

13.09.2023
Item No.5
Ct. No. 7
KS

W.P.A. 6324 of 2021
Chandan Paul & Ors.
Vs.
State of West Bengal & Ors.

Mr. Biswarup Biswas
Mr. Gora Chand Samanta

.....for the Petitioners

Mrs. Koyeli Bhattacharyya

.....for the West Bengal Municipal Service Commission

Mr. Alok Kumar Ghosh

Mr. Swapan Kumar Debnath

.....for the K.M.C.

1. In course of argument of this writ petition, Mr. Biswas, learned advocate upon taking instructions submits that he is not pressing the averments made in paragraph 17 of the writ petition, which runs thus:

“That the final merit list/panel published by the respondent authorities in respect of serial no.101, 102, 103 who were not participated personality test although their names were included in the panel.”

Such submission is placed on record.

2. The petitioners have challenged the panel published by the West Bengal Municipal Service Commission on February 22, 2021 for recruitment of Conservancy Mazdoor under Kolkata Municipal Corporation.
3. The petitioners state that an advertisement No.11 of 2020 was published by the Secretary, West Bengal Municipal Service Commission (for short, “the Commission”) on March 4, 2020 for recruitment to the post of ‘Conservancy Mazdoor’ under Kolkata Municipal Corporation. The petitioners appeared in the said examination, but were unsuccessful in the

same. Petitioners' claim that after the panel was published, he became aware of the fact that the entire recruitment process was conducted in an illegal manner. The petitioners state that no written examination as contemplated under the recruitment notification was conducted.

4. Mr. Biswas, learned advocate representing the writ petitioners submits that the Commission allowed the candidates, who have crossed the maximum age limit prescribed in the recruitment Notification to participate in the recruitment process. He further submits that a candidate, who does not belong to scheduled caste category has been treated as a scheduled caste candidate. He further submits that the Commission has changed the rules of the game in course of the recruitment process, which is not permissible in law.
5. Mr. Biswas, learned advocate for the petitioners further submits that in the absence of any rules and regulations being framed in terms of the West Bengal Municipal Service Commission Act, 2018, the Commission could not have conducted any recruitment process.
6. Mr. Biswas, learned advocate places reliance upon a decision of the Hon'ble Supreme Court in the case of *Ramjit Singh Kardam & Ors. Vs. Sanjeev Kumar & Ors.* reported at AIR 2020 SC 2060. He further refers to a Co-ordinate Bench decision in the case of *Jayasri Ghosh Vs. The State of West Bengal & Ors.* reported at 2014 (1) CLJ (Cal) 17.

7. Ms. Bhattacharya, learned advocate representing the Commission submits that the writ petitioners being unsuccessful candidates cannot challenge the selection process by filing writ petition. She further submits that since the Notification was issued for recruitment to the post of Conservancy Mazdoor, the authorities thought it fit that instead of holding a formal written examination, it would suffice if the reading and writing ability of the candidates are tested. She submits, on instructions, that the candidates were asked to write their names.
8. Ms. Bhattacharyya, learned advocate files copies of the Minutes of the meeting of the Commission on 25th September, 2020 and submits that the Commission decided that selection of Conservancy Mazdoor will be done only through personality test (read, write ability test and field test). She further submits that the candidates have to qualify in read and write test and also have to qualify field test. She further submits that several writ petitions have been filed challenging the self-same recruitment process. She produces an order dated March 3, 2021 passed by a Co-ordinate Bench in *W.P.A. No.5882 of 2021* in the case of *Subodh Paswan & Ors. Vs. The State of West Bengal & Ors.* wherein a writ petition at the instance of unsuccessful candidates has been dismissed.
9. Mr. Ghosh, learned advocate representing the Kolkata Municipal Corporation submits that pursuant to the recommendation made by the Commission, the Kolkata Municipal Corporation have issued appointment letters to the recommended candidates.

He submits that the candidates have already been appointed in the post of Conservancy Mazdoor.

10. Mr. Ghosh, learned advocate refers to a decision of the Hon'ble Supreme Court in the case of *V. T. Khanzode & Ors. Vs. Reserve Bank of India & Anr.* reported at *1982 SC 917*, in support of his contention that till the Regulations are framed under the relevant statute, it is open to the authorities to issue administrative Circulars for the purpose of holding the recruitment process.
11. Heard the learned advocates for the parties and perused the materials placed.
12. It has not been disputed by Mr. Biswas, learned advocate appearing for the petitioners that several persons have been appointed as Conservancy Mazdoor by the Kolkata Municipal Corporation.
13. Mr. Biswas submitted that the persons appointed as Conservancy Mazdoor are not necessary parties in this writ petition. He further submits that since the petitioners are not aware of the particulars of the persons appointed in the post of Conservancy Mazdoor, the petitioners could not implead such persons as respondents in this writ petition. It is not in dispute that several persons have been appointed as Conservancy Mazdoor and therefore rights have accrued in their favour. The writ petitioners have prayed for cancellation of the panel. Therefore, the persons appointed as Conservancy Mazdoor are necessary parties in a proceeding, wherein the panel pursuant to which they were appointed is challenged and a prayer for setting aside such panel has been made.

