

WPA 3601 of 2023**Sri Anirban Sarkar****vs.****State Legal Services Authority, West Bengal & Ors.**

Mr. Ayan Banerjee

Mr. Dhiman Banerjee

...for the petitioner

Mr. Partha sarathi Bhattacharya

Mr. Arindam Sen

Ms. Rinku Sen

Mr. Sagnik Bhattacharya

...for the SLSA

Mr. Jayanta Samanta

Mr. Manas Kumar Sadhu

...for the State

The petitioner participated in a recruitment process, pursuant to a recruitment notification dated August 25, 2022 for being engaged as a Chief Legal Aid Defense Counsel, for the District of Howrah. The grievance of the petitioner is that as per the notification dated August 25, 2022, the Deputy Chief Legal Aid Defense Counsel and the Assistant Legal Aid Defense Counsel were engaged. However, the petitioner was not engaged.

The petitioner made an application under the Right to Information (RTI) Act, 2005. After the said application was made, a merit list for the post of Chief Legal Aid Defense Counsel, for the

District of Howrah was published in the official website. From the said publication it appeared that the petitioner was the first empanelled candidate. However, the petitioner was informed that since the petitioner did not obtain 50% in aggregate (written test + viva voce), the petitioner's candidature was not considered. Thereafter, a fresh recruitment notification was published on January 30, 2023, for engagement of Chief Legal Aid Defense Counsel.

Mr. Banerjee, learned counsel appearing on behalf of the petitioner relied on a judgment reported in (2008)3 SCC 512 (**K. Manjusree vs. State of Andhra Pradesh and another**) in support of his contention that once the recruitment process has started, the selection criteria cannot be changed for the same. No fresh benchmark requiring the candidate to obtain 50% in aggregate could be introduced by the authorities concerned.

Mr. Bhattacharya, learned senior counsel appears on behalf of the respondents/State Legal Services Authority (SLSA), West Bengal. He submits that the engagement of Chief Legal Aid Defense Counsel was only a contractual appointment and the rules for a permanent appointment of an employee cannot strictly apply

for engagement of a contractual employee. The selection process was purely based on merit, taking into account the knowledge, skills, practice and experience of the candidate.

Even though, the petitioner stood first in the panel, the authority did not consider him to be a suitable candidate taking into consideration the subjective criteria as stipulated in the Legal Aid Defense Counsel Scheme, 2022. Attention of this Court is drawn to Clause 4 stipulating the selection procedure. The selection is to be carried out by the Selection Committee under the Chairmanship of Principal District and Sessions Judge (Chairman, DLSA) as envisaged in NALSA (Free and Competent Legal Services) Regulations 2010, subject to final approval by the Executive Chairman, SLA.

The qualifications for engagement of a Chief Legal Aid Defense counsel are enumerated hereinbelow:-

“a) Qualifications for Chief Legal Aid Defense Counsel:

- Practice in Criminal law for at least 10 years,
- Excellent Oral and written communication skills,
- Excellent understanding of criminal law,

- Thorough understanding of ethical duties of a defense counsel,
- Ability to work effectively and efficiently with others with capability to lead,
- Must have handled at least 30 criminal trials in Sessions Courts, aforesaid condition of handling 30 criminal cases can be relaxed in appropriate circumstances,
- Knowledge of computer system is preferable,
- Quality to lead the team with capacity to manage the office.”

He submits that it had to be assessed by the Selection Committee whether the candidate had excellent oral and written communication skills, excellent understanding of criminal law, thorough understanding of ethical duties. Further it had to be assessed whether the candidate could work effectively and efficiently and had the quality to lead a team with the capacity of managing an office. All such criteria were subjective in nature and therefore judicial intervention cannot be called for in assessing such criteria.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that whether it is a permanent appointment or a contractual engagement, the

selection procedure as stipulated in the recruitment notification has to be followed. In the present case the issue whether the Selection Committee applied its mind to the candidature of the petitioner, as a Chief Legal Aid Defense Counsel has not been addressed at all. Further, being the first empanelled candidate, the petitioner's candidature had to be assessed in terms of the recruitment notification which the authorities failed to show that they have done. Without the Selection Committee coming to the finding that the petitioner was not a suitable candidate, the Chairman of the SLSA could not take a decision that the candidate was unsuitable for such appointment.

Despite a Report-on-Affidavit being called for, no document was placed on record to corroborate that the Selection Committee applied its mind and came to the finding that the candidate was an unsuitable one in view of the subjective criteria of assessment.

In the light of the discussions hereinabove, the new recruitment notification which is impugned herein dated January 30, 2022 is set aside and/or quashed. The Selection Committee shall take a decision with regard to the suitability of the petitioner to be engaged as a Chief Legal Aid

Defense Counsel pursuant to the Selection process stipulated in the Memo dated August 25, 2022. The Selection Committee will take a reasoned decision after evaluating each and every subjective criterion as stipulated in the said notification and upload the same in the official website within a period of one month from date. If required, the petitioner will be called for an interview for assessing all the criteria as stipulated in the selection process.

With the directions aforesaid, **WPA 3601 of 2023 is disposed of.**

All parties are to act on a server copy of this order downloaded from the official website of this Hon'ble Court.

(Lapita Banerji, J)