

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 89 of 2023

Jainuddin Sk. & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners	: Mr. Raghunath Chakraborty, Adv. Ms. Sabnam Sultana, Adv.
For the State	: Mr. S. N. Mookherji, Ld. Advocate General Mr. Tapan Kr. Mukherjee, Sr. Adv. Mr. Somnath Naskar, Adv.
For the Respondent nos. 9, 11, 18, 20 and 21	: Mr. Shuvro P. Lahiri, Adv. Mr. Rajesh Naskar, Adv.
For the Respondent no. 15.	: Md. Nure Zaman, Adv.
For the Respondent Nos. 22 to 32	: Mr. Partha Ghosh, Adv. Mr. Amal Kumar Datta, Adv. Ms. Simran Sureka, Adv. Mr. Debashis Das, Adv.
Hearing Concluded on	: September 05, 2023
Judgement on	: September 14, 2023

DEBANGSU BASAK, J.:-

1. The writ petitioners have assailed an order dated February 21, 2019 passed in OA 53 of 2019 by the West Bengal Administrative Tribunal.

2. By the impugned order, the Tribunal has refused to grant any relief to the writ petitioners on the ground that, the selection process was over and that the selected candidates were given appointment and that such selected candidates were not made parties to the original application.

3. Learned advocate appearing for the petitioners has submitted that, the petitioners participated in the selection process for the post of Civil Defence Volunteers. The petitioners have requisite qualification as prescribed by the authorities. A Physical Fitness Test had been held on August 22, 2017 and on the basis of such test only 75 candidates were selected/sponsored. The petitioners had been successful in such selection. Thereafter, the petitioners had been asked to appear for Screening Test on December 15, 2017 at which the petitioners duly appeared. A Further Screening Test had been held on October 2018 which the petitioners attended. Physical Fitness Test of all candidates excluding the petitioners had been taken which was in departure to the recruitment notice. Two female candidates had also been called, though, the posts were meant for males. A final list of selected candidates for the post of Auxiliary Fire Operator had

been published on January 16, 2019 where the petitioners did not find any place.

4. Learned advocate for the petitioners has contended that, the selection process was vitiated by reason of the departure from the declared selection process.

5. Learned advocate for the petitioners has contended that, the appointment once granted was not limited to one year or till the filling up of the post of Fire Operators but till the selected candidate attained the age of 60 years in view of the circular issued by the Government.

6. Learned advocate appearing for the petitioners has contended that, 5 persons who were given appointment were without any training certificate. He has referred to the response given to the Right to Information Act, 2005. He has also referred to the reports submitted on behalf of the State and the supplementary affidavit filed by the petitioners. He has also referred to Section 3A of the West Bengal Fire Services Act, 1950.

7. The writ petition has been opposed by the respondents. Learned advocate appearing for the respondent Nos. 12 and 13 has submitted that, his clients possess requisite qualification as prescribed in the selection process.

He has relied upon the qualification certificate of the respondent Nos. 12 and 13 in this regard. He has contended that, the selection was done in accordance with the procedure prescribed. He has relied upon **2014 Volume 6 Supreme Court Cases 644 (Joginder Pal and Others versus State of Punjab and Others)** in support of his contention that even if there is an irregular/illegal selection then, the entire selection process is not vitiated. Since his clients are untainted and had entered service by virtue of their merit and not on extraneous consideration, the employment of the respondent Nos. 12 and 13 should not be cancelled.

8. Learned advocate appearing for respondent Nos. 9, 11, 18, 20 and 21 has contended that, the petitioners took a calculated chance. They had participated in the entire selection process without any objection. According to him, no right of the petitioners was infringed and that no right in favour of the petitioners had accrued by virtue of the selection of his clients to the post. He has pointed out that, the petitioners withdrew the earlier writ petition filed before this Hon'ble Court. He has also pointed out that, earlier writ petition challenging the selection process had been rejected.

9. Learned advocate appearing for the respondent No. 15 has contended that, his client was duly selected subsequent to an order passed in a challenge thrown to the selection process. Therefore, respondent No. 15 had been duly appointed to the post.

10. Learned Advocate for the respondent Nos. 22 to 32 has adopted the contentions of the successful candidates.

11. Learned Advocate General appearing for the State has referred to the report submitted pursuant to the order dated July 19, 2023. He has referred to the Resolution of the Cabinet dated April 20, 2007. He has pointed out that, 3781 posts of Fire Operators were vacant. He has submitted that, the Finance Department approved filling up of 1500 post of Fire Operators by direct recruitment through West Bengal Staff Selection Commission and engagement of 1500 Auxiliary Fire Operators from the trained Civil Defence Volunteers. The State Cabinet had in its meeting dated May 8, 2017 approved the proposal for filling up of 1500 post of Fire operators by direct recruitment and engagement of 1500 Auxiliary Fire Operators. On receipt of the approval from the Cabinet the Department had placed a requisition before the Public Service Commission for direct recruitment of 1500 Fire Operators

under West Bengal Fire and Emergency Services by a formal request dated August 17, 2017.

