

April 11, 2022
Sl. No. 32 & 33
Court No.1
PA(RB)

WPA 5156 of 2018

*Uttar Banga Tapashil Jati – o – Adibashi
Sanghathan & Anr.*

vs.

The State of West Bengal & Ors.

With

WPA 18398 of 2018

*Uttar Banga Tapashil Jati – o – Adibashi
Sanghathan & Anr.*

vs.

The State of West Bengal & Ors.

Mr. S.R. Das,
Mr. Kshetra Prasad Mukhopadhyay,
Mr. Sayantan Rakshit, Advocates

... for the petitioner

Mr. Suddhadev Adak, Advocate

... for the State

In these petitions, the petitioners who are social welfare organizations/social workers have raised the grievance that inspite of the coming into force of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976, the 100-Point Roster of reservation is not being followed, hence, a direction has been sought to take steps to comply with the 100-Point Roster.

In the matter of **Girjesh Shrivastava and Others vs. State of Madhya Pradesh and Others** reported in **(2010) 10 SCC 707** in a case, where in a Public Interest Litigation, allegation of non-issuance of proper

advertisement for reservation for ex-servicemen was made, the Hon'ble Supreme Court taking note of the legal position in respect of maintainability of the PIL in a service dispute had held that:

“14. However, the main argument by the appellants against entertaining WP (C) No. 1520 of 2001 and WP (C) No. 63 of 2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention. It is common ground that dispute in this case is over selection and appointment which is a service matter.

15. In *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* a three-Judge Bench of this Court held that a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held: (SCC p. 281, para 18)

“18. ... If public interest litigations at the instance of strangers are allowed to be entertained by the [Administrative] Tribunal, the very object of speedy disposal of service matters would get defeated.”

Same reasoning applies here as a public interest litigation has been filed when the entire dispute relates to selection and appointment.

16. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.* this Court held that in service matters only the non-appointees can assail the legality of the

appointment procedure (see SCC p. 755, para 51 of the Report).

17. This view was very strongly expressed by this Court in *Dattaraj Nathuji Thaware v. State of Maharashtra* by pointing out that despite the decision in *Duryodhan Sahu*, PILs in service matters “continue unabated”. This Court opined that the High Courts should “throw out” such petitions in view of the decision in *Duryodhan Sahu* (SCC p. 596, para 16).

18. Same principles have been reiterated in *Ashok Kumar Pandey v. State of W.B.* (SCC at p. 358, para 16).

19. In a recent decision of this Court delivered on 30-8-2010, in *Hari Bansh Lal v. Sahodar Prasad Mahto*, it has been held that except in a case for a writ of “quo warranto”, PIL in a service matter is not maintainable (see SCC para 15).”

It has further been held that:

“29. Coming to the issue of selection and appointment of ex-servicemen as a reserved category, from what has been placed before us, we understand that while in Mehagaon 5 ex-servicemen had been appointed out of a total of 9 applicants, in Raun none had been so appointed. As stated above, if at all there was an issue with respect to the reservation policy of the ex-servicemen it ought to have been brought up as a service dispute and not in a PIL. The High Court, with due respect, should have displayed a little

more restraint and balance before quashing a selection process in which the persons selected had already put in 3 years of service.”

Hence, the present Public Interest Petition raising a dispute relating to service matter cannot be held to be maintainable which is accordingly dismissed, however, making it clear that this order will not come in the way of the parties affected from alleged irregularity from approaching the competent Court.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]