

30.08.2023

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Sl. No. 17

Ct. No. 12

FMA 1153 of 2017

With

CAN 01 of 2017(Old CAN 4438 of 2017)

Tanmoy Sen & Ors.

-Versus-

The State of West Bengal & Ors.

Mr. Tapash K. Bhattacharya

Mr. Aviroop Bhattacharya

.....for the appellants

The appellants and others applied for appointment as Civil Defence Volunteers on contract basis for the post of Auxiliary Fire Personnel. The appellants applied for Kalna Block in the District of Burdwan. According to the appellants, there were number of litigations. The appellants and others have filed writ petition No. 7282(w) of 2016. In the said writ petition, respondent No. 3 filed a report stating that there were only three vacancies for the said post. The learned Judge of this Court by order dated 12.05.2016 directed the respondent No. 3 to consider 16 petitioners there in the said writ petition and appoint best three candidates among 16 candidates to the post. According to the appellants, there are 11 vacancies still available and appellants are entitled in view of the earlier order dated 12.05.2016 passed by this Court to be considered for appointment to the said post and filed the present W.P. 24103(W) of 2016.

Learned counsel appearing for the respondents before the learned single Judge submitted that initially a list of 25 candidates was prepared and subsequently a list of 18 fire personnel was sent to District Magistrate to be sent to the Director of Civil Defence. A Six Member committee was constituted for preparing the list and 83 candidates were called for interview. The selection list of 18 fire personnel was prepared based on the marks obtained by each candidate. The appellants did not obtain average requisite marks which was obtained by other 18 selected candidates and hence they were not selected for appointment.

Learned counsel appearing for the appellants before the learned single Judge submitted that appellants have received call letters for the interview and they must give appointment.

Taking into consideration the argument of the counsel appearing for the appellants and submission of the learned counsel for the respondents that appellants did not obtain average requisite marks the learned Judge held that call letters do not give them right for appointment and dismissed the writ petition.

As against the said order the appellants have come out with the present appeal.

Learned counsel appearing for the appellants submitted that in earlier writ petition being WP 7282(w) of 2016, this Court directed the respondent No. 3 to

consider only 16 candidates and appoint best 3 among them. Contrary to the order of this Court dated 12.05.2016, the respondent called for 83 candidates to fill up 18 posts. Apart from 16 petitioners, in earlier writ petition other candidates called for interview were not empanelled in the selection process held in the year 2012. The counsel for the respondents did not furnish any written submissions or did not file any affidavit-in-opposition before the learned Single Judge. The learned Judge without considering the same, accepted the arguments made by the counsel for respondents and erroneously dismissed the writ petition. Apart from three petitioners out of 16 in earlier writ petition, the respondent No. 3 did not select other petitioners which is contrary to the earlier order dated 12.05.2016 passed in writ petition No. 7282(w) of 2016 and prayed for allowing the writ petition.

No representation for respondents on 10.08.2023, 28.08.2023 and today also there is no representation for the respondents.

Heard learned counsel appearing for the appellants and perused the entire materials on record.

From the materials on record, it is seen that the four petitions were filed by the appellants and others challenging the selection to the post of Auxiliary Fire Personnel in Civil Defence Volunteers on contractual basis. In writ petition No. 7282 (w) of 2016 filed by the

16 candidates, a report was filed by the respondent No. 3 stating that only three vacancies are available. Based on such report this Court directed the respondent No. 3 to consider all the 16 petitioners and appoint best three candidates among them. Subsequently, respondent No. 3 identified 15 more vacancies and for total 18 vacancies called for 83 candidates including appellants and other petitioners in the earlier writ petition for interview. The appellants participated in the selection process without any demur or protest. The respondent No. 3 selected three petitioners out of 16 petitioners in the earlier writ petition No. 7282(w) of 2016. The appellants and others did not obtain necessary average requisite marks and therefore, they were not selected. It is not the case of the appellants that they obtained more marks than 18 selected candidates. Their objection is that the respondent No. 3 ought to have called for only 16 candidates for interview and ought to have interviewed only 16 persons who filed writ petition being W.P. No. 7282(w) of 2016. The appellants did not challenge the action of the respondent No. 3 calling 83 candidates for appointment to the post of 18 vacancies but they participated in the interview. Having failed to obtain necessary marks in the interview in which they participated willingly it is not open to them to claim present relief.

The learned Judge considered all the materials and passed orders. There is no error warranting interference of this Court.

Appeals fails and is accordingly dismissed without any order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)