

WPA 11864 of 2021
Partha Pratim Jana
Vs.
The State of West Bengal & Ors.

Mr. Biswarup Biswas,
Mr. Gora Chand Samanta
...for the Petitioner

Mr. Pulak Ranjan Mondal,
Mrs. Bandana Mondal,
Mr. Subhrangsu Panda,
Ms. Mithu Singha Mahapatra
...for W.B.C.S.C.

Mr. Anil Kr. Gupta
...for UGC

Mr. Raja Saha,
Ms. Rupsa Chakraborty
...for the State

Despite the service, neither the College nor respondent no.15 is represented. It has been submitted by the learned advocate appearing for the petitioner that they never appeared in this matter to contest the writ petition.

The College Service Commission (in short 'the Commission') is represented and opposes the prayer of the petitioner vehemently.

Before the merit of the case is addressed, it is important to take note of the facts which are not disputed by the Commission.

On July 16, 2018, the Commission advertised for filling up posts of Assistant Professors in different subjects. Following the selection process, a panel

was prepared on March 6, 2020.

The petitioner was successful in the selection test and his name was empanelled against serial no. 12 under the OBC-B category for the post of Assistant Professor in Geography.

One Subrata Guha, who was the sixth empanelled candidate for Geography under the OBC-B category was recommended by the Commission and joined Raja Narendralal Khan Women's College, respondent no.11, on October 1, 2020.

Subrata, however, resigned from the post on November 30, 2020. On December 28, 2020, the Department of Backward Classes Commission, West Bengal directed the said post to be de-reserved from the OBC-B category to the General category. The college then sent another requisition on December 28, 2020, to the Commission to fill up the post under the General category. The petitioner was aggrieved by the action of the college authority. He made a representation before the Commission on February 5, 2021, seeking his appointment at the said college as an OBC-B candidate following his empanelment. He repeated his representation before the Commission on February 19, 2021.

The Commission did not respond to those representations. The Commission called one Rajesh

Dey, respondent no.15, for interview as a General category candidate on the basis of the requisition made by the college. Rajesh was recommended by the Commission for the said post and accordingly, he joined the post on July 28, 2021, at the said college. Immediately thereafter, the petitioner approached this Court on or about July 23, 2021, seeking, inter alia, his appointment at the said college in Geography subject under the OBC-B category.

After the writ petition was filed, the West Bengal Backward Classes Commission rectified its mistake of making the post unreserved and during the pendency of the writ petition, on February 2, 2022 directed that the post be reserved under the OBC-B category.

Accordingly, the post was again reserved under the OBC category during the pendency of this writ petition.

It is the case of the petitioner that the post in question was illegally converted into a General category post and as a candidate under the OBC-B category, he ought to have been appointed to the post in question. The petitioner submits that the candidates up to serial no. 11 from the panel of the OBC-B category were recommended by the Commission and as the twelfth empanelled

candidate, he ought to have been recommended by the Commission for the post in question.

Opposing the prayer of the petitioner, Mr. Mondal, learned advocate appearing for the Commission, submits that the petitioner simply being an empanelled candidate did not have any vested right to be appointed to the post in question. Mr. Mondal submits that the Commission, a statutory body, was not at fault. It could not recommend any empanelled candidate unless a valid requisition was placed before it. In the present case, during validity period of the panel, the Commission received a requisition from the college for filling up the post in question by a General category candidate and during the validity of the panel, it recommended the name of Rajesh. The life of the panel expired within one year after its publication on March 5, 2021. The relevant post has been again made reserved for the OBC-B category by the Backward Classes Commission, West Bengal well after the validity period of the panel had expired.

The petitioner has approached this Court after the validity period of the panel. He cannot assert his right to be appointed based on his empanelment.

