

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 118 OF 2020

With

I.A. No. CAN 1 of 2018

(Old No. CAN 4190 of 2018)

Proloy Kumar Dey & Ors.

-Vs.-

Kolkata Municipal Corporation & Ors

Before:

The Hon’ble Justice Arijit Banerjee
&
The Hon’ble Justice Apurba Sinha Ray

For the Appellants : Mr. Ekramul Bari, Adv.
Mr. Tanuja Basak, Adv.

For the KMC : Mr. Aloke Kr. Ghosh, Adv.
Mr. Arijit Dey, Adv.

For the Municipal Service : Ms. Koyeli Bhattacharyya
Commission

Judgment On : 08.09.2023

Apurba Sinha Ray, J. :-

The Case in a nutshell

1. The brief facts of the case of the appellants (appellant nos. 1 and 2 being general candidates and appellant no. 3 being OBC (A) candidate are that though the three appellants were successful in the written test as well as interview for recruitment in the posts of S.A.E (Electrical), Kolkata Municipal Corporation conducted by Municipal Service Commission ('MSC' in short hereinafter) and their names surfaced in the supplementary panel, they were not appointed in the relevant posts. However, two other candidates from such supplementary panel were appointed due to non-joining of two candidates from the main panel. Time and again, the appellants were assured from the side of Kolkata Municipal Corporation ('KMC' in short hereinafter) that they would be appointed in the relevant posts but in vain. The appellants have heavily relied upon the relevant letter of Joint Municipal Commissioner (Personnel) dated 23.11.2016 wherein the said officer of KMC has categorically stated that during validity of the relevant panel, subsequent vacancies arose in more than 5 posts due to promotion and resignation and, therefore, the left out 5 candidates in the supplementary panel can be accommodated in their places. As the said proposal was not carried into action, the writ application was filed but the same was rejected solely on the ground that the validity of the panel had already expired. According to the appellants/ writ petitioners the Writ Court

failed to consider that during pendency of the relevant panel, Model Code of Conduct, 2016 had come into force due to Assembly Election in the State of West Bengal in 2016, and it was KMC which was unable to take any appropriate steps in this regard, and for which, the appellants should not be made scapegoat. Hence, this appeal.

2. The contention of KMC, however, is that two candidates from General category and one candidate from OBC (B) in the main panel did not join, and accordingly, two general candidates, who are more meritorious than the present appellants, from the supplementary panels were appointed. As there is no OBC (B) candidate in the supplementary list, the post reserved for OBC (B) was decided to be filled up through future recruitment process. Furthermore, according to KMC, the Learned Single Judge rightly dismissed the writ application as the validity period of one year of the panel expired long ago. As two posts of general candidates and one post of OBC (A) as per declared vacancies were already filled up, the plea of the three appellants, should be rejected *in limine*.

Court's View

3. From the materials on record it is found that there were 15 declared vacancies [General – 07, SC – 05, OBC(A) – 01, OBC(B) – 02] under main panel for the post of Sub – Assistant (Electrical) Engineer and 08 subsequent/prospective vacancies under supplementary panel for the said

post [General – 04, General (PH) – 01, SC – 01, ST – 01, OBC(A) – 01]. At the very outset, the relation between main panel and supplementary panel needs to be scrutinized.

4. If we peruse the letter dated 14.09.2013 by which the KMC sent requisition to the MSC for appointment of S.A.E. we shall find the reasons as to why 08 vacancies for supplementary panel were advertised. The relevant excerpt is as follows:-

“As regards preparation of panel beyond the number of declared vacancies, it needs to be mentioned that two sets of panels of selected candidates be prepared against the requisition from KMC. The first panel will be in respect of declared vacancies and the 2nd panel may be an additional panel or an extended one for the prospective vacancies that may occur from time to time during the validity of such panel i.e. within one year from the date of panel and it may be called supplementary panel.”

