated 5th October, 2018 made certain posts redundant. These posts would appear from the Notification itself and does not include the post of Electrician-cum-Caretaker, which was applied for by the petitioner. The Notification also does not mention any selection process which was due to be completed before 5th October, 2018. The issue of a candidate acquiring a vested right in terms of the Rules which existed on the date of selection is now settled and would also be evident from the decision of the Supreme Court in *P. Mahendran vs. State of Karnataka*; AIR 1990 SC 405. In that decision, the Supreme Court further held that an

amendment to the Rules cannot affect the Rules unless the amendment is retrospective in nature.

The petitioner was successfully empanelled in the results declared on 15th February, 2019 and had to suffer from a challenge to the selection process until 10th November, 2021 when the appeal filed by the unsuccessful candidate was dismissed. This Court sees no reason for keeping the petitioner's fate hanging in the balance when the State authorities shut its eyes to the pendency of the Notification for a substantial period during the extended time to fill up the non-teaching posts in the College including that of the petitioner.

In view of the above reasons, the impugned communication dated 21st February, 2022 is quashed and set aside. The College authorities and the State respondents are directed to take immediate steps in terms of the results declared by the College without any further delay.

WPA 4684 of 2022 is allowed and disposed of in terms of the above.

(Moushumi Bhattacharya, J.)