

**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 115 of 2023

**ANIRBAN ROY CHOWDHURI & ORS.
VS.
THE STATE OF WEST BENGAL & ORS.**

For the Petitioners: Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Sudipta Dasgupta,
Mr. Bikram Banerjee,
Mr. Saikat Sutradhar,
Mr. Sagar Dey, Advocates

For the State : Mr. Tapan Kumar Mukherjee, AGP
Mr. Arjun Roy Mukherjee,
Mr. Somnath Naskar, Advocates

Heard & Judgment on : August 21, 2023

DEBANGSU BASAK, J.

1. The writ petition is directed against an order dated August 7, 2023 passed by the West Bengal Administrative Tribunal in OA 206 of 2023.

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2. Petitioners before us, participated in the selection process for the post of Excise Constables (including Lady Excise Constables) initiated by an advertisement dated March 10, 2019.

3. Petitioners approached the Tribunal seeking direction upon the authorities to grant them appointment to the 160 vacancies that arose in the recruitment process.

4. The writ petition was initially moved before this Court on August 18, 2023. Urgency was pleaded. It was contended that, since the panel expired on August 17, 2023, immediate intervention of the Court was required.

5. On perusal of the impugned order, we find that the Tribunal was yet to dispose of the Original Application finally.

6. We requested the learned advocates for the parties as to whether, it would be convenient for the parties if we hear and dispose of the original application on merits. The parties agreed that the High Court should hear and dispose of the original application on merits.

7. In such context, the parties were invited to address the Court on merits of the original application.

8. Learned senior advocate appearing for the writ petitioners submits that, the writ petitioners were entitled to be considered in the selection process. He relies upon **(2001) 4 SCC 289 [Vijay Kumar Sharma & Ors. vs. Chairman, School Service Commission & Ors.]** and an unreported decision of the Hon'ble Supreme Court passed in **Civil Appeal Nos. 8822-8823 of 2022 [State of Uttar Pradesh vs. Karunesh Kumar & Ors.]**, in support of his contention that, the authorities were required to go down in the merit list so as to accommodate all the persons in the merit list towards the declared vacancies.

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9. Learned senior advocate for the petitioners submits that, in the present case, the declared vacancy was 3,000. The authorities admittedly did not fill up the entirety of the 3,000 declared vacancies. The authorities filled up about 2,700 vacancies. A balance of 300 vacancy remained out of the declared vacancies. The authorities were, therefore, obliged to take into consideration the persons who were in the merit list subsequent to 3,000 so as to ensure that the 300 vacancies which were still available, were filled up from such merit list. The authorities not doing so, their actions were arbitrary, discriminatory and violative of the rights of fair treatment of the petitioners. He, therefore, seeks a direction that the authorities be directed to fill up the entire 300 vacancies or at least the petitioners from out of the existing vacancies.

10. Learned senior advocate appearing for the petitioners, referring to page 160 of the writ petition being a notice issued by the West Bengal Police Recruitment Board in its website, submits that, a person in the select list was subsequently substituted and, therefore, considering the petitioners as successful candidates in the selection process, they should be given appointments.

11. Learned senior advocate appearing for the State submits that, 3,000 vacancies were declared in the selection process. He refers to the notification dated January 21, 2019 and submits that, such notification governs the selection process in the instant case. He refers to paragraph 7 of such notification and submits that, Rule (5) of the existing Rules was substituted. He submits that, in terms of the substituted Rule (5), the authorities, prepared a select list of 3,000 candidates. The marks obtained by the last candidate in the select list of 3,000 numbers was taken as the last mark for the qualification. No other person below such mark was

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included in the select list. Initially a select list of 3,000 candidates was published on August 8, 2022. Thereafter, the select list was modified on September 8, 2022.

12. Learned senior advocate appearing for the State relies upon **(2010) 6 SCC 777 [State of Orissa & Anr. Vs. Rajkishore Nanda & Ors.]** and submits that, a selection list cannot be treated as reservoir for the purpose of appointment. He submits that vacancy not filled up in the selection process will be considered in the vacancy available in the next selection process. Since the petitioners did not feature in the select list prepared in the selection process, therefore, their candidature for appointment cannot be considered in the present selection process.

13. We are concerned with a selection process initiated by the West Bengal Police Recruitment Board by the advertisement published in its website. The petitioners participated in the selection process without any demur. The petitioners did not feature in the select list of candidates on August 8, 2022 or in the revised list of September 8, 2022.

14. The petitioners, thereafter, approached the Tribunal in 2023 seeking a direction that they should be given the appointment.

15. The recruitment process is governed by the notification dated January 21, 2019 that substitutes Rule (5) of the recruitment process. The relevant portion of the Rule (5) is as follows :-

(5) Preparation of Merit List, verification of Testimonials and Character Antecedents, Medical Examination etc.:

(i) Merit list : the final merit list of previously selected candidates shall be prepared on the basis of the total marks obtained in the Final Written Test and Interview. WBPRB shall have the discretion to fix qualifying marks in

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Preliminary Written Test & Final Written Test.... ..
.....”

16. West Bengal Police Recruitment Board exercised discretion in the present selection process in preparing a select list of 3,000 candidates for the 3,000 declared vacancies. The list of selected candidates was initially published on August 8, 2022 and, thereafter, revised on September 8, 2022. None of the petitioners featured in either in the select list published on August 8, 2022 or on the next revised select list on September 8, 2022.

17. West Bengal Police Recruitment Board in their wisdom, took a number obtained by the last candidate in the select list as the cut off number for the purpose of consideration of the candidature of a person in the selection process.

18. Nothing is placed on record to suggest that such an action of the West Bengal Police Recruitment Board is *de hors* the published recruitment Rules or in violation of Rule (5) as quoted above. Rather, the stand taken by the West Bengal Police Recruitment Board is in consonance with such Rule.

19. Vijay Kumar Sharma (supra) in the facts of that case, found that there were vacancies available and that, the vacancies can be filled up from the existing panel. Here a select list of 3,000 candidates for the 3,000 vacancies declared was published.

20. Rajkishore Nanda (supra) is of the view that a select list cannot be treated as reservoir for the purpose of appointment, and that vacancies can be filled up taking the names from that list as and when it is so required. It notes that it is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court belatedly. If the

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selection process is over, select list expired and appointments made, no relief can be granted by the Court at a belated stage. As noted above, the last select list was published on September 8, 2022. The Original Application filed before the Tribunal was in 2023.

21. Karunesh Kumar (supra) which the writ petitioners rely upon, is also of the same view with regard to the select list. It notes that, no vested right of the unsuccessful candidate arises to insist upon their consideration, in the absence of any such rule requiring for the preparation of a waiting-list.

22. In the facts of the present case, attention of the Court was not drawn to any Rule governing the selection process requiring the preparation of a wait-list. In fact, the writ petitioners accepted by their conduct that no wait-list was required to be published in the facts and circumstances of the present case. A select list was published on August 8, 2022 and a revision thereof on September 8, 2022 without a wait-list being published. The writ petitioners did not agitate their grievances at that point of time also.

23. In such circumstances, we find no merit in the present writ petition.

24. WPST 115 of 2023 along with **OA 206 of 2023** are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

25. I Agree

(Md. Shabbar Rashidi, J.)