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2022**

Ct. No. 04

Ab

WP.ST 76 of 2021

**Shri Kamalendu Chattopadhyay
Vs.
The State of West Bengal and others.**

**Mr. Harisankar Chattopadhyay.
... for the petitioner.**

**Mr. Tapan Kumar Mukherjee,
Mr. Pinaki Dhole,
Ms. Saheli Mukherjee.
... for the State.**

The matter has a checkered history having traveled from the Tribunal to this Court and ultimately to the Supreme Court. By an order dated 13th August, 2013 the Civil Appeal Nos. 6750-6751-6752-6753 of 2013 were disposed of directing the State Government to fill up the post available from the select list. It was further indicated that if anyone whose name figured in the select list has been appointed in any other department or statutory organization or the Government company, he cannot claim appointment in the Department of Irrigation and Waterways. Since the respondent nos. 1 and 2 before the Supreme Court were not included in the select list, a direction was passed to adjust the aforesaid respondents and extend the benefit of the appointment to them.

The moment the name of the petitioner appears in the panel of the select list, it was an obligation and duty to give an appointment but the State resorted to some other means and published a separate panel of over-aged candidates figuring the petitioner in serial no. 17.

We hasten to say that the petitioner was one of the parties to the Supreme Court case and, therefore, was

supposed to get a letter of appointment. However, despite the same, there was no appointment letter issued to the selected candidates, at least to the petitioner and a contempt application was taken out and a compliance in the form a report was directed to be filed. The State filed the compliance report and after perusing the contents thereof, it was observed by the Supreme Court that the substantial compliance has been made to the order passed in the said Civil Appeal and the contempt petition was dropped. However, further direction was passed upon the alleged contemnor therein, i.e. the State, to make appropriate communications/letters to those candidates who could not be issued the letters of appointment as early as possible preferably within 45 days from that date. Liberty was granted to the candidates/petitioners who felt aggrieved by such communications/letters to approach the appropriate forum for appropriate relief in accordance with law.

Pursuant to the order of the Supreme Court, the petitioner was communicated with a letter dated 20th November, 2014 by the Superintending Engineer, North East Irrigation Circle-I Erstwhile, Superintending Engineer and Member (Execution), Irrigation and Waterways Directorate, State of West Bengal that his appointment cannot be considered because he is over-aged as on 1st January, 2006. Immediately thereafter, the tribunal application was filed by the petitioner challenging the said communication in terms of the leave having granted by the Supreme Court while dropping the contempt proceeding against the State.

At the time of hearing the said tribunal application, it was pointed out by the petitioner that another candidate, namely, Milan Kumar Ghosh, who stands on same footing that of the petitioner has been given

appointment and, therefore, there is a clear case of discrimination, nepotism, favouratism and cherry picking by the concerned authority. The Tribunal dismissed the application on the ground that the equality must be amongst the equal and not amongst the unequal. The Tribunal directed the enquiry to be conducted and a report to be filed before the Chief Secretary, Government of West Bengal regarding the decision of the authority in relation to Milan Kumar Ghosh and rejected the claim of the petitioner. Subsequently, the enquiry report would reveal that said Milan Kumar Ghosh was appointed being over-aged as on 1st January, 2006 as he was physically handicapped person and the supporting document was submitted by him at the time of offering candidature.

Our attention is drawn by the petitioner to the list of over-aged candidates published by the concerned authority. The said list would reveal that said Milan Kumar Ghosh was shown as serial no. 13 having offered his candidature under the general category. On the other hand, the name of the petitioner was appearing in serial no. 17 as general candidate.

Mr. Mukherjee invited our attention to the fact that at the time of initiation of the recruitment process the outer age limit reserved for general category was 37 years and the relaxation in age was given to a scheduled caste, scheduled tribe and physically handicapped candidates up to 5 years. According to him, the petitioner was 38 years 1st January, 2006 whereas the said Milan Kumar Ghosh was below the age of 42 years as on the said date.

We have perused the list of the over-aged candidates and found therefrom that the date of birth of Milan Kumar Ghosh was 24th February, 1965 and, therefore, as on 1st January, 2006 he was below 42

years of age whereas the date of birth of the petitioner was shown as 9th January, 1968 and, therefore, was above the 37 years of age.

The submission as advanced by the petitioner that by virtue of the West Bengal Services (Group-D Posts) Recruitment Rules, 2009 published on 5th May 2009, the outer age limit of the candidates to such posts has been fixed at 40 years as on 1st day of January of the year of the publication of the advertisement and the proviso appended thereto extend such period by 5 years to the candidates belonging to the category of scheduled castes and scheduled tribes within the West Bengal and 3 years for the category of the persons coming under the category of other backward classes within the State. It is, thus, submitted that by virtue thereof, the outer age limit was 40 years and, therefore, the additional period of 5 years is to be computed for the purpose of eligibility.

Indubitably, recruitment process was initiated on 29th June 2006. The Apex Court in the said appeal has observed that there is no scintilla of doubt that there has been a requirement of advertisement for inviting the names who, in fact, has not been shown in the selection process as the names were called for from the employment exchange yet the Apex Court held that since the sizeable amount of posts have been published and available for appointment and more than 57,000 candidates completed such selection process, it would not be for interest of justice to scrap the entire selection process and directed the State respondents to issue letters of appointment to the selected candidates.

What can be discerned from the above judgment of the Apex Court that though there was an infraction in the recruitment process, yet the Supreme Court refrained from interfering therewith and directed the

State authorities to complete the selection process by issuing the letters of appointment.

It is no doubt true that prior to 5th May 2009, when the aforesaid rule was promulgated, the outer age limit was fixed at 37 years and relaxation to scheduled castes, scheduled tribes and physically disabled persons were extended by 5 years. We do not find any substance in the submission of the petitioner that the rule, which was promulgated on 5th May, 2009, would apply to the recruitment process initiated prior thereto. There is no reflection from the said rule that it has been made applicable retrospectively and, therefore, even if the outer age limit has been enhanced/increased subsequently, it does not enure to the benefit of such candidates participating in the recruitment process initiated prior thereto. The saving clause contained therein is to be interpreted harmoniously wherein the appointments made were saved. There is no indication that the pending recruitment process would be governed by the said Rule of 2009 when the entire process of selection was completed prior to coming in force of the aforesaid rules. It was pending for appointment and the Apex Court has directed the appointment to be made to the selected candidates, obviously if they fulfil the eligibility criteria. Milan Kumar Ghosh was shown under the general category but his candidature was offered as physically disabled person and, therefore, the State Government has extended the period of age and found that he fulfils such conditions.

We, thus, do not find that the petitioner can stand on the same footing that of Milan Kumar Ghosh and, therefore, neither the ground of equality or discrimination can be found in the instant case. In absence of any rule or if the rule provides, the outer age limit as on the date when the recruitment process was

initiated such rule would regulate the selection process and any subsequent rule promulgated thereafter, in absence of any specific indication to have its effect on the ongoing recruitment process, cannot be applicable.

We, thus, find that the petitioner cannot stand on the same pedestal that of Milan Kumar Ghosh who is admittedly within the age limit and, therefore, do not find any illegality and/or infirmity in the order of the tribunal in rejecting the application.

The writ petition is, thus, dismissed.

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

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)