

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

WP.ST 77 of 2022

Jahangir Ali and others

Vs.

The Chairman,

West Bengal Police Recruitment Board and others.

For the Petitioners : Mr. Ashis Kumar Chowdhury,
Mr. Avijit Kar.

For the State : Mr. Tanpan Kumar Mukherjee,
Ms. Debdooti Dutta.

Heard On : 16.9.2022, 14.11.2022, 02.01.2023, 16.01.2023,
06.02.2023, 09.02.2023, 10.02.2023, 22.02.2023.

Judgment On : 1st March 2023.

The Court:

It is a sordid state of affair that the litigants have to approach the High Court for passing a direction upon the Tribunal to conclude the hearing of the tribunal application pending before it over the years.

While the instant writ petition was taken up, it was communicated to the Court that the Chairperson of the West Bengal

Administrative Tribunal is no longer there as the tenure expired. It is really unfortunate that only one Bench comprising of the Chairperson and the Member is manning the entire West Bengal Administrative Tribunal and upon expiration of the tenure of either of the Member, the matters are kept pending as there is some impediment on the part of the single Member to continue with the hearing of the matters and disposed of the same.

Though the aforesaid observations have been made, but we are aware of the provisions contained under Section 5(6) of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'said Act'), where the Chairman or any Member authorized by the Chairman may function as a Bench consisting of a single Member and exercise the jurisdiction, power and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify. The proviso attached to the said provision creates a bridle in exercising the power, jurisdiction and authority by the Single Bench in the event the said single Member found that the nature of the case requires consideration by a Bench consisting of two Members. Such power can also be traced out from Section 5(4) of the said Act where the Chairman may pass a general or specific order for the purpose of securing any case to be disposed of by any Bench provided in his opinion, the nature of the questions involved therein requires the same to be heard by a Division Bench.

The harmonious reading of the two provisions leaves no ambiguity in our mind that the Chairman is bestowed with the power to issue general or specific orders in relation to such classes of cases to be heard by a Single Bench, but in the event the nature of the questions involved therein requires the same to be heard and disposed by a Division Bench, such matter cannot be decided by the Single

Bench. Ironically, the Single Bench may proceed with the hearing of the case provided the questions raised therein do not involve complicated or complex questions of law, in such event, it is to be decided by a Division Bench.

The purpose of setting up a Division Bench is to minimize the error on meeting of two judicial minds in pursuit of securing the just and timely justice. The complicated and complex questions of law even involving the interpretation of the Articles in the Constitution of India require the consideration by a Division Bench of the Tribunal. The formation of the opinion by the Single Bench is *sine qua non* to refer the matter to the Division Bench and such opinion must be recorded in writing in the judgment indicating the complexity of the questions of law or the interpretation of the statutory as well as the constitutional provisions. Mere relegating the matter to a Division Bench by passing a cryptic order is opposed to the statutory ethos and the provisions contained in the said Act, as the opinion without having transcribed in writing is never regarded as a legal opinion in a judicial parlance.

We showed our anguish to the situation that only three Bench consisting of two Members has been sanctioned by the State Government despite the reality that spate of litigations are pouring in the State Administrative Tribunal and the only one Bench is grappling with the menace of the heap of the pending litigations as there are no Members appointed for other two Bench. The Act does not put any fetter in sanctioning more than one Bench for disposal of the cases pouring in the docket of the Tribunal in order to avoid the congestion and/or explosion in the docket. The tenure of the Chairperson has expired and the remaining Member of the Bench shirking its responsibility in disposing of the cases by passing a mechanical order that the matter should be heard by the Division Bench.

We do not come across with any order while in this determination since last several months that any opinion in writing has been expressed in the order by the Single Bench as to why the matter requires consideration by the Division Bench and cannot be disposed of by the Single Bench. While the Chairperson was in seisin of the affair, the general and specific orders are being passed in exercise of the powers conferred under the said Act conferring the jurisdiction, power and authority upon the Single Bench to dispose of the matter yet the desired goal is far from reality. There is an existence of the orders passed by the Chairperson conferring the power upon the Single Bench to decide the class of cases or sometimes the orders are general or omnibus in nature yet there is no attempt shown to dispose of the matter and the matter is adjourned simpliciter on the drop of the hat by either of the litigants.

The Act does not indicate any consequences relating to the general or specific orders passed by the Chairperson in exercise of its power under Section 5(6) of the said Act to lapse or become redundant upon demitting the office by the Chairperson. The moment the said orders are passed by a competent Chairperson, the same remains alive until superceded and/or removed by another competent Chairperson.