12. Referring to the report of the State, learned Advocate General has contended that, the selection of 25 Fire Operators for the district of Birbhum as commenced was completed through Public Service Commission on April 6, 2023. In absence of timely recommendation from the Public Service Commission for Fire Operators until April 6, 2023 the Department had extended the engagement period of the 25 Auxiliary Fire Operators for the district of Birbhum on yearly basis after taking the concurrence of the finance department.

13. Learned Advocate General appearing for the State has relied upon **2006 Volume 11 Supreme Court Cases 731 (Retired Armed Forces Medical Association and Others versus Union of India and Others)** for the proposition that, the State has power to make contractual appointments and such power includes the power to make appointment on substantive, temporary, officiating, ad hoc basis, daily wages or contractual basis. He has relied upon **1992 Volume 4 Supreme Court Cases 118 (State of Haryana and Others versus Piara Singh and Others), 2022 SCC OnLine SC 485 (Manish Gupta and Another versus President, Jan**

Bhagidari Samiti and Others) and ***2022 SCC OnLine Cal 2138 (Lieutenant Governor and Others versus Dr. Anthony and Others)*** for the proposition that, ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee.

14. In reply, learned advocate appearing for the petitioners has relied upon a writing dated August 29, 2023 and contended that, there was a proposal for enhancement of remuneration and other service benefits in respect of Auxiliary Fire Operators. He has also relied upon ***2010 Volume 10 Supreme Court Cases 707 (Girjesh Shrivastava and Others versus State of Madhya Pradesh and Others)*** for the proposition that, the illegal beneficiaries from the selection process should be weeded out. He has relied upon ***2008 Volume 1 CHN 140 (Anup Kumar Kundu versus Registrar of Cooperative Societies, West Bengal and Others)*** for the proposition that, even if, a candidate challenging the selection process did not possess the requisite qualification, such candidate was entitled to challenge the selection of another candidate who did not possess requisite qualification.

15. The petitioners before us had approached the West Bengal Administrative Tribunal by way of an Original

Application being OA 53 of 2019 praying inter alia for an appropriate order upon the respondent authorities to select 25 Civil Defence Volunteers out of 75 selected/sponsored Civil Defence Volunteers after setting aside the list of 25 selected candidates for engagement to the post of Auxiliary Fire Operator for Birbhum District.

16. Genesis of the proceedings lies in a notice dated July 20, 2017 that had been issued by the office of the District Magistrate and Controller of Civil Defence, Birbhum District inviting application for engagement of 25 Civil Defence Volunteers as Auxiliary Fire Operator for a period of one year or till regular recruitment to the main post of Fire Operators is made, whichever is earlier.

17. West Bengal Fire Services Act, 1950 has provided for the maintenance of a fire brigade by the State. The notice dated July 20, 2017 has proposed appointment to the post of Auxiliary Fire Operator which is contemplated in Section 3A of the Act of 1950. Learned Advocate General has submitted that such cadre is yet to be formalised by the State.

18. Appointments to the post of Fire Operators has to be made through the Public Service Commission. A number of vacancies had arisen to such post. The State had taken an

audit of the vacancies to such post of Fire Operators obtaining district wise on a particular date and found that 3,781 posts were vacant. State had decided to fill up 1,500 posts of Fire Operators. However, since filling up such 1,500 posts of Fire Operators would consume time, State had decided to recruit 1,500 Auxiliary Fire Operators till such time the 1,500 posts of Fire Operators were filled up. For the district of Birbhum State had decided to fill up 25 posts of Fire Operators through Public Service Commission and pending such filling up, to appoint 25 Auxiliary Fire Operator on temporary basis.

19. State has issued the notice dated July 20, 2017 in this regard, relevant portion of which is as follows :-

“This is for information to all concerned Civil Defence Volunteers of this Birbhum District that ADGP and Director of Civil Defence, West Bengal have asked to sponsor names of 75 (Seventy Five) Civil Defence Volunteers for engagement of 25 (Twenty Five) C.D.Vs on a daily payment basis @ Rs. 395/- (Rupees Three Hundred Ninety Five) only per day subject to maximum engagement of 22 days in a month for period of one year as Auxiliary Fire Operator for till regular recruitment to the main post, whichever is earlier.”

20. The notice dated July 20, 2017 had invited applications for temporary appointments of 25 Auxiliary Fire Operators for the district of Birbhum and made such appointments co-terminus with the appointment of 25 Fire Operators for such district.

