

04.12.2023
M/L No.46
Court No.8
(gc)

FMA 827 of 2015

Anindya Bandhu Guha
Vs.
The State of West Bengal & Ors.

1. The appellant is not represented. The matter was adjourned on the earlier occasion on 9th October, 2023 on the prayer of the learned Counsel for the appellant. The appeal has been preferred against the order dated 30th July, 2014. The appeal was filed on 29th September, 2014 and thereafter no step was taken for preparation of the paper book. The stay application also has not been filed.
2. The grievance of the petitioner is for non-consideration of his appointment in spite of him securing second position in the panel prepared in or about January 8, 2009 to the post of Lecturer in Bengali. One Suman Gun was the first empanelled candidate, after he joined in few months' time, he resigned. However, the petitioner as the second empanelled candidate was not considered for the appointment. The learned Single Judge dealt with the issue

in detail. The learned Single Judge was of the view that Section 21 of the West Bengal State University (Barasat, North 24 Parganas) Act, 2007, the Council was not authorized to cancel any already approved panel and as such, the decision of the Council to cancel the panels, the prayer of the petitioner for his appointment could not be considered. Although the learned Single Judge was of the view that Executive Council of the University is not empowered to take a decision in absence of any specific provision or statute, incidentally, the writ petition was dismissed on the ground that no right inheres in any person to seek a mandate from the Court for an appointment merely on the strength of empanelment. In the absence of any circular or rule that on the resignation of the first empanelled candidate, the existing vacancy shall have to be filled up from the panel itself. The learned Single Judge has referred to following three decisions of the Hon'ble Supreme Court in:-

- i) *State of Punjab Vs. Raghubir Chand Sharma and Anr.* reported in **AIR 2001 SC 2900;****

- ii) *Shankar Shau Dash Vs. Union of India* reported in **AIR 1991 SC 1612;****
- iii) *Sabita Prasad Vs. State of Bihar* reported in **1993 (1) SLJ 1 (SC)****

in which it has been reiterated that an empanelled candidate has no right to be appointed merely because of a vacancy existed and mere empanelment does not confer any right upon an empanelled candidate to get appointed to a post.

3. We do not find any reason to interfere with the order passed by the learned Single Judge.
4. Moreover, we have taken note of the fact that the appellant did not pursue the appeal after it was filed. Even today, having regard to the fact and circumstances, no relief should be given to the petitioner/appellant. The said post must have been filled up in the meantime.
5. Accordingly, the appeal stands dismissed.
6. However, there shall be no order as to costs.

7. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)