

**IN THE HIGH COURT AT CALCUTTA**

**(Civil Appellate Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Subrata Talukdar**

**And**

**The Hon'ble Justice Supratim Bhattacharya**

**FMA 120 of 2022**

**With**

**CAN 1 of 2021**

**CAN 2 of 2022**

**West Bengal College Service Commission & Ors.**

**-Vs**

**Md. Azfar Mondal & Ors.**

**with**

**FMA 121 of 2022**

**With**

**CAN 1 of 2021**

**CAN 2 of 2022**

**West Bengal College Service Commission & Ors.**

**-Vs.**

**Rentu Biswas & Ors.**

For the Appellants

: Mr. Kishore Dutta

Mr. Subhrangsu Panda

Ms. Ina Bhattacharyya

Ms. Mithu Singha  
 Mr. Debottam Das  
 For the Respondent/ : Mr. Biswaroop Biswas  
 Writ petitioner  
 For the respondent : Mr. Monish Sen  
 nos. 2 & 3 Ms. Oisani Mukherjee  
 For the respondent : Md. Sarwar Jahan  
 nos. 6 & 8 Mr. Shahzad Noor Thander  
 Mr. Asif Mehdi  
 For the UGC : Mr. Anil Kumar Gupta  
 Heard On : 31.03.2023  
 Judgement Delivered On : 28.06.2023

**Supratim Bhattacharya, J.:-**

- 1.** The instant appeals have been preferred against the common Judgement and Order dated 15.09.2021 passed by a Hon'ble Single Bench in WPA No. 5970 of 2021 and WPA 9231 of 2021.
- 2.** Both the appeals have been taken up together for analogous consideration.
- 3.** Through the impugned Judgement the Hon'ble Single Bench has directed the West Bengal College Service Commission (hereinafter referred to as the Commission) to verify about the existence of the 2 vacancies and if the vacancies are indeed available, conduct re-counselling from the empanelled candidates for filling up the said posts, notwithstanding the

fact that the validity of the panel expired in the meantime, as the writ petition was filed when the panel was valid.

4. The appellants, respondents no. 2 to 7 and the proforma respondents herein were the respondents in the said writ petitions and the respondents no.1 in both the appeals being FMA 120 of 2022 and FMA 121 of 2022 were the writ petitioners in the writ petition.
5. The fact of the instant *lis* is that pursuant to an advertisement being no. 1 of 2018 dated 16.07.2018 issued by the Commission inviting applications from eligible candidates for the post of Assistant Professor in different State aided Degree Colleges in accordance with the West Bengal College Service Commission (Manner of Selection of Persons for Appointment to the post of Assistant Professor, Principals and Librarians and Re-recommendation of Assistant Professor) Regulations, 2012.

The writ petitioners belonging to the OBC-A category participated in the recruitment process for being appointed as Assistant Professor in Geography. Notice for interview was published on 16.07.2018 and interview took place on 07.08.2019. Ultimately on 06.03.2020 a merit panel was published. The respondents/writ petitioners namely, Rentu Biswas, secured the 12<sup>th</sup> position while Md. Azfar Mondal stood 13<sup>th</sup> in the said panel. As 11 posts were vacant so the said respondents/writ petitioners were not called for counselling.

The writ petitioners/respondents have filed writ petitions stating that the candidate whose name appeared as 2<sup>nd</sup> in rank under the OBC-

A category namely, Md. Akhtar Hasinur Rahman, who was appointed and joined the Maharajadhiraj Womens College, Burdwan has expired during the first week of February 2021. As a result the said post fell vacant during the existence of the said panel.

The respondents/writ petitioners have further stated that Surendrenath College for Women has also sent requisition for filling up the vacant post under the OBC-A category but the same was not filled up initially and thereafter the said vacancy has been filled up by way of transfer of a candidate from Rabindra Mahavidyalaya, as a consequence of which vacancy cropped up in the Rabindra Mahavidyalaya.

The respondents/writ petitioners have alleged that they are entitled to be recommended in either of the two vacancies both of which arose during the validity of the panel. Their prayer being rejected the writ petitioners preferred the aforementioned writ petitions, wherein the impugned order has been passed by the Hon'ble Single Bench.

