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04-07-2022
debajyoti
(Ct. no.06)

MAT 429 of 2022
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IA NO:CAN/1/2022

Subhas Paul
Vs.
The State of West Bengal & Ors.

Mr. Rabilal Maitra, Sr. Adv.,
Mr. Haridas Das

... For the Appellant.

Mr. Amal Kumar Sen,
Mr. Naren Ghosh Dastidar

... For the State.

By consent of the parties, the appeal and the application are taken up together for hearing.

This appeal is directed against an order dated February 23, 2022, whereby WPA 25117 of 2007 was dismissed.

The appellant had approached the learned Single Judge challenging the process of selection of candidate for the post of Gram Panchayat Karmee under Deriachak Gram Panchayat in Kolaghat Block in the district of Purba Medinipur. The writ petitioner contended that the 19th vacancy, following the 100 Point Roster, which was reserved for OBC candidates, was illegally filled up by appointing a candidate belonging to the general category. The learned Judge, however, did not find merit in the writ application and dismissed the same. Hence, this appeal.

We have heard learned counsel for the parties at length. We are in agreement with Mr. Maitra, learned Senior Counsel, appearing for the appellant, that the 19th

vacancy was indeed reserved for OBC candidate. However, the appointment was given to a “General” category candidate. This was irregular and unlawful. But, considering the fact that the person, who was appointed in the 19th vacancy in 2007, has been working in the concerned post for the last 15 years, it would be unfair to disturb his employment now.

We had requested Mr. Sen, learned counsel for the State, to take instructions as to whether there are vacancies in Kolaghat Block. Mr. Sen has come back with written instructions that there is vacancy in the 23rd and 29th positions. 23rd vacancy is for ‘Unreserved’ candidate and the 29th vacancy is for ‘OBC-B’ candidate.

In the special facts and circumstances of the case, we direct the Government to fill up the 23rd vacancy, which is for ‘Unreserved’ persons, by the person who was appointed in the 19th vacancy with retrospective effect. The 19th vacancy should be filled up by the present appellant as ‘OBC’ candidate maintaining the roster. We clarify that the 20th, 21st and 22nd vacancies are not touched. The appointment of the appellant in the 19th vacancy would be on notional basis with effect from the date when the private respondent was appointed in the 19th vacancy irregularly. However, the appellant clearly says that he will not claim any monetary benefit, except the notional benefit, although the private respondent will be treated to have been appointed in the 23rd vacancy with retrospective effect from the date of his appointment in the 19th vacancy. This will ensure that the appellant gets justice without disturbing the private respondent’s service.

This order is passed in the special facts and circumstances of the case and is not to be treated as a precedent.

The process of appointment of the appellant should be completed within four weeks from date.

The appeal and the connected application are, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)