5. From the arguments of both sides and materials on record it transpired that though the declared and clear vacancies in the post of SAE was 15 at the time of relevant advertisement, the KMC Authority also advertised for 8 vacancies as per categories already mentioned above for the purpose of subsequent/prospective vacancies which may arise during the subsistence of the panel, and this panel is described as supplementary panel. The preparation of the supplementary panel is for multipurpose use so far as the KMC is concerned. It appears from the arguments of both sides that it can be used as waiting list for the main panel, and further it can also

be used if prospective vacancies arise during the validity period of one year due to promotion, resignation etc. However, it appears that such number of vacancies in supplementary panel is computed on the basis of anticipated or expected vacancies which may occur during a certain period, that is, one year during the validity period of the panel. According to the learned counsel of the appellants, if such anticipated vacancies actually occur during the subsistence of supplementary panel due to promotion, resignation, retirement etc. such vacancies can be filled up from the candidates whose names are found in the supplementary list. As the KMC disclosed anticipated vacancies of 08 in number during the relevant period, the KMC was under an obligation to appoint the three appellants, two from general quota and one from OBC (A) quota from the supplementary panel, even after two candidates in supplementary panel were upgraded in the Main Panel. Since the supplementary panel is meant for multipurpose use, which is evident from the requisition for appointment in the year 2015, and also from the letter dated 23.11.2016 of the Joint Municipal Commissioner (Personnel) the relevant vacancies at the relevant time as indicated in the said letter should be filled up by appointing the three appellants.

6. In our view, as the requisition letter dated 14.09.2013 of the KMC addressed to MSC clearly shows that supplementary panel is to be used for prospective vacancies that may occur from time to time during the validity of such panel i.e. within a year from the date of the panel. We have to ascertain what vacancies took place during the one year validity of the panel so far as

the post of S.A.E (Electrical) was concerned. Two general candidates in the Main Panel did not join, and accordingly two other general candidates from the supplementary panel, who were more meritorious than the two appellants being no. 1 and 2 were upgraded in the Main Panel. The term 'prospective vacancies' as found in the requisition letter dated 14.09.2013 is not confined only for the vacancies which might have occurred due to non-joining of some candidates in the Main Panel, but any vacancy which might have occurred 'from time to time' during the validity of such panel. In other words, the panel will be extended to include other prospective vacancies which may occur due to promotion, resignation etc. during validity of the panel. This has been echoed in the letter dated 23.11.2016. The excerpts of the letter as aforesaid is as follows:-

“KOLKATA MUNICIPAL CORPORATION
PERSONNEL DEPARTMENT
5. S.N. BANERJEE ROAD, KOLKATA-700 013

No. P/1288/v/16-18

Dated: 23-11-16

*To
The Secretary
Municipal Service Commission
149, AJC Bose Road
Kolkata-700 014.*

Sub: Seeking opinion regarding absorption of candidates in SAE (Electrical) cadre from Supplementary Panel vide memo no. 69 MSC/1D-18/2013 dated 07.03.2015.

It is to inform that As per Advertisement No.1 of 2014 dated 1st February 2014. Recruitment Examination for the post of SAE (Electrical) under the KMC was conducted by MSC. Subsequently, MSC forwarded a panel of 22 (twenty

two) nos of eligible candidates vide memo no. 69 MSC/1D-18/2013 dated 07.03.2015. There are 15 nos of candidates in Main Panel and 07 nos of candidates in Supplementary Panel. After intimation of vacancies to the MSC, several vacancies have occurred within the validity period of the panel due to i) promotion to the post of A.E.(Electrical) from SAE(Electrical) cadre under direct quota & ii) resignation after joining from the main panel.

It may be noted that two candidates in 'General' category from the Supplementary Panel have been absorbed within the validity period of the panel due to non- joining of two candidate 'General' category of Main Panel.

Subsequently since Model Code of Conduct of West Bengal Legislative Assembly Election, 2016 came in force from March 2016 to May 2016, we were unable to process the recruitment procedure. It is pertinent to mention here that KMC is now facing acute shortage of staff in SAE(Electrical) Cadre.

As per letter no. 207 MSC/1D-12/2013 dated 04.10.2016, the validity period of supplementary panel recommended by MSC will remain valid for one year from the date of recommendation as per existing order. According to this, the panel validity has expired on 06.03.2016.

Now, it is seen that there are 5(five) more candidates in the Supplementary Panel. More than 5 nos of vacancies have been occurred in SAE(Electrical) cadre within the validity period of the panel due to promotion, resignation.

Hence, it is evident that these 5 nos. of candidates of Supplementary Panel may be absorbed against the above vacancies which have occurred within the validity period of the panel.

Yours faithfully,

Joint Municipal Commissioner (Personnel)"

7. However, as the said letter dated 23.11.2016 of Joint Municipal Commissioner (Personnel) has specifically hinted that more than 5 vacancies arose due to promotion and resignation in the posts of S.A.E. (Electrical)

during the validity period of the relevant panel, we have to look into the particulars of the said vacancies for proper adjudication of the 'lis' before us.

