

16.09.22
Ct. No. 04
Akd

WP.ST 33 of 2022
The State of West Bengal & Ors.
Vs.
Debasish Chakraborty & Ors.
With
WP.ST 17 of 2022
Subhendu Krishna Ghosh
Vs.
The State of West Bengal & Ors.

**Mr. Tapan Kumar Mukherjee,
Mr. Avishek Prasad.
... for the petitioners/State
in WP.ST. 33 of 2022**

**Mr. Soumya Majumdar,
Ms. Shagun Baid.
... for the petitioner
in WP.ST. 17 of 2022
&
... for the respondents
in WP.ST. 33 of 2022**

**Mr. Partha Sarathi Sengupta,
Mr. D. N. Roy,
Mr. M. N. Roy,
Mr. N. N. Roy,
Mr. B. Nandy.
... for the respondent no. 1
in WPST 33 of 2022.**

**Mr. Raja Saha,
Mr. Biswabrata Basu Mullick,
Mr. Sayan Ganguly.
... for the State in
WP.ST. 17 of 2022**

**Ms. Shraboni Sarkar.
... for the P.S.C.**

The West Bengal Administrative Tribunal in OA 216 of 2021 disposed of the tribunal application directing the Principal Secretary, Department of Correctional Administration, Government of West Bengal and the Additional Director General & Inspector General of Correctional Services, West Bengal to issue necessary order to promote Debasish Chakraborty, respondent no. 1 in WPST 33 of 2022 and respondent no. 5 in WPST 17 of 2022, to the post of Deputy Inspector General under the Correctional Services, West Bengal with effect from 1st March, 2021

when the vacancy arose.

Admittedly the said respondent is holding the post of Superintendent, Presidency Correctional Home, and a disciplinary proceeding was initiated against him on the imputation of charges, which would be discerned from article of charges served upon him. It is revealed from the record that the said respondent submitted an unconditional apology and conveyed his conscious decision in maintaining the correctional home administration in a good manner under the guidance of the superior authority without violating the norms and extant regulations.

Indubitably the said proceeding continued even after the submission of unconditional apology and culminated into an order of imposing penalty in the form of censure. Immediately the matter was moved before the Tribunal seeking direction upon the concerned authorities to give promotion to the said respondent to the post of Deputy Inspector General under the Correctional Services and also to dispose of the prayer made before the competent authority vide Memo dated 24th February, 2021 by passing a reasoned order.

Undeniably the charge sheet was issued on 27th November, 2018 and the reply in the manner as indicated above was filed on 7th December, 2018, yet the disciplinary proceeding continued for a considerable period of time.

The Tribunal while entertaining the application passed an interim order restraining the authorities from filling up the said promotional post and it is undisputed that till date such promotional post has not been filled up. Subsequently the matter was referred to Public Service Commission and recommendation was made taking into account the inordinate delay in completing the disciplinary

proceeding and imposing the censure, with further direction that the candidature of the respondent no. 1 shall not be considered to the promotional post for a period of one year from the date of imposition of penalty.

The Public Service Commission was of the view that because of the inordinate delay in bringing the disciplinary proceeding into a logical end, it would be inappropriate and unreasonable to impose the condition that his candidature would not be considered for a period of one year to any promotional post and invited attention of the concerned authority to take an appropriate decision in this regard.

The Government did not adhere to such recommendation of the Public Service Commission and imposed such conditions upon maintaining the penalty by way of censure, which appears to the Tribunal to be arbitrary, mala fide and illegal.

The first and foremost question which fell for consideration before us is whether the Government is statutorily bound to the recommendation of the Public Service Commission. Ancillary thereto, another question that arise is whether the Public Service Commission enjoins the power in taking a decision and such decision is binding upon the Government.

All the Counsels appearing for the respective parties echoed that the power and the functions of the Public Service Commission in relation to the nature of the dispute involved in the instant writ petition are to act as recommending body and such recommendation may or may not be accepted by the appropriate Government. In view of the above, the Public Service Commission does not clothe with the power to pass an order which has a binding effect on the appropriate Government, but the same are regarded as recommendations, which the appropriate Government

may or may not accept.

In view of the categorical stands having taken before us the finding of the Tribunal cannot be sustained to the effect that the moment Public Service Commission has opined that it would be unreasonable and unjust to impose the moratorium period of one year upon the said respondent, the decision of the appropriate Government contrary thereto is tainted with arbitrariness and mala fide and, therefore, is illegal.

On the basis of the aforesaid facts emerged in course of the hearing there is no difficulty in setting aside the order of the Tribunal, which in our opinion as well has acted ignoring the provisions of law, rules, power and the functions of the Public Service Commission.

However, the Writ Court cannot ignore the position as it stands as of date. Learned Counsel for the State submits that as of this day one year period has elapsed and, therefore, the impunity, which was perceived earlier, has elapsed by passage of time. We further cannot overlook the fact that by virtue of the interim order passed by the Tribunal the promotional post could not be filled up.

There has been a substantial change in the position as well as the scenario, which existed prior in time and can be patently seen from the record and, therefore, there is no difficulty on the part of the Writ Court in extending the justice.

The order impugned is thus set aside.

The appropriate authority is directed to proceed with the filling up of the said promotional post in accordance with the procedures applicable in this regard and shall permit all the eligible candidates including the applicants if otherwise not entitled to by any reason prior or subsequent to the order of the

Tribunal and shall complete the exercise within six weeks from the date of the communication of this order.

With these observations the writ petitions are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)