- 6.** The Ld. Counsel appearing on behalf of the respondents/writ petitioners submitted that the writ petitioners have been compelled to approach the Court as because in spite of repeated requests made by them the Commission has not paid heed to their contentions. The Ld. Counsel has further submitted that the vacancies in the aforementioned two colleges in respect of which the respondents/ writ petitioners have sought for appointment have taken place during the validity of the panel

and not beyond the validity of the panel. The Ld. Counsel has further submitted that the Commission ought to have directed re-counselling for filling up the said posts but they have not done so which has compelled the writ petitioners to approach the Hon'ble Court.

- 7.** The Ld. Counsel appearing on behalf of the Commission has submitted that out of the 20 empanelled candidates in the OBC-A category, 11 candidates were recommended all of whom were above the writ petitioners in rank. The Ld. Counsel has further submitted that there is no vacancy in the post of Assistant Professor in Geography OBC-A category in the Maharajadhiraj Udaychand Womens College Burdwan as the college has not reported about the death of the newly appointed Assistant Professor. He has further submitted that as regards vacancy in the Surendranath College for Women the same could not be filled up as recommendation for transfer was issued by the Higher Education Department on 05.02.2021. The transfer order has been made from the Rabindra Mahavidyalaya to Surendranath College for Women, thus creating vacancy in the Rabindra Mahavidyalaya.

He has further submitted that the requisition submitted by Rabindra Mahavidyalaya on 26.03.2021 shall be guided by the advertisement No. 1 of 2020 which was published long before the vacancy reported in Rabindra Mahavidyalaya and as the writ petitioners are empanelled under advertisement No. 1 of 2018 accordingly their names cannot be recommended in respect of the vacancy which arose in

Rabindra Mahavidyalaya. He has further submitted that the death of the said Professor has not been reported either from the family members of the Professor or from the police as such in the absence of valid documents of death vacancy for the said post cannot be declared. Ld. Counsel has further submitted that the respondents/writ petitioner are merely empanelled candidates and they do not have any vested right of appointment and as and when their names will be recommended by the Commission their right to get the job will accrue and prior to that the writ petitioners are not entitled to a writ of *mandamus* commanding the authorities for issuance of letters of recommendation in their favour. Banking upon the facts and circumstance the Ld. Counsel appearing on behalf of the Commission has prayed for allowing the appeal.

**8.** Thus, the moot point for consideration is as to whether the prayer for appointing the writ petitioners in the two aforementioned posts which have felt vacant later on in the aforesaid two colleges is at all tenable or not.

**9.** It is fact that the panel in question expired on 29.03.2021. It is also fact that the respondents/writ petitioners are ranked 12<sup>th</sup> and 13<sup>th</sup> respectively in the panel and the candidates holding the ranks up to serial No.11 had been recommended for appointment.

The submission of the College that the death of the said Professor is not within their knowledge is not at all convincing. The said College has

admitted that there is vacancy and the said vacancy arose within the period of validity of the panel.

The transfer of the Professor from Rabindra Mahavidyalaya to 'Surendranath College for Women is admitted to have been issued during the validity period of the panel.

In this context the Hon'ble Single Bench dealt with a judgement passed by this Court in the case between *Nirvik Banerjee – vs. University of Burdwan* which has been published in *2014 3 CLJ (Cal 411)*. In the said judgement it was considered as to whether the vacancies arising subsequent to the issue of advertisement or preparation of the panel can be filled up from the same panel or not and the Court was of the opinion that vacancies arising during the lifetime of the panel would be capable of being filled up from the said panel and has further opined that the claim of the candidates cannot be rejected only on the ground that merely on the basis of being empanelled the candidates have acquired no vested legal right to seek appointment from the panel.

From the facts and circumstances it reveals that the causes of action arose during the validity of the panel that is the vacancy of the posts arose during the validity of the panel as such the respondents/writ petitioners are entitled to be considered for the vacant post.

In such circumstance the Commission is directed to verify the existence of the two vacancies and after verification to take necessary steps in respect of the empanelled candidates for filling up the said posts.

**FMA 120 of 2022 with CAN 1 of 2021 with CAN 2 of 2022 with FMA 121 of 2022 with CAN 1 of 2021 with CAN 2 of 2022 stands accordingly dismissed.**

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**I Agree.**

**(Subrata Talukdar, J.)**

**(Supratim Bhattacharya, J.)**