

WPA 1330 of 2018

Arnab Pramanick
Vs.
The State of West Bengal and others

Mr. Arnab Pramanick

.... for the petitioner(in person).

Mr. Shamim Ul Bari

.... for the State respondents.

The petitioner appeared for the post of Gram Panchayat Sahayak in the district of South 24 Parganas, pursuant to employment notification issued vide DLSC/ZP/01/13 dated November 4, 2013, issued by the Chairman, District Level Selection Committee (DLSC) and District Magistrate, South 24 Parganas.

The vacancy position was notified by the Chairman, District Level Selection Committee, vide notification dated July 21, 2014. The final panel of the selected candidates was notified on February 27, 2015. On the said date, another list was published by notifying the waiting list. The said wait list was valid for one year from the date of publication. The petitioner qualified at the written test and appeared at the interview. The petitioner appeared in the category of Unreserved (Meritorious Sportsman). His name was at serial No.44 in the wait list i.e. at serial

No.2 in the wait list of the Unreserved Meritorious Sportsman category. The petitioner came to know that one Abir Dutta Chowdhury, who was appointed in the “Unreserved Meritorious Sportsman” category, had tendered his resignation and he was released on September 3, 2015. As the seat of Abir Dutta Chowdhury in the unreserved sportsman category fell vacant, by a letter dated February 19, 2016, the petitioner prayed before the authorities for an appointment in the vacancy created after Abir Dutta Chowdhury resigned. The petitioner further contends in the writ petition that some persons who had been appointed namely, respondent nos.5 to 8, had not been selected in the recruitment process and their names had not appeared in any list. The letter of the petitioner was not paid any heed to and by another letter dated July 8, 2016, the petitioner requested the District Magistrate for consideration of his candidature against the vacancy created after Abir Dutta Chowdhury resigned. Further request was that the authority should take notice of the fact that the respondent nos.5 to 8 had been appointed outside the panel.

By a letter dated August 9, 2016, the District Panchayat and Rural Development Officer, South 24 Parganas, rejected the prayer of the petitioner. According to the petitioner, the basis for such

rejection was unfounded and no reasons had been assigned. Further representation was sent on November 8, 2017, before the higher authority. As no steps were taken, the writ petition was filed.

The petitioner appears in person and substantiates his claim on the basis of the documents which have been annexed to the writ petition. The list of provisionally selected candidates for appointment, and the wait list have been referred to. The petitioner's name appears at serial no.2 under the unreserved meritorious sportsman category, in the said list.

The fact that Abir Dutta Chowdhury resigned on August 19, 2015 is on record. Abir Dutta Chowdhury was released with effect from September 3, 2015. The petitioner submits that the letter dated August 9, 2016 indicates that the panel was alive for a year from the date of publication of the merit list. When the petitioner for the first time, applied for his appointment to the vacancy created after Abir Dutta Chowdhury resigned, the panel was in existence. The validity of the panel expired after the petitioner had filed his first representation. Hence, the petitioner urges the court to pass necessary orders for his appointment.

Further contention of the petitioner is that the candidate who appeared at serial no.1 in the wait

list, did not show any interest to be appointed against the vacancy created after resignation of Abir. A candidate who was disinterested in the process and did not seek further consideration of his candidature once the vacancy was created, was not entitled to any relief at all and the petitioner, although second in the wait list, should be pushed up and appointed in the vacancy so created.

The respondents filed an affidavit containing the details of the recruitment process and the documents pertaining to the said selection. The said affidavit was affirmed by the District Panchayat and Rural Development Officer, South 24 Parganas.

According to the affidavit, in view of the notification 7196-F(P) dated July 2, 2010, issued by the Finance Department, Government of West Bengal, if a notified vacancy was already filled up from the panel of successful candidates, remaining list of the candidates from the panel as well as the waiting list, would stand cancelled forthwith, without waiting for completion of one year. According to the said memorandum, all panels which were liable to be cancelled as per the said guidelines should be treated as cancelled with immediate effect, unless there were specific directions from any court of law to the contrary, including, a direction to keep the concerned panel alive and to grant appointment from the said

panel. The SPIO i.e. the Deputy District Panchayat and Rural Development Officer, answered the query of the petitioner made under the Right to Information Act and informed the petitioner that all the selected candidates in the unreserved Meritorious Sportsman category, who were provisionally selected for the post of Gram Panchayat Sahayak, had joined the post.

