

37 **31.10.
2022**
Ct. No. 04

Ab

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

WP.ST 112 of 2022

Debasis Bhattacharya and others.
Vs.
The State of West Bengal and others.

Mr. L. Vishal Kumar,
Mr. Anindya Bose.
... for the petitioners.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag.
... for the State.

The instant writ petition arises from a judgment and order dated 8th April 2022 passed by the West Bengal Administrative Tribunal in OA 25 of 2017 whereby and whereunder the contention of the writ petitioners on the recruitment process initiated for filling up the post of Constables in the Police Administration is rejected.

Admittedly, the writ petitioners are the serving Home Guards in the said Administration and applied their candidature for the post of Constables pursuant to the advertisement of the recruitment notice. Amidst the said recruitment process, an executive order was passed on 13th March 2000 for reservation of 10% of vacancies for the rank of Constables in Calcutta Police and the West Bengal Police for the existing Home Guards. The modalities of considering the suitability in the eligibility of such Home Guards are also provided in the said executive order.

Indubitably, the writ petitioners participated in the

selection process with the profound hope to get an appointment as Constable pursuant to the said recruitment process undertaken by the competent authority.

The said executive order was the subject matter of challenge before the Tribunal and ultimately the matter reached to the High Court in WPST 240 of 2013. A plea was sought to be taken by the State that by virtue of the said executive order, 10% of the vacancies were reserved in a vertical manner, which was not accepted by this Court in the order dated 25th November 2014. This Court repealed the contention of the State with a positive finding that the said 10% reservation mentioned in the said executive order cannot be perceived as vertical reservation for separate category and, in fact, is a horizontal reservation already specified several reserved categories in the 100 point roster.

Subsequently, the contempt application was taken out alleging violation of the said order by the State Authorities, which was disposed of with the categorical finding that the said order has been complied with and, therefore, there is no justification in keeping the contempt application pending.

Taking advantage of the aforesaid orders having passed by the High Court, the original application was taken out by the writ petitioners challenging the merit list subsequently published for the aforesaid 10% reservation meant for serving Home Guards in the Police Administration before the Tribunal. The Tribunal disposed of the said application taking into account the compliance of the order of the High Court as there is no further scope to enter into the said recruitment process.

Learned Advocate for the writ petitioners is very

much vocal in his submission that while publishing the merit list, the authorities have not disclosed the marks obtained by the candidates whose names were included therein nor initiating a recruitment process disclosing the number of vacancies.

The aforesaid two points are taken to thwart the recruitment process undertaken by the respondent authorities, more particularly, the merit list subsequently published in terms of the order of the High Court.

Learned Advocate appearing for the State took an exception to the aforesaid submissions as, according to him, the aforesaid points were neither pleaded nor taken before the Tribunal. The said points are taken for the first time in the instant writ petition, which is the second tier of the litigation and, therefore, in absence of any foundation before the Court of first instance it is not permissible to take a plea of facts for the first time in the instant writ petition.

We have given our anxious consideration to the aforesaid points canvassed before us. Indubitably, the points, which are sought to be agitated before us, are not corroborated by a pleading filed before the Tribunal. The aforesaid pleas are taken for the first time in the instant writ petition. The Tribunal did not have an occasion to consider the said points, as it was not taken before it and, therefore, it is not open to the writ petitioners to take a plea of facts for the first time in the instant writ petition.

It is no longer *res integra* that the Tribunal acts as Court of first instance and the writ petitions are filed assailing the order of the Tribunal under Article 226 and 227 of the Constitution of India. Apart from the same, the writ petitioners participated in the proceedings

knowing fully well that the recruitment notice did not disclose the exact number of vacancies for which such exercise is undertaken.

We find that the probable vacancies have been disclosed. In course of hearing, learned Advocate for the State disclosed that the total number of vacancies, which were filled up on the basis of the recruitment process, was ascertained as 2615. According to him, 10% of the vacancies were reserved for serving Home Guards and the merit list of the successful candidates were disclosed, which does not find the name of the writ petitioners as they could not perform well in the said recruitment process. Mere participation in the selection process does not create any vested right into the candidate for an appointment nor the legitimate expectations could be fastened in favour of the candidate pertaining to an appointment to the post, if such appointments are undertaken on the basis of the merit.

The parameters for conducting the recruitment process were duly notified and the writ petitioners being conscious of the same participated without any demur and, therefore, it is too late in a day to take a rebound and challenge the recruitment process on such technical ground.

No iota of papers has been produced before us evincing less meritorious candidates than the writ petitioners have been appointed to the post of Constables. The merit being the criteria and the evaluation and ascertainment has been done through a recognized process, the candidate, who could not succeed in the recruitment process, cannot take a reverse stand and challenged the process of selection on such technicalities.

We do not find that there is any infraction committed by the authorities in ignoring the reservation in terms of the said executive order; rather it appears that before this Court, more particularly, in a contempt application, the Court recorded the compliance of the said order and decided not to proceed with the contempt application any longer. The recruitment process was initiated as far back as in the year 2012, a decade has passed and, therefore, we do not find that it is a fit case where any interference is called for.

The writ petition is, thus, dismissed.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)