

Item-
ML-
184.

30-08-2023

Ct. 8

sg

FMA 700 of 2019
CAN 2 of 2017 (old CAN 12127 of 2017)

Indranil Bose
Versus
The State of West Bengal & Ors.

Mr. Indranil Chakravarti, Adv.,
Mr. Hare Krishna Halder, Adv.,
Mr. Koushik Bhattacharyya, Adv.
.... for the appellant

Mr. Sujit Sankar Koley, Adv.
... for the WBSEDCL

Ms. Tapati Samnata, Adv.
.... for the State

1. In the writ petition the petitioner has prayed for a writ in the nature of mandamus commanding the respondents to appoint him in the post of Assistant Engineer (IT and C) against vacancies as remained vacant in terms of the Notification No. MPP/2013/02, issued by the respondent no.2 i.e. the West Bengal State Electricity Distribution Company Limited (in short 'the Board').
2. The said writ petition was dismissed by the learned Single Judge along with the connected application on the ground that the writ petitioner has not been able to show any legal enforceable right to the said post. No candidate acquired any vested right against the said post merely because his name was short listed. The question of legitimate expectation and the policy does not arise in this case. The petitioner has no right to the post merely because he was empanelled.
3. The appellant is the writ petitioner.
4. Mr. Indrajit Chakraborty, the learned Counsel appearing on behalf of the writ petitioner submits that pursuant to the

advertisement issued by the Board on 17th December, 2014, the writ petitioner applied for the post of Assistant Teacher (IT and C). The number of posts to be filled up in the said category was 17. The Board had prepared a panel of 40 candidates. The petitioner through an RIT had come to know on 19th December, 2013 that he had ranked 25th in the combined merit list and 23rd in the category-wise merit list as general candidate. Out of 40 number of posts in the position of Assistant Engineer (IT and C) duly advertised in various newspapers and also given in official website of the company, there was 21 posts in the unreserved category. There was provision for empanelling maximum 21 candidates under general category. It is submitted that three candidates had opted out of various reasons by reason whereof, the writ petitioner had a legitimate expectation for being considered in the said post.

5. Mr. Chakraborty has relied upon a Government of West Bengal Notification No. 7196F(P) dated 2nd July, 2010 to show that the said Notification has clearly stipulated that a panel should be prepared for any of such recruitment against particular posts and shall valid for more than a year. The advertisement would also show the list of successful candidates and the waitlisted/reserve candidates separately. The number of wait-listed candidates shall not exceed 10% of the total vacancies subject to minimum one and also subject to condition that such candidates have scored minimum qualifying marks as determined prior to initiation of the selection process. At the time of publishing the panel it

is to be clearly mentioned that this panel will remain valid till all the posts as notified are filled up or for a period of one year whichever is earlier. Insofar as the successful candidates are concerned, total number of successful candidates must correspond to number of vacancies. Candidates out of waiting list will only be considered for appointment when a particular candidate from the main panel has declined in writing not to join the post or has not responded to join despite several notices having been issued to him and intimation regarding cancellation of his candidature has duly been notified to the said candidate as per law. Mr. Chakraborty has submitted that the Board did not formulate any policy for recruitment and having regard to the fact that such Board is now controlled by the State of West Bengal. The notification mentioned above applies in proprio vigore and the Board cannot decline to follow the said guidelines. It is submitted that the answer to RTI have fully established the right of the writ petitioner for being considered of the said post consequent upon the unwillingness of the three candidates above him in the panel. It is submitted that the petitioner had ranked 23 in the selection process conducted by the Distribution Company for appointment to the post of Assistant Engineer (Technical) and only of 21 posts were filled up but the writ petitioner was not offered a job though the petitioner was entitled in view of that aforesaid government circular dated 2nd July, 2010. The Distribution Company does not follow any process of preparing a panel of keeping the panel alive for any length of time. It is further

submitted that as a matter of policy, the Distribution Company does not maintain panels whether to fill up the posts upon the original appointees declining the same or to fill up casual vacancies that arise within the currency of the panel and the said fact having been established the Distribution Company could not have refused to consider the candidature of the writ petitioner.

6. The Distribution Company filed an affidavit in the writ proceeding. In the said affidavit, the distribution company has stated that the recruitment policy of the West Bengal State Electricity Distribution Company Limited does not provide for maintaining any waiting list of the successful candidates pursuant to a selection process. The advertisement does not state that a waiting list of candidates would be maintained over and above the panel prepared by the authority containing the list of candidates who are selected from the combined merit list and upon applying the 100 point roster of the State Government. The numbers of candidates empanelled are equal to the number of vacancies notified in a particular post. An empanelled candidate does not have a right to be appointed and the Distribution Company is entitled and empowered not to fill up a vacancy even if a selection process has been held. The recruitment authority as a Board can also abolish a post in respect of which a selection has been made. The petitioner does not have a right to be pushed up from the combined merit list (which is not a panel) and be appointed in one of the three general categories posts which fell vacant as three candidates

did not join. These vacancies have been re-assessed in the recruitment drive of 2014.

