

Dd 8 & 9 16.06.2023

WP.ST 72 of 2017

**Tuhin Goswami & Ors.
Vs.
The State of West Bengal & Ors.
With**

WP.ST 73 of 2017

**Rabindra Nath Ghosh
Vs.
The Principal Secretary
Department of Excise & Ors.**

Mr. Bikash Ranjan Bhattacharya, Id. Sr. Adv.
Mr. Kamalesh Bhattacharya,
Mr. Aninda Bhattacharya, Advocates
... ... For the Petitioners

Mr. Anirban Ray, Id. GP
Mr. Arjun Ray Mukherjee,
Mr. Sucherita Paul, Advocates
... ... For the State

Two writ petitions are taken up for analogous consideration as they involve similar issues.

Primary issue involved in the two writ petitions is the order dated June 24, 2014 passed by the Principal Secretary, Finance Department whereby the process of recruitment of Excise Constable initiated in 2006 was annulled.

Such order of the Principal Secretary was assailed by way of different original applications at the behest of different aspirants. One of such original application being OA no. 198 of 2013 was disposed of by the learned tribunal on January 3, 2014. Such order of the learned tribunal passed in such original application was

assailed before this Hon'ble Court in W.P.ST. 43 of 2019. Such writ petition was disposed of by a judgment and order dated June 24, 2019 finding no ground to interfere with the impugned order of the learned tribunal.

Learned senior advocate appearing for the writ petitioners in both the writ petitions submits that, the learned tribunal failed to take into account the impact of the violation of the service Rules. Moreover, the coordinate Bench, while disposing of the **W.P.ST. 43 of 2019 [Sri Sanjay Bera vs. State of West Bengal & Ors.]** also did consider the matter in such light.

Learned advocate appearing for the respondents draws the attention of the Court to the contents of **Sri Sanjay Bera** (supra) and submits that, the impact of the advertisement for the selection process, as also the Rules governing the selection process were considered by the co-ordinate Bench in light of the consideration of the decision reported at **(1996) 6 SCC 216 [Excise Superintendent Malkapatnam, Krishna District, A.P. –vs- K.B.N. Visweshwara Rao & Ors.]**.

The co-ordinate Bench was approached by another aspirant for the post of Excise Constable. The co-ordinate Bench took note the entirety of the factual matrix of the case including the Rules governing the selection process and the **K.B.N. Visweshwara Rao** (supra). The co-ordinate Bench considered the approach of the writ petitioners with regard to an earlier order passed by the tribunal and the dropping of the contempt petition by the tribunal. Independent of such contention, the co-ordinate Bench considered the merits of the case.

Indisputably, the writ petitioners before us, are similarly situate and circumstanced as **Sri Sanjay Bera**

(supra) who was the writ petitioner in W.P.ST. 43 of 2019 disposed of by the co-ordinate Bench.

In **Sri Sanjay Bera** (supra), the co-ordinate Bench observed as follows :-

"In our opinion the petitioner not having challenged the order dated 11th February, 2015 (whereby CCP 97 of 2014 was dropped), he has rendered himself disentitled to grant of any relief. The tribunal in its order dated 3rd January, 2014 had directed the process of recruitment to be completed by, inter alia, preparation of a panel. If indeed the petitioner was found suitable and empanelled, concluding the process would have meant working out the penal and issuing appointments to candidates figuring therein. However, the tribunal by its order dated 11th February, 2015 was of the view that the respondent authority had explained adequately why its previous order could not be implemented. While disposing of CCP 97 of 2014 by order dated 11th February, 2015, the tribunal, in fact, went behind the order dated 3rd January, 2014 and nullified whatever benefit that flowed from it in favour of the petitioner. Such order not being under challenge, the matter must be allowed to rest.

We are now to consider the correctness of the order dated 24th June, 2014 without being influenced by what the tribunal had observed in its order dated 3rd January, 2014.

Further to the decision of the Supreme Court reported in (1996) 6 SCC 216 [Excise Superintendent Malkapatnam, Krishna District, A.P. -vs.- K.B.N. Visweshwara Rao & Ors.],

amendments have been brought in the extant recruitment rules by all the recruiting authorities, whereby open advertisement inviting applications for employment on public posts is the normal rule. The principal secretary found that such rule was observed in the breach. It is only on the sole ground of absence of wide publicity/open advertisement that the recruitment process of 2006 was annulled. The tribunal did not interfere with such decision, and rightly so. By mere participation in the recruitment process and clearing the physical measurement and efficiency tests, the petitioner did not acquire any indefeasible right of appointment. Law is well settled that it is for the employer to decide whether to continue a process of selection or not after a recruitment process has been initiated. An aspirant for the post, even in the absence of being empanelled, has no right to claim in law that a recruitment process, once initiated, must be taken to its logical conclusion.

We are of the clear view that the tribunal rightly took into consideration the settled legal position in this behalf and while declining to grant relief, as prayed for by the petitioner, moulded the relief by holding that his age may be condoned in case of his desire to participate in any future recruitment process that is initiated subject of course to fulfillment of other eligibility conditions.

We see no justification to interfere with the impugned order and, accordingly, the writ petition stands dismissed."

The decision of the co-ordinate Bench, binds us. In any event, we are not finding any factual matrix which is different from **Sri Sanjay Bera** (supra).

In such circumstances, we find no merit in the two writ petitions.

WP.ST 72 of 2017 and WP.ST 73 of 2017 are dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)