8. Accordingly, by our order dated 26.06.2023 we directed the Municipal Commissioner, KMC to produce all the relevant upto date gradation lists of S.A.E (Electrical) of 2015, 2016, 2017, and a report in the form of Affidavit stating the particulars of 5 vacancies including the categories which took place during the validity period of the supplementary panel being no. 69 MSC/1D-18/2013 dated 07.03.2015 i.e. upto 06.03.2016.

9. Pursuant to our aforesaid direction, the KMC authority submitted an affidavit along with copies of updated gradation list of SAE (Electrical) as on 01.08.2012 (published on 08.08.2012) which existed up to 16.12.2015, a provisional gradation list of SAE (Electrical) as on 01.02.2015 published on 17.12.2015 and a final gradation list of SAE (Electrical) which was published on 05.02.2016. The KMC authority has further submitted that in the year 2017 no gradation list of SAE (Electrical) was published.

10. Although we had directed the KMC authority to state the particulars of the five vacancies including the categories in which such vacancies arose, during the validity of the supplementary panel being No. 69MSC/1D-18/2023 dated 07.03.2015 that is up to 06.03.2016, KMC authority did not divulge the particulars of five vacancies which were referred to by the Joint Municipal Commissioner (personnel) in his letter dated 23.11.2016. Without

disclosing the particulars of the five vacancies as referred to in the said letter dated 23.11.2016, the KMC authority again repeated the names and categories of left out candidates as per supplementary panel. Therefore, the KMC has failed to comply with the direction of this Court in true letters and spirit for reasons best known to it.

11. In view of such non-compliance on the part of the KMC, the main issue, which is required to be adjudicated now is that whether any legal right for appointment in the relevant posts accrued to the present appellants during the validity period of the panel or not. To adjudicate the same, this Court needs to scrutinize the available materials on record.

12. The first and foremost point is whether the supplementary panel is to be treated as merely a waiting list vis-a-vis the main panel or the same is more than a waiting list.

13. Learned Counsel of the KMC tried to impress upon this court that the supplementary list is a waiting list and nothing more than that. He eloquently submitted that during validity of the panel as two general candidates did not join, the KMC appointed two general candidates from supplementary panel and therefore the vacancies for the general candidates in the main panel having been filled up, there is no scope for appointment of the appellant no. 1 and 2, being the left out general candidates in the supplementary panel. Moreover, as one vacancy in the OBC (A) category in

the main panel has already been filled up, the appellant no.3 being the left out candidate from OBC (A) category has no legal right to be appointed in the said category. Therefore, the sum and substance of such argument of the Learned Counsel of the KMC is that he treats the supplementary panel as a mere waiting list. However, in our view, such argument does not receive support from the documents of KMC itself.

14. To understand why the supplementary list is more than a mere waiting list, we have to know first about the vacancies advertised for main panel and supplementary panel in the relevant advertisement, which may be quoted as hereunder:-

Main Panel for Sub-Assistant Engineer (Electrical)

Category	SAE (Electrical)
General	07
SC	05
ST	00
BC	Category A- 1 Category B- 2
Total	15

The break up for the extended/supplementary panel will be in the following order:-

Category	SAE (Electrical)
General	04
General(PH)	01
SC	01
ST	01
BC	Category A- 1

15. A cursory glance through the above vacancies would show that it is next to impossible for any employer to know beforehand as to how many candidates will qualify for the final merit list and how many persons will remain in the waiting list. Had supplementary panel been a mere waiting list, the KMC being the employer could not foresee that 4 candidates from General Category would be in the waiting list or 1 candidate from SC Category would be in the waiting list. A further scrutiny would reveal that though no vacancy exists in the Main panel for ST Category, one vacancy is available in the supplementary panel for ST Category. Similar is the situation for General (PH) Category candidate also. Therefore, the supplementary panel, as aforesaid, cannot be only a waiting list, as essentially argued from the side of the KMC.

16. Moreover, the argument of KMC on this issue does not get support from the letter dated 14.09.2013 by which KMC sent requisition to the Municipal Service Commission. We have already quoted the excerpts of the said letter in paragraph no. 4. But at the cost of repetition, we are recollecting the above contents herein below for the sake of convenience.

