

04 10.05.2023
rkd Ct.15

W.P.A. 18666 of 2017

Kah-Kashan Tabassum

-vs-

The State of West Bengal & Ors.

Mr. Kaushik Chandra Gupta,
Mr. K. M. Hossain

....for the petitioner.

Mr. Supriyo Chattopadhyay,
Mr. Sabyasachi Mondal

....for the State.

Dr. Sutanu Kumar Patra,
Ms. Supriya Dubey

....for the SSC.

The writ petition is presented, *inter alia*, challenging the decision of the Chairman, West Bengal Central School Service Commission dated 2nd January, 2017 whereby prayer of the petitioner to be appointed in the post of Assistant Teacher in Urdu (Pass) based on participation of the petitioner in Regional Level Selection Test, 1998 has been spurned.

While refusing to accept the contention of the petitioner the Chairman of the Commission took the point of expiry of the panel upon indicating the relevant facts that the panel in question which was prepared for appointment in the post of Assistant Teacher in Urdu (Pass) was published on 14th December, 1999 and subsequently the said panel

was extended. However, it has been specifically stated in the impugned order dated 2nd January, 2017 that the life time of the said panel even after the extension expired on 13th December, 2001. Petitioner filed the first writ petition on 19th August, 2005.

The learned advocate representing the petitioner submits that the first writ petition being WPA 6030 of 2006 was disposed of by a coordinate Bench vide order dated 17th November, 2016 thereby directing the Chairman of the West Bengal Central School Service Commission to take decision on the right of the petitioner to be recommended for the post of Assistant Teacher in Urdu under pass category being 3rd empanelled candidate in the panel in question. However, vide order dated 2nd January, 2017 the Chairman has negated the contention of the petitioner,

While questioning the decision of the Chairman of the Commission attention of this Court has been drawn to an order passed by a coordinate Bench on a writ petition being WPA 8545 of 2009 wherein the coordinate Bench directed the concerned authority of the Commission to recommend the name of the petitioner in that writ petition. Petitioner prays for similar order in the

present writ petition.

In addition thereto while answering the query of this Court relating to right of the empanelled candidate to be considered by the recommending authority after expiry of the panel reliance has been placed on judgment of the Apex Court, reported in **(1999) Vol.6 SCC 49 (Purushottam -vs- Chairman M.S.E.B. & Anr.)** and a judgement of the Hon'ble Division Bench of Patna High Court dated 15th July, 2019 passed in **(Arghananad Sharma -vs- The Magadh University, Bodh Gaya through its Registrar).** Upon placing reliance on aforesaid two judgments the learned advocate for the petitioner submits that since at the material point of time vacancies were not reported by the State respondents to the Commission there is no bar in recommending the petitioner being the 3rd empanelled candidate even after expiry of the extended life of the panel in question.

Dr. Patra, learned advocate is representing the Commission being the principal respondents who has filed affidavit-in-opposition to this writ petition and has made submission placing reliance on the statements made in affidavit affirmed on behalf of the Commission to defend the decision of

the Chairman dated 2nd January, 2017 on the score that life of the panel expired on 13th December, 2001 whereas the first writ petition was filed by the petitioner on 19th August, 2005 when the second empanelled candidates was recommended by the Commission on 3rd June, 2005 pursuant to the order passed by the High Court in WPA 18937 of 2000 and the contempt application being CPAN 1484 of 2001. According to the Commission the right of the petitioner cannot be appreciated at the belated stage since petitioner became wiser and approached this Court with the first writ petition after the recommendation was made in favour of the second empanelled candidate on 3rd June, 2005 and as such it has been specifically contended that petitioner being the fence sitter is not entitled to get relief as claimed in this writ petition.

Having considered the submissions made on behalf of the respective parties, this Court does not find any satisfactory answer from the learned advocate representing the petitioner regarding the delay made in approaching this Court with the first writ petition being WPA 6030 of 2006 seeking appointment being the 3rd empanelled candidate. Indisputably the panel in question expired on 13th December, 2001 therefore after expiry of the panel

right of the petitioner to be considered as an empanelled candidate for being recommended for the post of Assistant Teacher in Urdu (Pass) does not survive. In this regard reliance is placed the judgment of the Apex Court, reported in **(2009), Vol.2 SCC 706 (Girdhar Kumar Dadhich & Anr. – vs- State of Rajasthan & Ors.)**; in paragraph 17 the Apex Court has also considered the judgment reported in **(2007) Vol.8 SCC 161 (State of Rajasthan –vs- Jagdish Chopra)** wherein it has been succinctly held the candidate does not have any legal right to be appointed since the life of the panel remains valid for a one year as it is known to the candidate. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel.

However, reliance has been placed on **Purushottam (supra)** on behalf of the petitioner in order to assert that even after expiry of the panel right of the empanelled candidate to be considered does survive. However, on perusal on paragraph 4 of **Purushottam (supra)** it appears in spite of being selected the candidate could not be given appointment in view of adverse decision taken by the Caste Scrutiny Committee and when the decision of the High Court reached finality the life of

the panel expired.

In this backdrop of facts, the Apex Court decided the issue in favour of the empanelled candidate.

In the judgment of the Hon'ble Division Bench of Patna High Court dated 15th July, 2019 the fact situation was also completely different. It appears from paragraph 29 that in spite of being recommended the Governing Body of the College on adopting the resolution dated 25th February, 2003 did not permit the recommended candidate to join the post. It was found by the Hon'ble Division Bench that the resolution of the Governing Body was clearly in the teeth of the statutory provisions where the Governing Body for no valid reason can prevent joining of a permanently selected principal.

The order of the coordinate Bench passed on the writ petition being WPA 8545 of 2009 as relied upon by the petitioner is also passed on a different premise. It was found by the coordinate Bench that a candidate who was junior to the petitioner in merit list was appointed as an Assistant Teacher and having found such steps taken by the respondent authorities necessary direction was passed while disposing of the said writ petition.

None of the judgments/orders relied upon by the petitioner comes in aid of the petitioner in view of the discussion made hereinabove. It is well settled that judgment is an authority on what Court decides and not what can be logically deduced therefrom.

In the present case submissions have been made on behalf of the Commission that the steps were taken by the petitioner by filing the first writ petition being WPA 6030 of 2006 is afterthought and the said writ petition might have been filed having seen the recommendation made in favour of the second empanelled candidate. But fact remains the second empanelled candidate approached the Court with the writ petition within the life time of the panel and the Commission recommended the second empanelled candidate for the post of Assistant Teacher in Urdu (Pass) in terms of the order passed on the writ petition being WPA 18937 of 2000 and the contempt application being CPAN 1484 of 2001. So far the present petitioner is concerned situation is completely different who has approached the Court much after expiry of the panel in question on 13th December, 2001.

In view of expiry of the panel before filing of the first writ petition by the petitioner, no relief can

be granted. Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)