14. The petitioners are aware that the Conservancy Mazdoor are working under the Kolkata Municipal Corporation and, therefore, the submission of Mr. Biswas that they cannot be impleaded as parties because their address is not known to the petitioners cannot be accepted by this Court. Since, this Court has already held that the persons, who have been appointed as Conservancy Mazdoor under the Kolkata Municipal Corporation are necessary parties, this Court is of the considered view that the instant writ petition is liable to be dismissed only on the ground that the same is bad for non-joinder of necessary parties.
15. It is well-settled that when a selection process involving a large number of candidates are involved it may not be necessary for impleading all the candidates but some of them in representative capacity ought to have been impleaded in this writ petition.
16. That apart, all the writ petitioners are unsuccessful candidates. It is well-settled that candidates after participating in the selection process cannot turn around and challenge such process after the selection process is over.
17. In the case of *Ramjit Singh Kardam (supra)*, the Commission did not publish any criteria on the basis of which the candidates were going to be subjected for selection process and the candidates participated in the selection process without knowing the criteria of selection, they cannot be shut out from challenging the process of selection when ultimately they came to know that Commission step by step has diluted the

merit in selection. In the said reported decision, the Chairman only took a decision to scrap the written examination whereas such decision as to the criteria of selection has to be taken by the Commission. On such facts, the Hon'ble Supreme Court held that candidates can challenge the entire selection process. The said decision is distinguishable on facts and, therefore, is of no assistance to the petitioners in the case on hand.

18. In the case on hand, the petitioners have not challenged the jurisdiction of the authority to select the candidates only through personality test (read, write ability test and field test).
19. There is, however, no quarrel to the proposition of law laid down in the case of *Jayasri Ghosh (supra)* that an unsuccessful candidate if he/she can prove to the satisfaction of the Court that glaring illegalities have been committed, which were not known to him or her before the selection process was completed and that he came to learn of the same after completion of the selection process can legitimately question a concluded selection process.
20. In the case on hand, the petitioners have specifically stated in paragraph 11 of the writ petition that in the panel/merit list published by the respondent authorities in respect of Serial No.200 is a candidate belonging to Muslim community above 45 years old included in the panel as a Scheduled Caste candidate in the panel as a scheduled caste candidate. It has been further stated in paragraph 22 of the writ petition that in the panel/merit list published by the respondent authorities in respect of Serial No.256 is

an over aged candidate and his date of birth was recorded in the panel as 01.01.1978. It is evident from the decision in the case of *Subodh Paswan & Ors.* (*supra*) that the Co-ordinate Bench after noting such issues held thus:-

“It appears that the petitioners are unsuccessful candidates who participated in the recruitment process. After publication of the panel the petitioners have challenged the same by making vague allegations in the writ petition in respect of several candidates who have not been impleaded as party respondents in the writ petition. The petitioners have not been able to pin point a single irregularity in the panel but have come up with several vague allegations.

The candidate whose name is appearing at serial no. 200 of the list of recommended candidates has been treated as a Scheduled Caste candidate. According to the petitioner the said candidate is a Muslim candidate and he ought not to have been treated as a Scheduled Caste candidate.

The candidate whose name appears at Serial no. 256 of the said list has crossed the maximum age limit prescribed for appearing in the recruitment process.

The petitioner alleges that a candidate with the surname ‘Mandal’ ought not to have been treated as a Scheduled Tribe candidate.

Similar allegations have been made by the petitioners in respect of other candidates also. None of the candidates have been impleaded as party respondent in the instant writ petition. The allegations which have made by the petitioners are not based upon any records.

It appears that the petitioners being unsuccessful candidates have approached this Court to stall the recruitment process. The same cannot be permitted. Accordingly the writ petition fails and is hereby dismissed.”

21. The issues raised in this writ petition are similar to the issues, which has been considered and decided by the Co-ordinate Bench in *Subodh Paswan (supra)*.
22. In so far as the contention of Mr. Biswas that the Commission could not have conducted the recruitment process in the absence of any rules and regulations being framed under the 2018 Act,

reference may be made to the decision of the Hon'ble Supreme Court in the case of *V. T. Khanzode (supra)* wherein the Hon'ble Supreme Court observed that until and unless the rules and regulations are framed, the authorities can fill up the gap by issuing administrative circulars.

23. The Commission in its meeting held on 20th September, 2020 resolved that the selection of Conservancy Mazdoor will be done only through personality test (read, write, ability test) and field test. In the recruitment Notification also it appears that the essential qualification was mentioned as read and write ability in Bengali, English and vernacular (Hindi, Urdu, Oria and Nepali languages).
24. Therefore, it does not appear to this Court on the basis of averments made in the writ petition that the recruitment process lacks transparency. In view thereof, this Court is not inclined to interfere with the process of recruitment to the post of Conservancy Mazdoor under Kolkata Municipal Corporation at the instance of the unsuccessful candidates.
25. For the all the reasons, as aforesaid, the writ petition stands dismissed.
26. There will be no order as to costs.
27. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)