

15.03.2023

*Sl.No. 3
Ct.No.7
Amalranjan*

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

WPA 17911 of 2021

With

CAN/1/2022

With

CAN/2/2023

Anibash Barman and anr.

Vs.

The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, ld. Sr. Adv.

Mr. Samim Ahammed

Ms. Saloni Bhattacharya

Mr. Aniruddh singh

Ms. Gulsanwara Pervin

... for the petitioners

Mr. Amitesh Banerjee, ld. Sr. Adv.

Mr. Soumitra Mukherjee

Mr. Sayan Ganguly

...for the State

The writ petitioners have prayed for issuance of a writ in the nature of mandamus commanding the respondent authorities to regularise their services to the post of Constables in Kolkata police with effect from their date of initial appointment along with other consequential benefits.

The petitioners are Ex-servicemen. They claimed to have participated in the selection process conducted by the Kolkata Police Recruitment Board sometimes in the year 2011. The petitioners were declared fit and were duly

appointed in the sanctioned post of constables but on contractual basis.

The petitioners claimed that they were appointed through a selection process and have been appointed against the existing vacancies in the post of constables of Kolkata police.

Mr. Bhattacharya, learned senior counsel assisted by Mr. Ahammed, learned advocate refers to the notification dated February 13, 2012 to impress upon this court that the selection process was conducted for filling up vacancies of the post of constables in Kolkata police from Ex-servicemen on contractual basis for a period of one year against the existing vacancies.

Mr. Banerjee, learned senior counsel assisted by Mr. Mukherjee, learned advocate representing the State raises a preliminary objection against the entertainability of this writ petition in view of Section 15 of the West Bengal Administrative Tribunal Act, 1985.

He contends that the issues raised in this writ petition concerns recruitment to the civil posts and therefore, West Bengal Administrative Tribunal and not this court shall have the jurisdiction to decide the issues raised in the writ petition. He refers to the affidavit-in-

opposition of the State in support of his contention on the issue of jurisdiction of this court to decide this writ petition.

Mr. Bhattacharya, learned senior counsel submits that the issue as to the jurisdiction is to be decided before deciding the other issues in the writ petition. Because the petitioners might face a difficulty once they approach before the Tribunal, as the State might raise an objection as to the maintainability of the proposed application before the Tribunal. For the purpose of deciding whether this court shall entertain and try this writ petition it would be relevant to take note of Section 15 of the West Bengal Administrative Tribunals Act, 1985 and the same is extracted hereinbelow:

15. Jurisdiction, powers and authority of State Administrative Tribunals. *-(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to ,-*

a. recruitment, and matters concerning recruitment, to any civil service of the

State or to any Civil Post under the State;

- b. all service matters concerning a person (not being a person referred to in clause (a) of this sub-section or a member, a person or civilian referred to in clause (b) of sub-section (1) of section 14) appointed to any civil service of the State or any civil post under the State and pertaining to the Service of such person in connection with the affairs of the State or any local or other authority under the control of the State government or of any corporation (or society) owned or controlled by the State Government;*
- c. all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation (or society) or other body as is controlled or owned by the State government, at the disposal of the State Government for such appointment.”*

Upon a reading of Clause (a) of Section 15(1) it appears that the Administrative Tribunal in a State shall exercise on and from the appointed day of the jurisdiction powers of the authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to recruitment and matters concerning recruitment to any civil service of the State or to any civil post under the State.

Upon going through the averments made in this writ petition, this Court finds that the petitioners have not challenged the selection process pursuant to which they were appointed on contractual basis. The petitioners have claimed that since advertisements were issued for filling up the posts in question after obtaining approval and the petitioners participated in the selection process and also appeared before the medical board and were appointed against sanctioned posts after being declared fit and also that the nature of the job is perennial in nature, petitioners have prayed for regularisation of their services.

The petitioners, in the considered view of this Court, have laid their claim to the post of constable of Kolkata Police by virtue of being appointed against existing vacancies in the post

of constables. That the post of Constable is a “Civil Post” has, however, not been disputed by the learned Counsel representing the petitioners. The principal relief claimed by the petitioners if allowed, would in effect amount to the petitioners to be the holder of civil posts and therefore the claim made by the petitioners shall undoubtedly fall within the expression “recruitment and matters concerning recruitment to any Civil Post under the State”.

This Court, therefore, holds that in view of Section 15(1)(a) of the 1985 Act, the West Bengal Administrative Tribunal shall have jurisdiction to entertain, try and decide the claim of the petitioners. The jurisdiction of the High Court to decide the matter falling within the jurisdiction of the Tribunal has been excluded by Section 28 of the Act. 1985 Act also provides for transfer of suit or other proceedings pending before any Court or authorities in respect of matters falling within the jurisdiction of the Tribunal to the Tribunal.

In view thereof this court is not inclined to decide the issues raised in this writ petition as the same falls within the jurisdiction of the West Bengal Administrative Tribunal.

At this juncture, Mr. Ahmmed, learned advocate for the petitioners, prays for leave to withdraw this writ petition with liberty to file an appropriate application before the West Bengal Administrative Tribunal.

Such prayer is, however, not opposed by Mr. Mukherjee, learned advocate representing the State.

In view thereof, this writ petition is dismissed as withdrawn with liberty to the petitioners to file a fresh petition before the proper forum in accordance with law on the self-same cause of action.

It is, however, made clear that other issues including the question of maintainability of the writ petition on other grounds excepting the one decided by this court hereinbefore are all left open to be decided by such forum if an approach is made in accordance with law.

There will be, however, no order as to costs.

(Hiranmay Bhattacharyya,J.)