

S/L 22
16.11.2022
Court. No. 19
GB

W.P.A. 23770 of 2022

Anirban Tewari
VS
The State of West Bengal & Ors.

*Mr. Bani Israil,
Ms. Rabia Khatoon,
Ms. Soma Mal.*

...for the Petitioner.

*Mr. Raja Saha,
Mr. Amit Kr. Ghosh.*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner submits that one Sovraj Mohanta had been wrongly appointed as a 'Sahayak' on December 7, 2020. The allegation is that the appointment against the sports quota, was illegal, as Sovraj did not have adequate qualification in terms of the Labour Department's memo. The petitioner submits that the petitioner was the only other eligible candidate who was qualified to be appointed in the sports category as a 'Sahayak', in terms of the notification dated April 4, 2011, issued by the Chief Secretary to the Government of West Bengal, Labour Department.

According to the petitioner, Sovraj Mohanta had participated at the local panchayat level, in a football tournament and the certificate of the Assistant Secretary of the West Bengal State Sports Council, did not satisfy the eligibility criteria as per the memo of the Labour Department.

The petitioner claims that he had participated in Inter-University tournaments and had the eligibility certificate in terms of the Labour Department's memo.

It appears that the selected candidate Sovraj Mohanta joined the service sometime in 2017 and left the job on December 7, 2020. Thus, the challenge to the appointment of Sovraj Mohanta, has now become infructuous.

The prayer of the petitioner to be appointed to the said vacant post under the sports category, cannot be permitted after more than five years have lapsed since the completion of the recruitment process. Although, the petitioner was a wait listed candidate, the waiting list could not be kept alive once the single vacancy was filled up by a candidate through a recruitment process. The fact that the incumbent left the job after three years would not *ipso facto* entitle the wait listed candidate of 2017, to be appointed. The panel could not be kept alive for so long. Moreover, a wait listed candidate does not have a right to be appointed or pushed up if a vacancy arises after three years from conclusion of the recruitment process by way of resignation of the incumbent.

In the matter of ***Surinder Singh v. State of Punjab***, reported in **(1997) 8 SCC 488**, the Hon'ble Apex court held that a wait listed candidate had no vested right to be appointed except when a selected candidate did not join and the waiting list was operative.

A waiting list cannot be used as a perennial source of recruitment for filling up any vacancy. The candidate from

such waiting list may be pushed up for appointment only against those vacancies which may have arisen out of non-joining of the selected candidates.

Be that as it may, the petitioner also has not been able to satisfy the Court that he fulfilled the eligibility criteria. There is nothing on record to show that the petitioner had participated in the Inter-University tournament and had been awarded a certificate by either the Dean or Director of Sports or any other authorized officer in charge of sports of any university, in Form-3.

Form-3 categorically provides the details which would have to be mentioned. The student claiming appointment in the sports quota, ought to have represented the university at an Inter-University competition, in any of the recognized games/sports.

The certificate relied upon by the petitioner has been issued by the Higher Education Department of Chattisgarh and it appears that the petitioner had taken part in a local state football tournament and his team was Runner Up. Such certificate does not conform to the requirement of the Labour Department in terms of Annexure-P/2 and Form-3 attached thereto.

Accordingly, the writ petition is dismissed.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)