The vacancy created after Abir's resignation had not been filled up. In terms of the Memo dated July 2, 2010, after the vacant posts were filled up from the panel of selected candidates, the wait list would neither have validity nor relevance. Thus, the vacancy created by way of resignation later on, could not be filled up by pushing up the petitioner.

In the affidavit, it was further stated that the respondent nos.5 to 8 were selected from the wait list of the OBC-A category. 17 selected OBC-A candidates had not joined the post. Abir joined the post and worked for a period of time and resigned thereafter. Whereas, the candidates who were selected in the vacancies against which the respondents nos.5 to 8 were appointed, had not joined at all.

Under the OBC-A category, two waiting lists were prepared. The first waiting list was exhausted. The last appointed candidate was Novonil Roy. Thereafter, respondent nos.5 to 8 were selected from

the next waiting list, whose names appeared at serial nos.27 to 30 in the said list.

Mr. Bari, learned Advocate for the respondents, relied on a decision of the Apex Court in the matter of ***State of Punjab vs. Raghbir Chand Sharma and Anr.***, reported in ***(2002) 1 SCC 113***. Further reliance was placed on ***Mohd. Sohrab Khan vs. Aligarh Muslim University and Ors.***, reported in ***(2009) 4 SCC 555***.

Having heard the learned Advocates for the respective parties, this Court frames the following issues: -

(a) Whether the petitioner is entitled to be pushed up from serial no. 2 in the waitlist, to fill up the vacancy in the unreserved meritorious sportsman category, which was created after Abir, who had worked for some time, had resigned from the post.

(b). Whether the petitioner could have any grievance against the appointment of the respondent nos.5 to 8.

The above issues have been framed on the basis of the arguments advanced by the parties. The reliefs claimed in the writ petition are:-

(a) consideration of the representation of the petitioner and

(b) initiation of enquiry and proceedings against the respondents on the ground that the

recruitment process was not conducted in accordance with the rules and procedures.

In the above context, the notification dated July 2, 2010 is taken into consideration. The said notification was issued by the Government of West Bengal, Principal Secretary, Finance Department. It was an instruction regarding preparation, cancellation and appointment from the panels, to fill up non-PSC posts. The government was concerned that the departments, directorates, regional offices were not cancelling the panel of wait-listed candidates, prepared in connection with a recruitment process, even after a lapse of considerable period of time. As a result, the panels were interpreted to be virtually valid and various complications arose. At times, the position of wait-listed candidates was not shown clearly. Similarly, the manner of filling up of posts out of the said panel also needed some clarifications.

In this case, four vacancies were advertised in the unreserved meritorious sportsman category. All the posts were filled up by the selected candidates.

Thus, any panel published after conclusion of a selection process is not valid for more than a year. The panel automatically stands cancelled, when all the notified vacancies are filled up. Once the notified vacancies are filled up from the panel of successful

candidates, the remaining list of candidates in the panel as well as the waiting-list, are to be cancelled without waiting for completion of one year. The notification also provides that the future vacancies cannot be filled up from the waiting list of the earlier examination.

Paragraphs 10 and 11 of the said notification are quoted below :-

“10. Under the above circumstances, 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.

11. All panels which are liable to be cancelled as per the above guidelines at the materials point of time will be treated as cancelled with immediate effect unless there is specific direction of any court of law to the contrary including a direction to keep the concerned panel alive and to make appointment out of such panel.”

The fact that Abir joined the post after being selected and worked for a few months is not in dispute. All the selected candidates had joined the posts that were advertised. Thus, in view of the notification of 2010 and the clauses quoted hereinabove, once the selected candidates from the panel under the unreserved meritorious sportsman category had joined the post and had started working, the waiting list automatically expired or lapsed. The consequent resignation of Abir in August 2015 and his release from his service with effect from

September 3, 2015, would not bring the wait list back to life. Thus, the petitioner has no right to be pushed up from the expired/cancelled wait list after the consequent vacancy was created, upon resignation of a selected candidate. In this case even if, the petitioner applied for appointment within one year from the publication of the panel, his candidature could not be considered.