We, thus, do not find any fetter on the part of the Single Bench to continue with the matters pending before it provided the nature of the case comes within the ambit of the general or specific orders issued by the Chairman and in the event it is found that the complicated or complex question of law is involved requiring the matter to be disposed of by the Division Bench, it is an ardent duty of the said Single Bench to record such reasons and not to pass order in mechanical manner.

This takes us now to another disturbing fact discerned in course of hearing that since the outgoing Chairperson demits an office, there is no appointment of the Chairperson as of date. Our attention is drawn to Section 6(4) of the said Act providing the procedure and the manner in which the Chairperson of the State Administrative Tribunal shall be appointed. The said provision postulates that the President after consultation with the Governor of the concerned State shall appoint the Chairman of the Administrative Tribunal for the State.

After noticing the aforesaid provision, we invited the attention of the learned Additional Solicitor General to apprise us as to whether any steps have been taken in this regard. The learned Additional Solicitor General submits that subsequent to the said Act, the Parliament has enacted the Tribunals Reforms Act, 2021, which exhaustively contain the provisions relating to the appointment of the Chairperson and the Members of the Tribunal, be it Central or the State. The procedures and the modalities of the appointment have been succinctly incorporated in Section 3 thereof, which runs thus:

“3. Qualifications, appointment, etc., of Chairperson and Members of Tribunal -(1) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, the Central Government may, by notification in the Official Gazette, make rules to provide for the qualifications, appointment, salaries and allowances, resignation, removal and other conditions of service of the Chairperson and Member of a Tribunal after taking into consideration the experience, specialisation in the relevant field and the provisions of this Act:

Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member.

(2) The Chairperson and the Member of a Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee

constituted under sub-section (3), in such manner as the Central Government may, by rules, provide.

(3) The Search-cum-Selection Committee, except for the State Administrative Tribunal, shall consist of—

- (a) a Chairperson, who shall be the Chief Justice of India or a Judge of Supreme Court nominated by him;
- (b) two Members, who are Secretaries to the Government of India to be nominated by that Government;
- (c) one Member, who —
 - (i) in case of appointment of a Chairperson of a Tribunal, shall be the outgoing Chairperson of that Tribunal; or
 - (ii) in case of appointment of a Member of a Tribunal, shall be the sitting Chairperson of that Tribunal; or
 - (iii) in case of the Chairperson of the Tribunal seeking re-appointment, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court, to be nominated by the Chief Justice of India:

Provided that in the following cases, such Member shall always be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court, to be nominated by the Chief Justice of India, namely:—

- (i) Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947;
 - (ii) Debt Recovery Tribunal and Debt Recovery Appellate Tribunal established under the Recovery of Debts and Bankruptcy Act, 1993;
 - (iii) where the Chairperson or the outgoing Chairperson, as the case may be, of a Tribunal is not a retired Judge of the Supreme Court or a retired Chief Justice or Judge of a High Court; and
 - (iv) such other Tribunals as may be notified by the Central Government, in consultation with the Chairperson of the Search-cum-Selection Committee of that Tribunal; and
- (d) the Secretary to the Government of India in the Ministry or Department under which the Tribunal is constituted or established—Member-Secretary:

Provided that the Search-cum-Selection Committee for a State Administrative Tribunal shall consist of—

- (a) the Chief Justice of the High Court of the concerned State—Chairman;
- (b) the Chief Secretary of the concerned State Government—Member;
- (c) the Chairman of the Public Service Commission of the concerned State—Member;
- (d) one Member, who—
 - (i) in case of appointment of a Chairman of the Tribunal, shall be the outgoing Chairman of the Tribunal; or
 - (ii) in case of appointment of a Member of the Tribunal, shall be the sitting Chairman of the Tribunal; or
 - (iii) in case of the Chairman of the Tribunal seeking re-appointment, shall be a retired Judge of a High Court nominated by the Chief Justice of the High Court of the concerned State:

Provided that such Member shall always be a retired Judge of a High Court nominated by the Chief Justice of the High Court of the concerned State, if the Chairperson or the outgoing Chairperson of the State Administrative Tribunal, as the case may be, is not a retired Chief Justice or Judge of a High Court;

- (e) the Secretary or the Principal Secretary of the General Administrative Department of the concerned State—Member-Secretary.

(4) The Chairperson of the Search-cum-Selection Committee shall have the casting vote.