“As regards preparation of panel beyond the number of declared vacancies, it needs to be mentioned that two sets of panels of selected candidates be prepared against the requisition from KMC. The first panel will be in respect of declared vacancies and the 2nd panel may be an additional panel or an extended one for the prospective vacancies that may occur from time to time during the validity of such panel i.e. within one year from the date of panel and it may be called supplementary panel.”

The said requisition letter, therefore, shows that the proposed supplementary panel will be treated as an additional panel or extended one for the purpose of including prospective vacancies that may occur from time to time but not beyond one year from the publication of such panel. Now, the term ‘prospective vacancies’ as contemplated in the said letter dated 14.09.2013 of KMC, does not include only the vacancies which may occur in respect of 15 vacancies in the Main panel, but it also includes other vacancies in the post of SAE (Electrical) which may occur due to promotion, death, etc. during the validity period of the panel.

17. A model employer knows that unless there are good schemes for promotion, and new recruitment of Officers/Staff, there may occur a serious

scarcity of officers/ staff who are in fact, the spine and hands of such employer, and to avoid such difficulties the model employer always tries to mitigate the hurdles by promoting old officers/staff and recruiting new officers/staff in their places. It is known to everybody that a recruitment process is inevitably a long drawn process, and during pendency of a recruitment process for some advertised posts, further vacancies may occur in the said cadre due to promotion, resignation, death etc., of its officers/staff, and to bridge such gap, if the employer makes provision in the advertisement for recruitment to fill up prospective vacancies which may occur during pendency of such recruitment process, the effort of the employer should not be viewed with suspicion since it shows that the employer is not willing to keep posts vacant till further recruitment process is initiated which will also take some time to be completed. The relevant letter dated 14.09.2013 shows that the KMC had consciously anticipated the situation and preferred to make a supplementary panel that would take care of future vacancies which may occur during the validity of the panel arising out of the relevant recruitment process. Moreover, the words 'additional panel or extended one' in the said letter dated 14.09.2013 further fortify the plea that the panel prepared after the recruitment process may be extended if further vacancies occur in the cadre during the validity period of the said panel.

18. Now, the word 'prospective vacancies', in our opinion, includes not only vacancies occurred in the main panel for not joining of some candidates

in the main panel, but it also includes vacancies which occur due to promotion, resignation or death of any officer/staff of KMC in the relevant cadre during the validity of the said panel, as per the scheme of the recruitment laid down in the requisition letter dated 14.09.2013 of KMC.

19. Moreover, the letter dated 14.09.2013 as aforesaid shows that specific number of anticipated vacancies in the General, General PH, SC, ST and Backward categories has been mentioned. It is true that though the factum of resignation or death cannot be anticipated, but the factum of promotion of the concerned staff from lower post to higher post can be anticipated beforehand since the KMC maintains gradation lists and accordingly the notified vacancies in the supplementary panel in this case have been anticipated by the KMC beforehand as the promotion of many staff from lower rung to higher rung was due at the relevant point of time and that is why the supplementary panel with specific number of vacancies and category thereto was advertised in anticipation of such vacancies and that is the only plausible reason for making such notified future vacancies in anticipation. It was done with a view that the work of KMC so far as regards electrical wing which deals with serious and emergent issues, is not hampered due to scarcity of staff. This conclusion is also fortified by the letter dated 23.11.2016 of Joint Municipal Commissioner (Personnel) wherein it was stated that more than five vacancies occurred due to promotion, resignation of the staff and the left out candidates in the supplementary panel as aforesaid could be accommodated therein. This goes

to show that promotion of staff of the concerned cadre or rung took place during the validity period of the panel in question. As such, the anticipation of KMC for preparation of supplementary panel for future vacancies is shown to have been well founded. Therefore, we are of the opinion that the supplementary panel as aforesaid was notified to include prospective or future vacancies and it was not only for the vacancies created for non-joining of the selected candidates in the main panel, but also for the vacancies which occurred due to promotion of the staff/officers during the relevant period as aforesaid.

