

41 **23.09.
2022**
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 82 of 2022

Sk. Kamrul Arefin and another
Vs.
The State of West Bengal and others.

Mr. Himadri Sikhar Chakraborty,
Mr. Sk. Samsul Arefin,
Mrs. Priyanka Chandra,
Ms. Barnali Gutait.

... for the petitioners.

Mr. Raja Saha,
Mr. Biswabrata Basu Mallik,
Mr. Sayan Sinha.

... for the State.

A point is raised in the instant writ petition at the behest of the successful candidates in the selection process initiated in the year 2010 for filling up the Group-D posts under the Food and Supplies Department to the effect that the Tribunal has not returned its independent findings on the issues raised before it but has proceeded on the basis of the findings made by the Division Bench while remanding the matter to the Tribunal to consider it afresh, which is merely prima facie in nature.

It is really a matter of great concern that the recruitment process initiated a decade before is still under challenge and traveling in the docket of the Tribunal and the Court and did not reach to its logical conclusion as yet. The challenge, which was thrown as far back as in the year 2010, is yet to reach finality, but the irony of the thing, which can be seen in this regard, is that it remained in lurch and undecided.

Initially, the matter was heard and disposed of on 10th January 2012 by the West Bengal Administrative

Tribunal but the said order was set aside in a writ petition being WPST 79 of 2012 by this Court and remanded the matter to the Tribunal for hearing afresh in accordance with law. Again, the tribunal application was dismissed on 20th June 2012 and the said order was carried by way of a writ petition before this Court being WPST 418 of 2012, which was disposed of on 10th June 2016 by directing the Tribunal to consider the matter afresh. However, the observations made by the Division Bench in the said writ petition appears to have taken a front seat in the impugned order and perceived to be final in nature.

There was a serious allegation made before this Court in an earlier round of litigation that two Members of the Interview Board Committee have close relatives of the candidates included in the successful list and should recused from participating in the interview. The moment it is found that they have taken an active and leading role in the Interview Board, the possibility of nepotism and favouritism cannot be ruled out. Obviously, the Division Bench was of the view that if the existence of those two persons are evident from the record, the allegation of the private respondents being the petitioners before the Tribunal cannot be ruled out and for such reason, the Court thought it fit to send the matter on remand.

The another point, which emerged before the earlier Division Bench, is that 800 candidates, who were found successful, were interviewed in a day by the Interview Board, which is improbable and/or inconceivable.

In the backdrop of the aforesaid facts, which the earlier Division Bench prima facie found, the observation made on such selection process is mere farcical and eyewash. Ultimately, the Division Bench decided to send the matter on remand so that the successful candidates, who have been appointed on the basis of the selection list prepared for such selection process, are required to be

heard and a leave was granted to implead them as party in the tribunal application. Pursuant to the said leave, 650 persons perceiving to be the successful candidates were impleaded as party respondents in the said tribunal application and a direction for service of notice and the copy of the petition was passed. Because of the large number of the candidates having been impleaded, the State authorities were directed to ensure the service of notice and it appears that a report was submitted in a sealed cover that such notices have been given to the added respondents through the respective departments.

Indubitably, the successful candidates, who have filed the instant writ petitions before us, neither appeared before the Tribunal nor contested the said proceedings. A plea has been taken that there was no service of notice and the copy of the petition and, in fact, they had no knowledge of the proceedings having been initiated in which they have been subsequently added as party respondents, to which we do not venture to go into the above aspect after noticing the manner in which the tribunal application has been disposed of by the impugned order.

The majority of the successful candidates have come up before us by filing the writ petitions either individually or collectively. We are told some are in process to file writ petition before this Court. We do not intend to go into the aforesaid aspect the moment successful candidates are aware of the proceedings and the order is challenged before us. It is not necessary to give them a separate notice as their appearance in the writ petitions would be treated as appearance in the tribunal application.

Be that as it may, the aforesaid observations would assume significance the moment we find that the impugned order is liable to be quashed and set aside. We find that the Tribunal has proceeded merely on the basis of the observations made in the order of the earlier

Division Bench while remanding the matter and did not return its independent finding after remand. The observations made by this Court cannot be regarded as conclusive when the Court finds difficulty in disposing of the matter finally and remand is ordered. Such finding cannot be projected affront and played a pivotal role in adjudication of the disputes. Such findings are for the purpose of setting aside the earlier order of the Tribunal and once this Court finds that a serious allegation as perceived, *prima facie*, is required to be considered and needs a deeper scrutiny, such findings cannot be a basis for disposal of the tribunal application.

Had it been construed as final observation and/or finding, there was no necessity to make an open remand. From the penultimate decision of the earlier Division Bench it was an open remand and the Tribunal was directed to consider the matter afresh on merit meaning thereby what would appear from the record are required to be considered and the independent finding is to be made thereupon.

Solely on the ground that the Tribunal has disposed of the tribunal application in a cryptic manner based upon the *prima facie* finding of the earlier Division Bench, the impugned order cannot be sustained. However, considering the plight of the private respondents, who have been litigating more than a decade and are still knocking the door of justice, we feel if the Tribunal is directed to dispose of the tribunal application within a timeframe, it would sub-serve the justice.

Since the impugned order cannot be sustained in view of the findings recorded herein above, the same is quashed and set aside.

The matter is remanded to the Tribunal for consideration of the tribunal application afresh and shall be disposed of within two months from the date of communication of this order by recording proper reasons

in accordance with law.

For the purpose of clarity, we made it clear that no further notice is required to be served on the writ petitioners being the added respondents and the tribunal application shall be treated ready as regards service. We further made it clear that the presence of the added respondents is necessary, as they cannot suffer an adverse order without being heard.

Equally, this Court finds that the allegations, which have been made in the tribunal application, can be decided on the basis of the stand taken by the State and the private respondents may not be directed to file affidavits except to the extent that whether they have any close nexus and/or relation with the Members of the Interview Board. If any such materials are forthcoming at the behest of the State or the private respondents being the petitioners in the tribunal application, an opportunity may be given to the persons against whom the said documents are aimed at to disclose their stand and not to all and the sundry against whom no allegation has been made.

However, this Court is conscious of the fact that if the Tribunal finds that the allegation of nepotism and/or favouritism to be patent and proved by convincing materials, it is free to take a decision without being swayed by any other factors.

With these observations, the writ petitions are disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

