

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Abhijit Gangopadhyay

WPA 18327 of 2021

Atashi Dutta

-Versus-

The State of West Bengal & Ors.

For the petitioner : Mr. Goutam Banerjee
: Mr. Sandip Kumar Mondal

For the State : Mr. Swapan Banerjee
: Mr. Shamim ul Bari

For SSC : Dr. Sutanu Kumar Patra
: Ms. Supriya Dubey

Heard On: 25.01.2022, 28.02.2022

Judgment On: 28.02.2022

Abhijit Gangopadhyay, J.

1. The petitioner submits that she was 4th wait listed candidate in the post of Assistant Teacher in Computer Applications in Class XI and XII. The 3rd wait listed candidate was recommended by the School Service Commission and she refused to join. Therefore, in the refused vacancy the petitioner should have been recommended.
2. Learned advocate for the School Service Commission submits that whether a recommended candidate is refusing a vacancy or not comes

through the District Inspector of Schools to the Commission and then again in respect of the said vacancy counselling is required to be held if such report from the DI comes within the validity period of the panel.

3. From the documents annexed to the writ application, specially Annexure P-3 of the writ application, I find that the recommendation letter was issued to wait listed candidate no.3 (WL-3) on 04.09.2019 under 1st SLST 2016 under rule 18 (3) of the relevant rules. A recommendation letter remains valid for a period of ninety days from the date of issuance. Therefore, the recommendation letter which was issued to WL-3 on 04.09.2019 remained valid till 03.12.2019. As soon as the validity period of the recommendation letter issued in favour of the WL-3 expires, the right of the wait listed candidate no.4 (WL-4) accrues (unless it is extended under the proviso of the said rules) and the said candidate gets a legal right to get an opportunity of counselling.
4. This right of WL-4 accrued before expiry of the relevant panel. The panel expired, as has been intimated to me by the learned advocate for the Commission, on 17th December, 2019. The right of the petitioner, being WL-4, accrued on 04.12.2019. Therefore, she should get an opportunity of counselling and recommendation if she selects a school in the counselling.

If this is the only school where vacancy arose in respect of the subject 'Computer Applications' the Commission is directed to call maximum three candidates from the wait list being WL-4, WL-5 and WL-6 if there is 6 (six) waitlisted candidates (or less, if there is lesser number of waitlisted candidate) for placing the vacancy before them for the purpose of holding a counselling. On the basis of the counselling, following the procedure for

holding the counselling as has been laid down in the rules and followed by the Commission, the appropriate candidate should get a recommendation because of the fact that the vacancy arose before expiry of the panel.

5. If the right of a candidate accrues before the expiry of the panel, no bureaucratic delay can stand in the way of the right of a candidate accrued to him/her in any manner whatsoever. The vacancy in the school, where WL-3 was recommended, may be reported to the Commission after one, two or three years or may be after ten years keeping in mind the snail's pace with which the bureaucracy works. Does such bureaucratic delay means that a candidate aspiring for a job of a school teacher when the candidate he is in the wait list will suffer? The reply shall always be in the negative.
6. Therefore, I direct the School Service Commission to hold a counselling as has been indicated above within a period of thirty days from the date of communication of this order and to give the candidates an opportunity to select a school and on the basis of such counselling recommendation has to be made in favour of a candidate and the West Bengal Board of Secondary Education shall issue appointment letter by twenty one days from the date of receipt of the recommendation from the School Service Commission.

With the above observation and direction, the writ application is allowed.

(Abhijit Gangopadhyay, J.)