

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 4228 of 2023

**Md. Mobassar Hossain
Vs.
The State of West Bengal & Ors.**

Mr. Ramdulal Manna
Mr. Manju Manna (Dey)
Mr. Sayan Mukherjee
Ms. Payel Khanra

... for the petitioner

Mr. Uday Narayan Betal
Mr. Dhananjay Banerjee
Mr. Arup Kr. Bhowmik

...for the State

Item No.34.

Heard & Judgment on: 12.07.2023

Bibek Chaudhuri, J.

The petitioner applied for dealership in respect of a fare price shop at Rajaramchak within the P.S.-Gazole in the District of Malda on the basis of a Notification dated 7th February, 2019.

It is the case of the petitioner that he had complied with all the eligibility criterion mentioned specially in Clauses 6, 8 and 9 for getting license in respect of the said fare price shop. After submission of his application, the petitioner was waiting with the hope that he would be granted license.

However, after a lapse of about 3 years, the petitioner came to know that the private respondent no.6 was granted license on the basis of a new vacancy Notification dated 9th May, 2022 which was issued in cancellation of the earlier Notification No. 124/SCF(M)/2019 dated 07.02.2019. In the said notification the Licensing Authority dilated the clauses of working capital of the applicants. The petitioner had no knowledge about the said vacancy notification.

Therefore, only after granting license in faovur of the respondent no.6, he came to know about all such matters stated hereinabove. The petitioner made a representation on 23rd August, 2022 requesting the Sub-Divisional Controller (F&S), Malda to cancel the M.R. Dealership of the respondent no.6. Some villagers also made similar prayer but the respondents did not pay any heed to such representation filed by the petitioner and local villagers.

Learned Advocate for the petitioner has submitted to the tune of the averment made out in the writ petition. It is also urged by the Learned Advocate for the petitioner that the petitioner was entitled to get a personal notice relating to vacancy notification dated 9th May, 2022 specially when his application on the basis of the vacancy notification dated 7th February, 2019 was pending.

It is also submitted by Learned Advocate for the petitioner that 13(v) of Part-3 of the vacancy Notification dated 9th May, 2022 states as follows:

“A person holding a post in the establishment of any State Government or Central Government or any authority or body or institution of Local self-government established or constituted by or under the Constitution or by any other law made by the Parliament or a State Legislature or by notification issued or order made by the Central Government or a State Government.”

Learned Advocate for the petitioner next draws my attention to a letter dated 12th August, 2022 which shows that the Superintending Engineer, Northern Circle, P.W.Dte., Malda wrote a letter to the Joint Secretary (Personnel), Public Works Department, stating *inter alia* that the respondent no.6 was a contractual Group-D employee and she filed an application for tendering her resignation.

It is submitted by Learned Advocate for the petitioner that the respondent no.6 was holding a post in the establishment of the State-

Government in the Public Works Department. Therefore, she is not entitled to be considered as a dealer of a fare price shop.

Learned Advocate for the respondent no.6 submits that she was a contractual employee under the Public Works Department on the basis of 'no-work-no-pay' principle. She was not a permanent employee and she does not hold a civil post under the State-Government or any local body.

Therefore, she is entitled to be considered for a FPH Dealership in support of his contention.

Learned Advocate for the respondent no.6 refers to an unreported decision of this Court passed in *WPA 9698 of 2022 (Nur Islam Daptari -Vs- State of West Bengal & Ors.)* decided on 5th July, 2023.

In the aforesaid unreported decision this Court had the occasion to decide the question as to whether a Civil Volunteer under Kolkata Police can be held to be in employment under the State-Government.

This Court also relies on a decision of the Hon'ble Supreme Court in the case of *The State of Assam & Ors.-Vs- Kanak Chandra Dutta* reported in *AIR 1967 SC 884*. In paragraph 9 of the said judgment, it is observed by the Hon'ble Supreme Court as follows:

"9. The question is whether a Mauzadar is a person holding a civil post under the State within Art. 311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the

Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Art. 311. In Art. 311, a member of a civil service of the Union or all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Arts. 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."

Thus, taking into account the aforesaid constitutional provisions in the nature of job which the respondent no.6 uses to perform on the basis of 'no-work-no-pay', this Court holds that the respondent no.6 shall not be deemed to be a holder of a Civil Post.

Moreover, on the date of consideration of her application, she left the job. Thus, on the date of consideration of her application she was unemployed.

Barring the aforesaid issue, there is another aspect of the matter. It is not in dispute that the petitioner made an application

having all eligibility criterion on the basis of the vacancy notification dated 7th February, 2019. The petitioner did not get any information as to whether his application was allowed or rejected. He was also not informed that the said notification was subsequently cancelled and a new notification was issued.

It is submitted by the Learned Advocate for the respondent no.6 that the Notification dated 9th May, 2022 was published in the official website of the Food Supplies Department as well as in the newspaper. Such advertisement in the newspaper or publication of notice in the official website might lost the notice of the petitioner specially when he was waiting for the decision in respect of the earlier notification dated 7th February, 2019.

In view of such circumstances, this Court is of the view that the representation filed by the petitioner ought to have been considered by the State-respondents specially the Sub-Divisional Controller (F&S), Malda/the respondent no.5 herein.

In view of what has been stated above, the instant writ petition is disposed of directing the respondent no.5 to treat the instant writ petition as a representation of the petitioner and to dispose of the same within 60 days from the date of communication of this order by a reasoned order giving opportunity of hearing to the petitioner and the private respondent no.6 or, their authorised representatives.

In the facts and circumstances, the instant writ petition is disposed of without any order as to costs.

All parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Bibek Chaudhuri, J.)