In support of his submission, Mr. Mondal has placed reliance upon Clause 3 (4) of "Regulations regarding manner of selection of Persons for

Appointment to the posts of Assistant Professors, Principals and Librarians in Government aided Colleges in West Bengal.” The said clause reads:

“Only on receipt of a valid and complete requisition from the Principal or a Teacher-in-Charge of a College for recommending a candidate for appointment in a vacancy against an approved post, the Commission shall consider the vacancy as a valid vacancy and shall record it as such in its books.”

He placed reliance upon Para-8 of the judgment, reported at **(2010) 12 SCC 204 (Public Service Commission, Uttaranchal v. Mamta Bisht)** to argue that if a selected candidate resigns or dies, the resultant vacancy cannot be filled up from the panel which already stood exhausted.

Mr. Mondal has also placed reliance upon a judgment delivered by a Division Bench of this Court in MAT No. 464 of 2000 (Chairman, W.B. College Service Commission Vs. Tapan Kr. Mukhopadhyay) to argue that after the validity period of a panel is over, a candidate cannot enforce his right of appointment following his empanelment.

Mr. Mondal has emphatically relied on the following lines from the said judgment.

“We are of the opinion that Regulation 8 (3) is mandatory provision and it is competent with the provisions of the Act and any action taken by the Commission derogatory to that is illegal and no writ of mandamus can be issued to enforce that panel, which has expired long back. The writ of mandamus can only be issued to enforce lawful act and not any unlawful act. The action of the Commission is to be condemned as they have acted beyond the regulation and the action of the Commission was totally wrong and that illegality cannot be perpetuated by a writ of mandamus.”

The issue raised by the Commission as to whether the petitioner, an empanelled candidate, has the right to be appointed to the post in question has to be answered in affirmative. There are number of judgments of the Supreme Court for the proposition that mere empanelment of a candidate does not confer him a vested right to be appointed. Said observations need to be understood in the context of the specific factual matrix of each case.

[See: (2005) 3 SCC 618 (*Food Corporation of India v. Bhanu Lodh*); (2001) 6 SCC 380 (*All India SC & ST Employees’ Assn. v A. Arthur Jeen*); (1999) 5

SCC 180 (*UPSC v. Gaurav Dwivedi*); (2010) 6 SCC 777 (*State of Orissa v. Rajkishore Nanda*); (2013) 12 SCC 171 (*Manoj Manu v. Union of India*); (2016) 6 SCC 532 (*Kulwinder Pal Singh v. State of Punjab*)]

When a recruitment process is carried out to fill up vacancies, the appointing authority or the selecting authority normally prepares a panel with the excess number of candidates than the notified vacancies to ensure that in the event a selected candidate does not join the post or resigns or dies after appointment or for any other reason, the post does not remain vacant.

The candidates, who have been empanelled against the notified vacancies, do acquire an enforceable right to be considered for appointment though they may not have any vested right to be appointed. The authority cannot deny to offer appointments to those empanelled candidates without any justifiable ground. Other candidates, who have been empanelled in excess of the notified vacancies, also may have a similar contingent right to be considered for appointment depending on the relevant recruitment rules, if the notified vacancies are not filled up. This right is, however, subject to the validity period of the panel as specified by the relevant recruitment rules.

The majority view of a recent judgment of the

Supreme Court reported at **(2019) 12 SCC 798**
(Dinesh Kumar Kashyap v. South East Central
Railway) makes the position clear. It has been held
 in the said judgment as follows:

“5. The main issue which arises before us is whether SECR could have ignored the 20 per cent extra panel despite the letter dated 2-7-2008 without giving any cogent reason for the same. No doubt, it is true, that mere selection does not give any vested right to the selected candidate to be appointed. At the same time when a large number of posts are lying vacant and selection process has been followed then the employer must satisfy the court as to why it did not resort to and appoint the selected candidates, even if they are from the replacement panel. Just because discretion is vested in the authority, it does not mean that this discretion can be exercised arbitrarily. No doubt, it is not incumbent upon the employer to fill all the posts but it must give reasons and satisfy the court that it had some grounds for not appointing the candidates who found place in the replacement panel. In this behalf we may make reference to the judgment of this Court in *R.S. Mittal v. Union of India* [1995 Supp (2) SCC 230 : 1995 SCC (L&S) 787] , wherein it was held as follows: (SCC p. 234, para 10)

“10. ... It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a

justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

6. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination, etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State. It is in the light of these principles that we need to examine the contentions of SECR.”