(5) The Member-Secretary of the Search-cum-Selection Committee shall not have any vote.

(6) The Search-cum-Selection Committee shall determine the procedure for making its recommendations.

(7) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, the Search-cum-Selection Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be, and the Central Government shall take a decision on the recommendations made by that Committee, preferably within three months from the date of such recommendation.

(8) No appointment shall be invalid merely by reason of any vacancy or absence of a Member in the Search-cum-Selection Committee.”

On the reading of the aforesaid provisions it is manifest that for appointment of the Chairperson and the other Members of the State Administrative Tribunal, the Search-cum-Selection Committee is set up and empowered to exercise the powers in this regard. The said Committee comprised of the Chief Justice of the High Court of the concerned State as Chairman, the Chief Secretary of the concerned State, the Chairman of the Public Service Commission of the concerned State and one Member in case of appointment of the Chairperson of the Tribunal, shall be the outgoing Chairman of the Tribunal. The Secretary or the Principal Secretary of the General Administrative Department of the concerned State shall act as Member Secretary of the said Committee. The Tribunals Reforms Act, 2021 is a later Act and promulgated for the purpose of appointment and conditions including the removal of the Chairperson or any Members and, therefore, such provision has to be implemented with full rigor.

Though we noticed the inconsistency and/or incongruity between the procedure for appointment of the Chairperson of the State Tribunal in the Administrative Tribunals Act, 1985 and the Tribunals Reforms Act, 2021, but both being the Special Act and the Act of Parliament, the later Act has been enacted for specific purposes and has to be given a primacy. The moment the later Act is enacted containing the specific provisions, which may sometimes be inconsistent or overrides the provisions of the earlier Act, the later Act would prevail, as the legislatures while enacting the said statute was conscious of those provisions and decided to incorporate such provisions in the later Act.

Even the report of the Registrar General would indicate that the Search-cum-Selection Committee was, in fact, set up and a meeting was held, but there is no positive results, which could emerge from the said meeting. Apart from the single meeting, there is no improvement or progress, which we can see, but we cannot overlook the fact that the State Administrative Tribunal is rendered inoperative, non-functional and exists merely without rendering any services to the stake holders.

The country has envisioned and propelled the motto that the justice must be accessible to every citizens of the country at the doorstep. Such being the spirit and the ethos of the responsible Government, it is unexpected that the system is put at halt or remains in existence without rendering justice to the citizenry. Keeping the infrastructure without utilization of the potential thereof is mere farcical and the recipient of such services are denied, although the framers of the Constitution were conscious about such right and the protection of the right of the citizens of the country through an institutional system was the hallmark thereof.

The aforesaid expressions can be fructified with the incorporation of Articles 323A and 323B of the Constitution to ease out the burden from the Courts and establishing specialized Tribunals for specified cases to secure speedy justice. We would not have made certain observations had we not received slue of litigation at the behest of the litigants claiming that their matters being postponed and/or adjourned without any reasons being recorded therein, which ultimately has an resultant effect, creating a heap of the pending litigation and if we are not wrong, may tantamount to denial of justice.

We find that the Principal Secretary to the Government of West Bengal activated the process of Search-cum-Selection Committee, but thereafter no further progress has been made nor any letter has been

caused for scheduling the meeting of the said Committee to take a decision for filling up the vacant post. We, therefore, direct the Finance Secretary to the Government of West Bengal to schedule a meeting of the Search-Cum-Selection Committee so that an appropriate decision may be taken to find out the name of the suitable person fit for the appointment of the Chairperson or the other Members of the Tribunal.

It goes without saying that the moment the name of the person or persons suitable for the post of the Chairperson or Member is available, the appointing authority shall not unnecessarily delay but will take a prompt action in this regard.

The learned Additional Solicitor General has also assured this Court that all actions would be taken under the said Act without any unnecessary delay.

So long the Chairperson is not appointed, the Single Bench of the Tribunal in terms of the order issued by the outgoing Chairperson shall continue to hear the matter and in the event, it is found that the nature of the case requires consideration by a Division Bench, shall record the reasons in this regard and shall not mechanically postpone the same.

We appreciate the fairness in the stand of the learned Additional Solicitor General and the learned Additional Government Pleader in resolving the impasse, as noted herein above.

With these observations, the writ petition is disposed of.

There shall, however, no order as to costs.

ab

(Harish Tandon,J.)

(Prasenjit Biswas, J.)

