

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 52 of 2016

(CAN 4 of 2022)

The State of West Bengal & Anr.

VS.

Basudev Das & ors.

with

WP.ST 31 of 2018

Mainul Haque Halder & Ors.

VS.

The State of West Bengal & ors.

with

WP.ST 79 of 2018

Abdul Alim & Ors.

VS.

The State of West Bengal & ors.

For the Writ Petitioners : Mr. Pratik Dhar,
(in WP.ST 31 of 2018) Mr. Rittwik Pattanayak

For the Writ Petitioners : Mr. Samim Ahammed,
(in WP.ST 79 of 2018) Mr. Arka Maiti

For the respondent

Nos. 1 to 4 : Mr. D. N. Ray,
(in WP.ST 31 of 2018) Mr. Sankha Ghosh,
Mr. Biswarup Nandy,
Mr. Rajesh Kumar Shah

For the respondent

Nos. 6 to 236 : Mr. A. K. Neogi,
in all the writ petitions Mr. Vaskar Pal

For the proforma

Respondent nos. 237-407 : Mr. Pratik Dhar,
(in WP.ST 52 of 2016) Mr. Rittwik Pattanayak

For the State : Mr. Amitesh Banerjee, Sr. Advocate
Ms. Munmun Tewari
Mr. Suddhadev Adak

Hearing concluded on : 19.06.2023

Judgement on : 19.06.2023

DEBANGSU BASAK, J.:-

1. Three writ petitions are taken up for analogous hearing as they emanate out of the same impugned order of the learned Tribunal.

2. By the impugned order, the learned Tribunal disposed of an original application by setting aside the entire recruitment process to the post of Sub-Inspector of Police.

3. One writ petition being WP.ST 52 of 2016 is at the behest of the State of West Bengal. The other writ petitions being WP.ST 31 of 2018 and WP.ST 79 of 2018 are at the behest of the writ petitioners who were successful in the selection process.

4. The three writ petitions are being opposed by the four original applicants before the Tribunal and unsuccessful candidates in the selection process. Unsuccessful candidates were added to WP.ST 52 of 2016 as respondent nos. 6 to 236.

5. Contentions were advanced on both sides of the divide. For the sake of convenience, the contentions of the respective learned advocates are adumbrated on the basis of either support to the impugned order or the opposition thereto.

6. It is contended on behalf of the writ petitioners that, the impugned order cannot be sustained. It is pointed out that, the original applicants were four in number. The original applicants participated in the selection process to the post of Sub-Inspector for armed and unarmed branch through limited departmental examination. The original applicants knew the exact parameters of such selection process. They knew the

height prescribed in the selection process amongst others. They participated in the selection process without any reservation. The original applicants approached the learned Tribunal with a prayer for relaxation of height in respect of hill-men/women. The original applicants applied by way of a miscellaneous application for reliefs relating height relaxation, without seeking setting aside of the selection process. By the impugned order, the learned Tribunal erred in setting aside the entire selection process, when no prayer with respect thereof was made by the original applicant. At that material point of time, the respondent nos. 6 to 236 of WP.ST 52 of 2016 were not present before the Tribunal.

7. It is contended on behalf of the writ petitioners that, the impugned order, grants relief, which were not in the original application or in the miscellaneous application. It is contended that, the original applicants participated in the selection process knowing fully well the parameters of the selection. Therefore, they waived their right to question the parameters of selection process. In support of such contention, reliance was placed on **(2013) 11 SCC 309**

(Ramesh Chandra Shah & Ors. Vs. Anil Joshi & Ors.), (2017) 9 SCC 478 (D. Sarojakumari Vs. R. Helen Thilakom & Ors.), and (2019) 15 SCC 633 (Union of India & Ors. Vs. C. Girija & Ors.).

8. It is contended on behalf of the writ petitioners that non-joinder of the respondent nos. 6 to 236 in WP.ST 52 of 2016, did not permit the learned Tribunal to pass the impugned order of setting aside the entire selection process. In support of such contentions, reliance was placed on **(2014) 16 SCC 187 (Ranjan Kumar & Ors. Vs. State of Bihar & Ors.)** and **(2016) 2 SCC 779 (Poonam Vs. State of Uttar Pradesh & Ors.).**

9. Relying upon 2023 SCC Online SC 344 **(Tajvir Singh Sodhi & ors. vs. The State of Jammu and Kashmir & ors.)** it is contended on behalf of the petitioners that, simply because the result of selection process is not palatable to a candidate, he cannot allege that the process was vitiated. Such a challenge cannot be entertained in the light of waiver and acquiescence.