In the present case, it is the stand of the Commission that it recommended the names of the candidates serially from the panel whenever valid requisitions were received from any Colleges during the validity period of the panel.

It is admitted position that the Commission recommended the first eleven candidates for the post of Geography following their empanelment. The post of Assistant Professor in Geography at Raja Narendralal Khan Women's College was illegally converted into a general category post from the OBC-B category post and the College accordingly made a requisition for a general category candidate. If the post had not been converted, the College would have sent a requisition for an OBC-B category candidate and the Commission would have recommended the name of that petitioner as the twelfth empanelled candidate.

It is immaterial whether the Commission was at fault or not. The rectification of the mistake by the State during the pendency of this writ petition only supports the case of the petitioner that the State illegally converted the post from the General category to the OBC-B category during the validity of the panel.

The right of the petitioner was violated because of such illegal conversion and the illegal requisition made by the college authority. Such violation should be remedied by this Court.

With regard to the next argument of Mr. Mondal regarding validity period of the panel, I am of the view that the right of the empanelled candidate does not evaporate ipso facto when the validity

period of the panel ends. The test should be whether the right of appointment accrued in favour of a candidate during validity period of the panel and whether he has demonstrated his due alacrity in approaching the Court to enforce his right.

I have indicated already that the accrued right of the petitioner was violated during the validity period of the panel. There was no delay on the part of the petitioner in approaching this Court to enforce his right that had accrued during the validity period of the panel.

Mr. Biswarup Biswas, learned advocate appearing for the petitioner has rightly placed reliance on the following judgments of the Hon'ble Supreme Court to suggest that even after the validity period of the panel is over, the right of an empanelled candidate does not necessarily wither away.

1. *“(1996) 6 SCC 49 Para 4 (Purushottam v. Chairman M.S.E.B.)*
2. *(2009) 5 SCC 368 Para 17 (BSNL v. Abhishek Shukla)”*

Therefore, I cannot accept the contention of the Commission that after the validity period had ended, the petitioner could not approach this Court to enforce his right following his empanelment.

The judgment relied on by Mr. Mondal, for the

proposition that after the validity period of the panel is over, the same cannot be given effect to, is clearly distinguishable from the facts of this case. In that case, the relevant panel was prepared in the year 1990. Despite the expiration of the panel after one year, the Commission continued to recommend candidates until 1995. In 1995, some empanelled candidates approached this Court contending that since some empanelled candidates were appointed after the validity of the panel, they should also be given appointment. The plea was turned down by the Division Bench of this Court.

The facts involved in this case are fundamentally different. The petitioner's right to be appointed was violated during the validity of the panel. Another empanelled candidate was appointed in place of the petitioner during validity of the panel.

During the course of hearing of this writ petition, the Commission was asked to disclose before this Court by way of an affidavit as to the current vacancy position in Geography for the OBC-B category.

The Commission in its affidavit has stated that at present no requisition has been received from any colleges for the post of Geography under the OBC-B category.

Having regard to the aforesaid stand, I allow

this writ petition directing the Commission to treat the petitioner as the first empanelled candidate under the OBC-B category for Geography in the next recruitment year. As and when any requisition is received by the Commission for the post of Geography under the OBC-B category, the Commission will recommend the name of the petitioner first for the said post.

Since I am informed that the appointment of respondent no.15 at the relevant College is a subject matter of a different writ petition pending before this Court, I express no opinion with regard to the same.

With the aforesaid direction, **WPA 11864 of 2021** is allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)

LATER

After the judgment is delivered, Mr. Mondal prays for stay of operation of the same.

Such prayer is considered and rejected.

(Kausik Chanda, J.)