7. On the procedure followed by the respondents are indicated in paragraph 4 sub-paragraph (d) of the affidavit in opposition. For the sake of brevity the procedures mentioned therein are stated below:

- i) The total numbers of vacancies in different posts are taken out and additional posts required to be created are added. Approval for initiating the recruitment drive thereafter is sought from the State Government. Thereafter an advertisement in three leading daily is published and the rules for selection are up loaded in the official wet site of the West Bengal State Electricity Distribution Company.
- ii) The interested candidates apply on line as the forms are available on the website. If the application is complete then an admit card is generated on line. The candidate can appear in the written test. If he clears the written test then candidate gets call for interview. A combined merit list of successful candidates is prepared according to merit. The 100 point roster of thee State Government is then applied and the final Panel is prepared only as per notified vacancies. In this case 40 vacancies were notified for the post of Assistant Engineer (IT&C) in different categories and a panel of 40 selected candidates was published. The combined merit list does not have any relevance or utility thereafter. Only those

candidates whose name appears in the final list are offered appointment subject to qualifying in the medical test. If any vacancy arises from the said list due to no provision for giving further opportunity to a candidate, who was found medically unfit then those vacancies are carried forward to the next recruitment drive. This is the usual procedure followed by the distribution company.

- iii) These empanelled candidates are called for pre-employment medical fitness test. All the 21 empanelled general category candidates were called for medical and fitness test.
- iv) Thereafter to the 20 candidates of the general category, appointment letters were issued on different dates as they qualified in the pre-employment medical test. Most of the appointment letters were dated between November 28, 2013 to December 2013. Only Pamela Mazumder was not offered any appointment as she did not submit medically fit Certificate as asked for giving her along with 9 other candidates a second opportunity to re-check her blood sugar level. This is the usual practice followed, if, in the first medical test a temporary unfitness is detected then the respondents give another opportunity to the candidate to correct the temporary unfitness. The other candidates submitted re-assessed medical reports and were found fit.

8. It is stated that out of 20 nos. of General Category empanelled candidates who were offered appointment, 18 candidates joined the service. 2 nos. namely Amrita Som and Avishek Banerjee did not join. Pamela was not given the appointment. The respondent did not fill up the rest of vacancy as being an entry level post filling up of the same was not of any emergent nature and the non filling up was not causing any loss to the company so the usual procedure was follow and these three vacancies were reassessed in the next recruitment drive along with other vacancies, the preparation for which started and upon receipt of the approval of the State Government the advertisement was published on December 17, 2014. In the next interview process for the post of Assistant Engineer (IT&C) the vacancy was 17 including vacancies occurred by registration and these three vacancies. It is not a case that a fresh recruitment drive was held only for three vacancies. The recruitment was held for total 123 vacancies for different posts.
9. The learned Counsel for the State Electricity Board has submitted that the recruitment rule of the Corporations are independent of the Government order dated 5th March, 2008 as it has been categorically stated in the last but one paragraph of the said government order that the Power Corporations shall decide independently issues of personnel recruitments and selection performance assessment, performance linked promotion, compensation and incentives.

10. It is submitted that this has been the long practice of the corporation to carry forward the vacancies not filled up and similar procedure has been followed in the instant case. In fact, the writ petitioner was in serial no.25 in the combined merit list and if his candidature is considered in the general category he would be placed in serial no.23 out of the vacancy of 21 candidates.
11. The State respondents have also submitted that the circular relied upon the writ petitioner is not applicable to the Statutory Corporations.
12. We have considered the relevant circulars including the circular issued by the Government of West Bengal on 2nd July, 2010. The said circular no.7196-F(B) dated 2nd July, 2010 is in relation to an instruction relating preparation, cancellation appointment out of panels for filling up of the non-PSC posts. The said circular instructed the departments that the selection process should always be initiated for a particular number of vacancies against particular posts and a panel should not remain valid for more than year. The vacancies allowed to be filled up after the notification of the selection process should not be filled up from the panel prepared for previous vacancies. If the notified vacancies have already been filled up from the panel of successful candidates, the remaining list of candidates of the panel as well as the waiting list should be cancelled forthwith without waiting for completion of one year. In the instant case the entire selection was over and appointment letters were issued to 20 number of general category empanelled candidates.

13. It appears that 18 joined the service and 2 candidates did not join. One Pamela also did not join. The respondent did not fill up the rest of the vacancy as being an entry level post and was considered to be not on any emergent nature. Accordingly, it was decided to carry forward the said vacancy for the next recruitment process.
14. In the next interview process for the post of Assistant Engineering (IT & C) the vacancy was 17 including vacancies occurred by resignation and the three vacancies occurred in the earlier recruitment process.
15. Although it was desirable to prepare a panel to be valid for one year but it appears that the Corporation has not taken such measure and we have not come across any instances where there has been any deviation from the procedure that they have adopted in the instant case. We have not been shown any past or subsequently instances where they have deviated from the procedure adopted in the instant case.
16. The learned Counsel for the appellant has submitted that by reason of his empanelment it creates a legitimate expectation for being considered once a vacancy occur either due to resignation or for other reasons. In absence of any recruitment rules to the aforesaid effect we are unable to accept such submission. Although it may be desirable for an organization to have a panel for one year the decision however rests with the organization as they are the best judge with regard to suitability and the procedure to be followed for the purpose of filling up the vacancies. In absence of mala fide we feel that the procedure adopted

could not be said to be faulty or illegal.

17. On such consideration we did not find any reason to interfere the order passed by the learned Single Judge the appeal fails.

18. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)