10. Learned advocate appearing in support of the impugned order and representing the original applicants before the learned Tribunal, submits that, although no relief with regard to the selection process was sought for as granted by the learned Tribunal, however, the same did not prevent the learned Tribunal from moulding the reliefs. In support of such contention, reliance is placed on **(2013) 4 SCC 690 (Rajesh Kumar & Ors. Vs. State of Bihar & Ors.)**.

11. Learned advocate appearing for the original applicant submits that, the subject selection process ought to be governed by the provisions of the notification no. 8078 dated December 12, 2001. Such notification, prescribes a height in respect of hill-men of Darjeeling. He compares the height limits prescribed in the impugned selection process and claims that the same was in variance. According to him, the authorities erred in prescribing a regulation for the selection process, which was at variance to the subsisting ones. According to him, the existing rules were overridden erroneously.

12. Learned advocate appearing for the original applicants submits that, since the selection process was not completed when the original applicants approached the learned Tribunal, question of adding parties that were affected did not arise. Therefore, the original application cannot be faulted on such ground.

13. Learned advocate appearing for the respondent nos. 6 to 236 of WP.ST 52 of 2016 submits that, the earlier rules governing the selection process was erroneously given a go-bye through the impugned selection process. Since the impugned selection process was bad in law, the learned Tribunal was correct in setting aside the entire selection process. He submits that, mere participation in a selection process, which was conducted erroneously did not violate the fundamental right of his clients to be considered appropriately in a selection process for grant of promotion. In support of such contention, he relies upon **(2007) 6 SCC 704 (Union of India & Ors. Vs. Sangram Keshari Nayak)**, **AIR 2010 SC 1682 (Union of India & Anr. Vs. Hemraj Singh Chauhan & Ors.)** and **AIR 1959 SC**

149 (Basheshar Nath Vs. The Commissioner of Income Tax).

14. Learned advocate appearing for the respondent nos. 6 to 236 refers to regulations 741 and 742 of the Police Regulations, Bengal, 1943. He submits that, the Police Regulations governs the entirety of the conduct of police affairs including disciplinary proceeding and promotion to a post. He submits that, the authorities erred in adopting a procedure, which was not prescribed by the Police Regulations, Bengal, 1943 in respect of the selection process and, therefore, the learned Tribunal was correct in setting aside the entire selection process.

15. On December 12, 2001, the State of West Bengal, Home Department, Police by notification no. 8078 issued under Article 309 of the Constitution of India, published rules for regulating recruitment for the post of Sub-Inspector (unarmed), Sub-Inspector (Armed) in West Bengal Police and Sub-Inspector (Sergeant) in Kolkata Police.

16. The State of West Bengal initiated a process of limited departmental examination for recruitment of Sub-Inspectors in

view of extreme urgency for filling up the vacant posts. Such process was initiated by an advertisement dated February 22, 2002.

17. On November 29, 2004, a notification was issued amending the Rules of 2001, inter alia, to the effect that the combined written test shall be held in two parts i.e. preliminary examination and final examination followed by personality test/interview.

18. State of West Bengal introduced further amendments to the Rules of 2001 by a notification dated March 9, 2006. This notification largely concerned the hill-men of Darjeeling.

19. On September 11, 2006, Government of West Bengal, Home, Police by a notification made amendments to the Rules regulating the recruitment of the post of Sub-Inspector (unarmed) and Sub-Inspector (Armed) in the West Bengal Police.

20. The natural parties before us were joined the West Bengal Police both in armed and unarmed branch through the selection process as constables. They were subsequently

promoted to the Assistant Sub-Inspector. They are posted in various districts.

21. By a meeting dated October 14, 2014, The Special Secretary to the Government of West Bengal informed the Director General and Inspector General of Police that the Governor was pleased to accord approval for filling up 400 vacant posts in the rank of direct Sub-Inspector of Police (Armed and Unarmed Branch) in the West Bengal Police from eligible candidates through limited departmental examination to be conducted by the West Bengal Police Recruitment Board.

