

11     **18.07.  
2022**

Ct. No. 04

Ab

**WP.ST 40 of 2022**

**Manas Chakraborty**

**Vs.**

**The State of West Bengal and others.**  
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**Mr. Asim Banerjee,  
Mr. Ambu Bindu Chakraborty.  
... for the petitioner.**

**Mr. Anirban Ray,  
Mr. Raja Saha,  
Mr. Biswabrata Basu Mallick,  
Mr. Sayan Ganguly.  
... for the State.**

Recently, a trend has developed at the Bar in improving the case while advancing argument unsupported by any pleading and/or the documentary evidence produced before the Tribunal. The moment the arguments are advanced by an adversary, immediate the improvements are made on something, which cannot be decided in absence of any pleading.

Admittedly, the petitioner participated in the selection process for recruitment to the post of Constable in Police Administration ensued in the year 2012. Since the said selection process took a longer time because of enormity in participating candidates, somewhat disturbing thing has also been projected before us when the petition is filed before the Tribunal segregating one sheet of paper from the voluminous rest and making a statement on oath that the same is the extract of the finally selected candidates in the said recruitment process and making the Tribunal believe such statement to be true and correct.

Equally, it is a sordid state of affairs that the State represented before Tribunal has proceeded with the matter in a more casual manner and failed to disclose

the true and correct facts, which sometimes may be perceived for extraneous factors having played in them.

The truth would have been under the cover and would not have been made patent unless this Court while entertaining the writ petition directed disclosure of the document concerning the said selection process by way of an affidavit with certificate required under Section 65B of the Evidence Act. The said affidavit is filed today in tune with the provisions contained under the aforesaid Act and disclosed the real and true state of affairs, which belied the statement of the petitioner on oath before the Tribunal.

It is alarming that the Tribunals are taken for ride when a document in a truncated manner is annexed to the application making the Tribunal believe that the same is the actual, correct and legal piece of paper and would proceed to pass an order because of the incompetence having shown by the Advocate representing the State before it. However, the truth has come out. In an adversarial system, the voyage is in quest of a truth and dispensation of justice founded thereupon. The sheet of paper annexed to the tribunal application indicating that it is an extract from the panel of finally selected candidates appears to be totally false and false to the record.

In the affidavit filed today, the list of the selected candidates has been annexed thereto, which includes the paper annexed with the tribunal application. The said list pertains to the candidates, who are provisionally short-listed for interview on categorywise for the recruitment to the post of Constable in the Police Administration. Mere selection for interview does not create any right of appointment as the marks obtained in the interview and than the other marks obtained by each of the candidate would be the deciding factor in

adjudging the suitability and the success of each of the participants.

The representation was made by the petitioner before the concerned authority when his name did not find place in the further list, which was published, saying that once selected cannot be denied an appointment. Precisely for such reason, the tribunal application was taken out with substantive relief that an order or a Writ of Mandamus be passed commanding the respondents to appoint the petitioner to the post of Constable under the Police Administration being a selected and empanelled candidate in the selection process undertaken in the year 2012. There is no prayer, which we could lay hand to, from the tribunal application that non-consideration of the representation was the factor or the cause of action pleaded in this regard.

Be that as it may, the Tribunal was approached for an appointment after having selected and the support was lend to a segregated sheet of paper from the rest and making the Tribunal to believe that he has been finally selected in the said selection process. Such course of action is not only improper but appears to have been done with the encouragement having shown from the legal professional, who owe a greater responsibility as an Officer of the Court. It would be an urgent duty of the legal professional while drafting the petition to satisfy its conscience on the genuinity or authenticity of the said document and the legal implication that would follow therefrom and should not have drafted the petition simply on the *ipsi dixit* of the instructions given by his client. The role of the legal professional is more honourable and a confidence is reposed on such pious and noble profession and, therefore, there must be a greater responsibility on the

legal professional not to project something, which is apparently creating a confusion or making the wrong thing to the right one.

After the said affidavit is filed in terms of the order passed in the instant writ petition, the learned Advocate for the petitioner tried to improve the case making various allegations on the conduct of the State authorities but has no answer to a fact that the said sheet of paper annexed to the tribunal application has been segregated from the list published for short-listing the candidates for interview.

As indicated above, the selection process has been conducted in several compartments and the interview is also one of them. After exhausting all the exercise, the suitability and eligibility to be adjudged on the performance and awarding of marks and not on the parameter of one of such category.

A point is sought to be taken that the learned Advocate representing the State submitted before the Tribunal that the records are not available and have been destroyed and, therefore, the Court ought not to have taken such fact into consideration while disposing of the writ petition.

We are amazed and surprised with the aforesaid submission. As indicated above, the learned Advocate representing the State must have taken all steps and disclosed all the documents available in the department and should not have submitted something, which does not appear to be correct. We have strong doubt on the role of the learned Advocate representing the State before the Tribunal and the reason appears to be obvious.

However, the records have been produced and it appears that though the petitioner was provisionally selected for interview but was not found suitable for

appointment to such post and for such reason his name did not figure in the finally published list of the selected candidates.

Furthermore, the petitioner approached the Tribunal after a gap of nearly more than six years. Section 21 of the Administrative Tribunals Act, 1985 postulates that the application has to be made within one year from the date of final order as mentioned in Clause (a) of Sub-Section (2) of Section 20 thereof. Though the power is conferred upon the authority to condone the delay for the reasons having shown satisfactorily under Sub-Section (3) of Section 21 of the Act but in absence thereof, it is not obligatory on the part of the Tribunal to consider the case on merit if appears to be palpably barred by limitation.

The Tribunal has proceeded not only to dismiss the Tribunal application on the ground of limitation but also made various observations on merit, which disentitles the petitioner to have the desired relief claimed therein. The moment the proceeding is found having barred by limitation, it is not imperative on the part of the Tribunal to decide the cause on merit.

The purpose of promulgation of the Limitation Act can be seen from the object indicated therein. The provisions of the Limitation Act nor the purpose for its incorporation is to destroy the right of the party but certainly denies the relief to be granted by the statutory forum constituted in this regard. The Tribunal though ultimately denied the relief as claimed therein, we do not want to delve more on the above aspect, more particularly, when this Court also found the claim of the petitioner to be untenable and unsustainable.

Since the petitioner was not finally selected after the interview having held in the said selection process, the relief as claimed cannot be granted in favour of the

petitioner.

Accordingly, the writ petition is dismissed.

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

**(Harish Tandon, J.)**

**(Shampa Dutt (Paul), J.)**