20. The learned counsel for the KMC has referred to case laws reported at **AIR 1995 SC 1088 (Madan Lal & Ors. Vs. State of Jammu and Kashmir & Ors.)**, **JT 2006 (3) SC 167 (State of UP & Ors. Vs. Rajkumar Sharma & Ors.)**, **AIR 1994 Supreme Court Cases 765 (State of Bihar & Anr. Vs. Modan Mohan Singh & Ors.)**, **AIR 1997 SC 2197 (Sanjay Bhattacharjee Vs. Union of India & Ors.)**, **1992 AIR 1348 (Rakesh Ranjan Verma & Ors. Vs. State of Bihar & Ors.)**, **(2009) 5 Supreme Court Cases 368 (Bharat Sanchar Nigam Limited & Ors. Vs. Abhishek Shukla & Anr.)**, **(2005) 10 Supreme Court Cases 314 (Sheo Shyam & Ors. Vs. State of UP & Ors.)**, **(2010) 2 Supreme Court Cases 637 (Rakhi Ray & Ors. Vs. High Court of Delhi & Ors.)**, **AIR 1994 SC 736 (State of Bihar and Ors. Vs. The Secretariat Assistant Successful Examinees Union 1986 & Ors.)**, **(1999) 6 Supreme Court Cases 49 (Purushottam Vs. Chairman, M.S.E.B & Anr.)**, **(2013) 11 SCC 611 (Vijoy Kumar Pandey Vs. Arvind Kumar Rai & Ors.)**

2010 (6) SCC 777 (State of Orissa & Anr. Vs. Rajkishore Nanda & Ors.), (1996) 2 SCC 7 (State of Bihar & Ors. Vs. Md. Kalimuddin & Ors.) and one unreported judgment dated 14.02.2013 passed in APO No. 365 of 2011 CS No. 3 of 2005 by the Hon'ble High Court at Calcutta (the Registrar General High Court, Calcutta, Vs. Minakshi Chakraborty), in support of his contention that as the validity period of the panel has expired long ago the prayer of the appellants cannot be entertained and further the court cannot direct the KMC to appoint the appellants when the declared vacancies have already been filled up.

21. To counter, the Learned Counsel for the appellants has referred to case laws reported at **(2009) 5 SCC 368 (Bharat Sanchar Nigam Limited & Ors. Vs. Abhishek Shukla & Anr.), (2005) 10 SCC 314 (Sheo Shyam & Ors. Vs. State of UP & Ors.)** and also one unreported decision of this Court passed in W.P. No. 18081 (W) of 2017 in the year 2017 in support of his contention that the case laws referred to by the learned Counsel of the KMC are not applicable to the factual matrix of the present case.

22. Needless to mention, each case has its own texture, and the factual differences are material factors which may ultimately pave the way for looking at a particular case from a different angle. The present case in our hand is one of such cases. The scheme of supplementary panel for future vacancies along with the main panel of clear vacancies has given this case a unique character.

23. Therefore, it is seen from the case laws reported at **Rajkishore Nanda (supra)**, **Rakhi Ray & Ors. (supra)**, **Bharat Nigam Sanchar Ltd & Ors. (supra)**, **Sanjay Bhattacharjee (supra)**, **State of Bihar & Anr. (supra)**, **Madan Lal & Ors. (supra)**, **Rakesh Ranjan Verma & Ors. (supra)** that they deal with the notified vacancies of particular posts, and as the notified vacancies thereat were filled up, the prayers for appointment of the candidates concerned were not accepted. In our case, the position is different since 08 number of future vacancies were notified and advertised along with 15 clear vacancies. The scheme of the KMC was to fill up the prospective 8 vacancies which could occur within the one year of the panel, and the materials on record particularly the letter dated 23.11.2016 of Joint Municipal Commissioner (Personnel) showed that such vacancies did occur during the validity period of the panel. Therefore, the case of the appellants is with regard to 08 notified future vacancies which were declared and advertised by the KMC itself by proposing to make a supplementary panel of successful candidates for the purpose of using the same for future vacancies. The said case laws, therefore, in our view, do not improve the position of the KMC.