22. Such writing dated October 14, 2014 also stated that, the rules regulating the recruitment of the Sub-Inspector of Police, unarmed branch as well as armed branch published by the notification no. 8078-PL dated December 12, 2001 will be amended in due course. The writing dated October 14, 2014 prescribed the procedure for the recruitment to the post of Sub-Inspector of Police.

23. There being an error, Government of West Bengal issued a corrigendum dated January 28, 2015.

24. Government of West Bengal issued a memo dated February 23, 2015 for recruitment of direct Sub-Inspector (unarmed branch/armed branch) and lady Sub-Inspector (unarmed branch/armed branch) through limited departmental examination where 300 posts of Sub-Inspector/lady Sub-Inspector of armed branch and 100 posts of Sub-Inspector (armed branch) in West Bengal Police through a limited department examination from amongst the constables and Assistant Sub-Inspector, the Assistant Sub-Inspector (excluding police drivers and wireless operators of West Bengal and Habildar, Naik, Lance naik, Rifleman of the Eastern Frontier Railway) in accordance with the writing dated October 14, 2014 of the Home Department, Police Establishment Board, Government of West Bengal.

25. Annexure-I of such notification dated February 23, 2015 contained detailed information for recruitment to the post. It also prescribed the eligibility criteria.

26. By a writing dated March 11, 2015, West Bengal Police Recruitment Board requested all the Unit Heads to direct eligible candidates to procure no objection certificate from their

respective reserve office in the prescribed proforma as provided by the West Bengal Police Recruitment Board.

27. Apparently, the natural persons before us, obtained such no objection certificates. They participated in the selection process. Their participation was on the basis of the notification dated February 23, 2015 which made the contents of the writing dated October 14, 2014 applicable.

28. It appears from the records made available to Court that, eligible candidates numbering 1,700 applied for the post. Applicants before the Tribunal, as also the respondent nos. 6 to 236 in WP.ST 52 of 2016 also applied in the selection process. Applicants before the Tribunal and respondent nos. 6 to 236 passed the written examination but did not qualify in the personality test. Their wisdom that the selection process was vitiated dawned on them after their conditional participation resulted in rejection of their candidature.

29. Despite repeated queries to the learned advocates appearing for the original applicants as well as the respondent nos. 6 to 236 in WP.ST 52 of 2016 to draw our attention to any document or any material that such persons participated in

the selection process, with reservations as to the Rules governing the selection process, in any manner, or in the manner as they contend before us, the answer is in the negative.

30. The applicants in the original application participated in the written examination in the selection process, qualified in the written examination and then approached the learned Tribunal for the purpose of height relaxation. They also filed a miscellaneous application again directed towards height relaxation. At no stage, before the learned Tribunal, did the original applicants prayed for the cancellation of entirety of the selection process. The respondent nos. 6 to 236 of WP.ST 52 of 2016 were not before the learned Tribunal at that material point of time.

31. As noted above, the learned Tribunal set aside the entire selection process despite no prayer being made to such effect by the original applicants.

32. We need to consider whether unconditional participation in a selection process without any reservation, would entitle any of the applicants in the original application to canvass a

case of height relaxation before the learned Tribunal and obtain an order of cancellation of the entire selection process.

33. In **Ramesh Chandra Shah & Ors. (supra)**, the High Court considered a challenge to a recruitment process and held that, a person who consciously takes part in the process of selection, cannot, thereafter, turn around and question the method of selection and its outcome. It noted various authorities on the subject. It noted that, the doctrine of waiver is attracted where, a person participates in the selection process without objection.

34. In **D. Sarojakumari (supra)**, the Supreme Court noticed amongst diverse authorities **Ramesh Chandra Shah & Ors. (supra)** and expressed the same view.

35. In **C. Girija & Ors. (supra)**, the Supreme Court again noticed diverse authorities including **Ramesh Chandra Shah & Ors. (supra)** and expressed a similar view.

36. **Tajvir Singh Sodhi (supra)**, lays down that, the only exception to the rule of waiver is an existence of mala fides on the part of the selection board.

37. In the facts of the present case, prior to the notification for the recruitment process, initially, 2001 Rules were governing the selection process. Thereafter, an amendment was sought to be incorporated in the 2001 selection process through the writing of 2014. It is the contention that, 2014 amendments were not actually incorporated in the 2001 Rules.