21. Fire operators for 25 posts for the district of Birbhum had been appointed on April 6, 2023 through Public Service Commission on permanent basis. Therefore, as on that date, Auxiliary Fire Operators, who had been appointed in terms of the notice dated July 20, 2017 ceased to be in engagement. Any other view would militate against the contents of the notice dated July 20, 2017 and would advance a course of action which does not have any sanction in law. Contractual employment for declared vacancies in sanctioned posts cannot be continued with, after the vacancies in the sanctioned posts had been filled up. Any attempt to continue with such appointments would be illegal.

22. It has been the contention of the State that, there are other vacancies in the post of Fire Operators as well as Auxiliary Fire Operators and therefore, the 25 person appointed Auxiliary Fire Operators should continue. With respect we are unable to accept such a contention as has been advanced on behalf of the State. The 25 Auxiliary Fire Operators had been appointed temporarily for the 25 vacancies of the Fire Operators in the district of Birbhum. With the appointment of the 25 Fire Operators for the district Birbhum, the temporary or contractual appointments of the

25 Auxiliary Fire Operators for the district of Birbhum as has been engaged pursuant to the notice dated July 20, 2017 cannot continue. The notice dated July 20, 2017 had specified that the appointments of Auxiliary Fire Operators were co-terminus with the appointments of Fire Operators.

23. The view that, appointments of 25 Auxiliary Fire Operators undertaken through the notice dated April 20, 2017 was co-terminus with the appointment of 25 Fire Operators has been fortified by the submission on behalf of the State that, the 25 Auxiliary Fire Operators cannot seek to be employed till the age of sixty years, given the nature of their appointments. Secondly, the State had undertaken an exercise of accommodating these Auxiliary Fire Operators at different posts as will be appearing from the writings dated August 29, 2023 of Director General, West Bengal Fire and Emergency Services. This exercise, ipso facto has acknowledged that these Auxiliary Fire Operators vacated their offices on April 6, 2023 with the appointment of 25 Fire Operators for the district of Birbhum. We hasten to add that we have our reservations as to whether a temporary appointee can be appointed to a different post or job subsequent to his

appointment coming to an end without a fresh selection process for the new post or job.

24. Fire Operators and Auxiliary Fire Operators play an important role in the ability of the State to maintain a robust fire brigade. In the facts of the present case, Auxiliary Fire Operators who are supposed to fill in for Fire Operators and are required to respond to, inter alia, a fire emergency, had been engaged at a daily rate of Rs. 395 per day, for a maximum of 22 days a month. The daily rate had been subsequently enhanced. At that rate they are expected to respond to a fire emergency.

25. In ***Retired Armed Forces Medical Association and Others (supra)*** the Supreme Court has considered the issue of contractual appointment under Section 4 (2) of the Karnataka Urban Water Supply and Drainage Board Act, 1973. In such context, it has held that , there was no bar for appointment to the post in question on contractual basis and that, Government has power to make contractual appointment which includes power to make appointment on substantive basis, temporary basis, official basis, ad hoc basis or daily wages basis. The issue herein is not the power to appoint Auxiliary Fire Operators on contractual basis but their

continuance subsequent to the appointment of Fire Operators on permanent basis, to sanctioned posts.

26. *Piara Singh and Others (supra), Manish Gupta and Another (supra), Lieutenant Governor and Others (supra)* have observed that, an ad hoc temporary employee should not be replaced by another ad hoc or temporary employee and that he must be replaced duly by a regularly selected employee. Again, contractual employees have been replaced with permanent appointments, in the facts of the present case.

27. *Joginder Pal and Others (supra)* has held that, quashing the entire selection process on the ground of manipulation, forgery and fraud when segregating non-tainted candidates from tainted candidates is possible, is not called for. The ratio has no manner of application in the facts of the present case inasmuch as, Auxiliary Fire Operators had been appointed on temporary basis subject to the filling up of the 25 post of Fire Operators in the district of Birbhum. 25 Fire Operators in the district of Birbhum have been appointed on April 6, 2023 and therefore, subsequent thereto, the employment of the 25 Auxiliary Fire Operators cannot be continued with.

28. *Girjesh Shrivastava and Others (supra)* has held that, non-impleadment of the appointees in the selection process goes to the root of the matter as it violates the principles of natural justice. It has also held that, the illegal beneficiaries in the selection process need to be weeded out. In the facts and circumstances of the present case, since the appointments have terminated with the engagement of Fire Operators on April 6, 2023 we need not enter into the exercise of weeding out illegal beneficiaries if any.

29. In *Anup Kumar Kundu (supra)* the Division Bench has held that, a writ petition filed at the behest of a person, who does not hold requisite qualification is maintainable. In the facts and circumstances of the present case, the ratio is not attracted.

30. In such circumstances we are not minded to interfere with the selection process as the engagement of 25 Auxiliary Fire Operators had stood terminated on April 6, 2023.

31. WP.ST 89 of 2023 is dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

32. I agree.

[MD. SHABBAR RASHIDI, J]