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24.1.2023
S.D.

W.P.A. 685 of 2023

**Someswar Pal
Vs.
State of West Bengal & Anr.**

Mr. Shyamal Kumar Das
Mr. P.K. Banerjee
Ms. Indrani Nandi

...For the petitioner

Ms. Shraboni Sarkar

..For the Respondents

By an order dated September 27, 2022, the petitioner's representation was directed to be considered by the Chairman, Public Service Commission, West Bengal/respondent no. 2. The petitioner appeared in the Clerkship Examination, 2019 of Public Service Commission, West Bengal pursuant to an advertisement vide no. 05/2019. From the reasoned order dated November 23, 2022, it appears that the petitioner's demand for appearing in the typing test could not be entertained since there is no existing vacancy in the particular category for which the petitioner applied for an appointment.

Mr. Das, learned counsel appearing on behalf of the petitioner submits that a super-numerary post must be created for the petitioner since grounds for rejection (i.e. the Disability Certificate not being updated) did not exist as on date.

Ms. Sarkar, learned counsel appearing on behalf of the respondents submits that the writ petition is not maintainable due to the enactment of the Administrative Tribunals Act, 1985. She submits that a super-numerary post cannot be created by the Public Service Commission. If at all it can only be created by the Government of West Bengal.

Having considered the rival submissions of the parties and the materials placed on record, this Court is of the view that the Public Service Commission held the Clerkship Examination for recruitment to be made in the clerical posts under the Government of West Bengal. Under Section 15(1)(a) of the 1985 Act Recruitment, matters concerning recruitment to any civil service of the State or to any civil post under the State is to be governed by the Act.

Therefore, this Court is of the view that the appropriate Tribunal under the Administrative Tribunals Act, 1985 is to be approached at the first instance. This Court is not inclined to receive, try or determine the present writ petition.

Therefore, **W.P.A. 685 of 2023** is **dismissed**.

However, it is made clear that this Court has not gone into the merits of the disputes.

Liberty is given to approach before the appropriate Tribunal, if so advised.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the writ petition are deemed not to have been admitted by the parties.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)