38. In the fact scenario of the present case, there was an amendment to the 2001 Rules without such amendments being carried out in the 2001 Rules physically in the sense that they were proposed to be incorporated in the 2001 Rules and not actually incorporated therein. However, the State did not stop there. It proceeded to initiate the impugned selection process on the basis of the 2014 amendment. The fact that the process of selection impugned in the original application was on the basis of the 2014 amendment was well published and known to all the participants including the applicants before the learned Tribunal and the respondent nos. 6 to 236 in WP.ST 52 of 2016. All of them, including the writ petitioners participated in the selection process on the basis of the 2014 amendment.

39. Having participating in such selection process on the basis of the 2014 amendment, whether any of the participants are entitled to resile therefrom and claim that, the selection process not being in terms of 2001 Rules, therefore, stood vitiated.

40. In our opinion, none of the persons participating in such selection process are entitled to contend that the selection process was vitiated in view of 2001 Rules not being amended. The participants expressly waived their rights, if any, by participating in the selection process on the basis of declared 2014 amendment. The authorities declared that the 2014 amendment would be applicable to the selection process. The selection procedure laid down, inter alia, that there would be written examination of three papers and personality test. A limited number of candidates selected merit wise on the result of the written examination would be called for the personality test. A final merit list would be prepared on the basis of total marks obtained in the written examination and personality test. It also provided that, the physical measurement would be taken at the personality test.

41. The natural persons before us participated in such selection process. They succeeded at the written examination. The four applicants in the Original Application then approached the learned Tribunal for the purpose of height relaxation by filing the Original Application.

42. All the applicants in the original application knew the height that was required of them. The requisite height was prescribed in the documents relating to the selection process. At the time of participation, they knew the physical measurement required of them. They were not entitled to any relief with regard to height relaxation as originally prayed for in the Original Application. Miscellaneous application that was filed in the Original Application reiterated to return their stand that they are entitled to height relaxation. Again, since the Original Application itself was not maintainable they were not entitled to any further relief therein.

43. It is contended on behalf of the respondent nos. 6 to 236 of the W.P.S.T.52 of 2016 that, unconditional participation in the selection process is not waiver of the fundamental right to be considered for a promotion.

44. In **Sadhya Keshwari Nag (supra)**, the Supreme Court held that right to be considered for promotion is a fundamental right. Similar is the view of the Supreme Court in **Hemraj Singh Chauhan (supra)**. In **B. Nag (supra)** the Supreme Court held that it cannot be urged that it is open to a citizen to waive his fundamental right conferred by Part III of the Constitution.

45. The applicants in the Original Application before the learned Tribunal as also respondent nos.6 to 236 in W.P.S.T.52 of 2016 were considered in the selection process to the post. In fact, all of them, unconditionally participated in the selection process on the basis of the 2014 amendment. All of them qualified in the written examination. Thereafter, they are now seeking to turn around and claim that selection process was required to be held in terms of unamended 2001 Rules and that, the amendment of 2014 cannot guide the selection process. In the facts and circumstances of the present case, we do not find any violation of any fundamental right of any of the participants in the selection process as sought to be contended on behalf of the respondent nos.6 to 236 of W.P.S.T.52 of 2016. Their fundamental right to be

considered in the selection process was not breached. They were being considered. They failed to meet the parameters prescribed. The parameters on which, they were to be selected were also notified. All of them participated on the basis of a prenotified selection process without any objection.

46. Moreover, in the facts and circumstances of the present case, nothing is placed before us to suggest that, any section of the participants in the selection process was differently treated or that any of the original applicants or the respondent nos.6 to 236 of W.P.S.T.52 of 2016 were discriminated against. Nothing is placed before us to suggest that a section of the participants were considered on the basis of different parameters other than the parameters laid down. It cannot be said that the authorities acted malafide or arbitrarily.

47. In the facts and circumstances of the present case, nothing is placed before us to suggest that there was any mala fide or arbitrariness on the part of the selection board. The extent to the rule of waiver is not appropriate in the facts and circumstances of the present case.

48. In such circumstances, we set aside the impugned order of the Tribunal dated March 3, 2016. O.A. 947 of 2015 is dismissed.

49. W.P.S.T. 52 of 2016, W.P.S.T. 31 of 2018 and W.P.S.T. 79 of 2018 along with pending application, if there be any, are disposed of.

(Debangsu Basak, J.)

50. I agree.

(Md. Shabbar Rashidi, J.)