24. It is also the contention of the KMC that the panel expired long ago, and therefore, the prayer of the appellants is not sustainable. However from the discussion as recorded in the foregoing paragraphs, it transpires that the appellants have been able to show that the supplementary panel is not only

for the vacancies occurring in the main panel but also for future vacancies arising during the validity period of the panel. Moreover, the appellants have been further able to show on the strength of materials on record that during the validity period of the panel, more than five vacancies occurred in which the appellants could have been accommodated. Therefore, it goes to show that the right of appointment to the vacancies arising out of promotion etc. accrued in favour of the appellants before the expiry of validity period of the panel. But the KMC was unable to take any appropriate steps as according to KMC, the Model Code of Conduct for General Election 2016 came into force. It was not the fault of the appellants. As the right to appointment in the relevant vacancies accrued to the appellants during the validity period of the panel, the same cannot be abrogated for inaction of the KMC, or merely on the ground that the Model Code of Conduct was in force at that time which consumed the period of validity of the panel. The KMC has utterly failed to show that there was any fault on the part of the appellants for which the process of appointment of the appellants could not be fructified. The case law of **Sheo Shyam and Ors. (supra)** has no application in this case since in our case, the Rule regarding period of validity is specifically mentioned in the relevant advertisement. The case law reported at **JT 2006 (3) SC 167** is also not applicable since it is nobody's case that the KMC has committed any mistake but, on the other hand, the allegation is that the KMC denied the right of the appellants to be appointed in the relevant post which arose out of notified and declared future vacancies in the relevant post of the KMC. Moreover in the unreported decision in **APO 365 of 2011**,

the Registrar General, High Court (supra) it is held that “ it is true that there is no inviolable rule that a select list would remain in force for one year. It is for the employer to decide the period.....”. In our case, the employer KMC had already decided that the validity period of the panel would be one year, and the appellants have been able to show that right to be appointed in the vacancies accrued upon them before expiry of such panel.

25. The case law reported at **State of Bihar and Ors. (supra)** has laid down that empanelment does not create a vested right to be appointed unless relevant service Rule says to the contrary. In **Vijoy Kumar Pandey (supra)**, Hon’ble Apex Court quoted the observation of the case law reported at **(1991) 3 SCC 47 (Shankarsan Dash V. Union of India) in para 14**. The essence of such quotation is that unless the relevant recruitment rules so indicate, the authority is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the authority has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide and for valid and justifiable reason.

26. In fact the above two decisions support the cause of the appellants herein. The relevant scheme of recruitment of SAE (Electrical) as found from the materials on record was that the KMC itself requisitioned two lists of successful candidates one for 15 clear vacancies and the other for notified 08 future vacancies. The scheme further suggests that the first panel will be

in respect of declared vacancies and the second panel may be an additional panel or an extended one for the purpose of filling up the prospective vacancies that may occur from time to time during the validity of such panel, that is, within one year from the date of panel. Therefore, the scheme of recruitment policy of KMC at that point of time propelled the preparation of a panel for successful candidates for prospective vacancies which may occur within a period of one year, along with the main panel. Therefore, the above case laws professed that if the relevant recruitment rules indicate certain action is to be taken in certain direction, then the same can be adopted. In our case as the recruitment policy of the KMC has allowed future vacancies to be notified and a panel of successful candidates can be prepared for filling up such prospective vacancies within one year from the publication of the panel, we do think that the appellants have been able to show that their rights of appointment in the relevant vacancies have been infringed by the KMC by not appointing them in spite of having recruitment policy of KMC in their favour and also in spite of occurring of future vacancies in the relevant post as per the relevant recruitment policy of the KMC.

27. The case law reported at **(1996) 2 SCC 7 (State of Bihar & Ors. Vs. Md. Kalimuddin & Ors.)** is not applicable in our case since in that case there was an acceptable reason for not appointing the empanelled candidates. But in our case the right to appointment of the appellants was denied on the ground that as the Model Code of Conduct 2016 was in force

at the relevant point of time the validity period of the panel expired. In our view, such a reason cannot abrogate the right of the appellants to be appointed in the posts which were notified as future vacancies in the relevant advertisement of the KMC.

28. Considering all the aspects of the matter we are of the considered view that there is no fault on the part of the appellants to whom the reason for expiry of the validity period of the panel can be attributed. As the scheme of the recruitment policy of the KMC notified future vacancies by way of the relevant advertisement and such vacancies actually occurred during the validity period of the panel, three appellants being two general candidates and one OBC – A candidate respectively are entitled to be appointed as per the relevant advertisement in question. Accordingly, we direct Municipal Commissioner, KMC to consider the case of appointment of the present appellants in the respective posts in the right earnest in the light of this judgment and take appropriate steps to appoint them within two months from the date.

29. The impugned judgment and order passed on November 8, 2017 in W.P. No. 12178 (W) of 2017 is hereby set aside. The instant appeal is allowed. No order as to costs. The connected application is also disposed of.

30. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)