From the note-sheet which has been annexed to the affidavit, it appears that reminder letters had been sent to 17 selected candidates under the OBC-A category, who had not joined. Accordingly, one Novonil Roy was selected from the first wait-list and after exhaustion of the first wait-list, further vacancy remained on account of non-joining of OBC-A candidates. The respondent nos.5 to 8 were appointed from the second wait-list.

Thus, the other allegation of the petitioner that the respondent nos.5 to 8 were wrongly selected, does not survive on the basis of the records. Secondly, those candidates were appointed against the OBC-A category, whereas the petitioner was wait-listed under the unreserved meritorious sportsman category. Such allegation with regard to the appointment of the respondent no.5 to 8 was made after expiry of the three years from their selection, without any supporting documents.

Moreover, the law has been well settled by the Hon'ble Apex Court. With the appointment of all candidates to the vacant posts which were advertised in a recruitment notification, the panel consisting of the names of the successful candidates out-lives its utility. No one else in the panel can legitimately contend that he should have been offered appointment, either in the vacancy arising out of subsequent resignation of the person appointed from the panel or in any other vacancy arising subsequently. The notification of the Department of Finance, Government of West Bengal also clarifies the position.

Another impediment towards appointing the petitioner is that there was another person above the petitioner in the waiting list, who would be deprived, if the petitioner is appointed.

In Surinder Singh & Ors. vs. State of Punjab & Anr. reported in ***AIR 1998 SC 18***, the Hon'ble Apex Court held that the waiting list in an examination conducted by the Commission, would not be a source of recruitment. It was operative only for the contingency that if any of the selected candidates did not join, then a person from the waiting list may be pushed up and be appointed. Thus, the purpose of the waiting list was only to

provide a candidate, to fill up the vacancy, on the non-joining of the selected candidate.

In State of Punjab vs. Raghbir Chand Sharma & Anr. reported in ***AIR 2001 SC 2900***, the Hon'ble Apex Court held that, if only one post was advertised and the candidate whose name appeared at serial No. 1 in the select list joined the post, but subsequently resigned, the post could not be filled up by offering appointment to the next candidate in the select list. It was held that the select list ceased to exist as soon as one of the selected candidates joined and the vacancy arising on account of the resignation of the said selected and appointed candidate, could not be filled up from the select panel.

In the matter of ***Manoj Manu & Anr. vs. Union of India & Ors.*** reported in ***(2013) 12 SCC 171***, the Hon'ble Apex Court discussed two situations, Situation A- where the candidate who had initially joined, subsequently resigned/quit, thus resulting in creation of vacancy and Situation-B- where out of the recommended candidates, some candidates did not join at all. In Situation-A, when the selected candidate joined and subsequently resigned, the vacancy notified got exhausted and the vacancies arising thereafter had to be filled up by fresh examination.

In the matter of ***Mukul Saikia & Ors. vs. State of Assam & Ors.*** reported in ***AIR 2009 SC 747***, the Hon'ble Apex Court held that appointment could not be made of more than the number of posts advertised. Once the appointments were made against the advertised posts, the select list got exhausted and those who were placed below the last selected/appointed candidate, could not claim appointment against the posts which subsequently became available.

A Five Judges Constitutional Bench of the Hon'ble Apex Court in ***Shankarsan Dash vs. Union of India*** reported in ***(1991) 3 SCC 47*** held that the candidates included in the merit list had no indefeasible right to appointment, even if a vacancy existed.

In the matter of ***Raj Rishi Mehra & Ors. vs. State of Punjab & Anr.*** reported in ***AIR 2013 SC 3580***, the Hon'ble Apex Court held that the question whether the candidates whose names were included in the waiting list were entitled to be appointed against the unfilled post as of right, must be answered in the negative in view of various earlier precedents of the Supreme Court.

The writ petition is, thus, dismissed.

The petitioner is at liberty to appear in any other recruitment process, if he is otherwise eligible.

There will be no order as to costs.

Parties are directed to act on the server copy of
this order.

(Shampa Sarkar, J.)