

64, 68 &
69
27.06.2023
KAUSHIK

**WP.ST 274 of 2011
(CAN 1 of 2021)**

Ranabir Patra & Ors.
Vs.
The State of West Bengal & Ors.

With

**WP.ST 62 of 2013
(CAN 4 of 2021)**

Aksar Ali
Vs.
The State of West Bengal & Ors.

With

**WP.ST 86 of 2015
CAN 1 of 2015 (Old CAN 2965 of 2015)
CAN 2 of 2021**

Netai Purkait
Vs.
The State of West Bengal & Ors.

Mr. Subir Sanyal
Mr. Sutirtha Das
Mr. G.S. Kadery
Mr. Sankha Ghosh

... for the petitioners

Mr. Kumar Jyoti Tewari
Mr. Debnath Mahata

... for the respondent nos. 6 to 86
(Except respondent nos. 16, 18, 23, 24,
34, 36, 37, 41, 42, 45 to 53, 55 to 64,
66, 68, 69, 71, 77, 80, 82, 83, 85)

Mr. Kumar Jyoti Tewari
Mr. Debnath Mahata

... for the respondent nos. 41, 48 to 51, 56,
57, 59, 60, 66.

Mr. Anirban Ray, learned Government Pleader
Mr. Biswabrata Basu Mallick
Mr. Sayan Ganguly
... for the State

Affidavits filed in Court be taken on record.

Three writ petitions are taken up for consideration analogously as they emanate out of the same order of the West Bengal Administrative Tribunal dated January 3, 2012.

Learned advocate appearing for the writ petitioners submits that, police undertook a selection process through an advertisement dated January 14, 2009 of a specified declared vacancy. The vacancies were in respect of Kolkata Police. Writ petitioners participated in such selection process. Writ petitioners appeared in the interview held on July 9, 2009. A panel was prepared in respect of the selection process, which was published on August 14, 2009. Writ petitioners found place in such selection process.

Learned advocate appearing for the writ petitioners submits that, subsequent to the preparation of the panel, police department appointed persons not only towards

filling up of the declared vacancies but also took persons from the panel so prepared for the purpose of appointment to West Bengal Police. The initial advertisement of the selection process did not include West Bengal Police. This the police department did in many tranches. Therefore, the writ petitioners should not be denied the same facility to be considered to the post of constable from out of the panel prepared pursuant to the advertisement dated January 14, 2009.

Learned advocate appearing for the writ petitioners submits that, appointment from out of the panel received judicial scrutiny both by the learned Tribunal as also by the High Court in public interest litigation. Save and except one of the Division Bench of this Hon'ble Court which held that, appointments given out of the panel were illegal, other judicial pronouncement did not find fault with the appointments given out of the panel. He submits that, such a situation prevails today also. Even today, police department requires constables. The writ petitioners should be considered for appointment in such vacancies.

Learned advocate appearing for the writ petitioners points out that, panel presently subsisting are out

of employment. There exist sufficient number of vacancies in the police department at the same post to accommodate all the writ petitioners. He, therefore, seeks direction upon the police department to grant appointment to the writ petitioners.

State is represented.

As noted above, police department issued an advertisement dated January 14, 2009 for the purpose of filling up declared vacancies of Kolkata Police. The writ petitioners participated in such selection process. The declared vacancies by such advertisement was 1247 constables. A panel was prepared. Out of the panel, initially, the first 1247 selected candidates were given appointment. Out of 1247 candidates given the appointment, 30 candidates did not join. The next 30 selected panelist were given the appointment according to merit.

Subsequently, government took further decision to recruit 1200 constables and 3100 constables in the West Bengal Police from the remaining panelist. Accordingly, the second phase of appointment were given from the panel itself.

Apparently, the police department did not exhaust the entire panel. In fact, the second trunch of recruitment,

which they proposed to undertake from out of the existing panel, the entirety of the vacancy declared in the second round of advertisement was not filled up from out of the panel prepared.

Questioning such action of the police department, at least four original applications were filed before the West Bengal Administrative Tribunal, which were disposed of by a common order dated April 20, 2010.

By such order, the learned Tribunal directed that the validity of the panel will remain for a period of one year from the date of communication of the order dated April 20, 2010.

There is nothing on record to suggest that, any appeal was carried against the order dated April 20, 2010 or the validity of the panel as fixed by the learned Tribunal in its order dated April 20, 2010 was extended by a judicial pronouncement. The parties to the pronouncement, therefore, are bound by the order dated April 20, 2010 passed by the learned Tribunal.

There may or may not be instances of the State acting in derogation of the order dated April 20, 2010 passed by the learned Tribunal and appointing persons from out of

the panel beyond the period of one year fixed by such order. That action of the State, does not imbibe or infuse any legal right in favour of any of the writ petitioners to claim that they should be considered for the purpose of appointment from out of the panel after the expiry of one year from the date fixed by the order dated April 20, 2010. Essentially, the writ petitioners seeking to enforce negative equality before a Writ Court.

In our view, the validity of the panel expired with the expiry of one year from the date of communication of the order dated April 20, 2010. As a panelist, no right in favour of the writ petitioners survive such date. In fact, the impugned order, permitting the State to consider the possibility of appointment of the writ petitioners from out of the panel towards future vacancies. In our view, such direction contained in the impugned order, is legally without foundational basis.

In such circumstances, such portion of the impugned order, which permits the State to consider the applicants for the purpose of giving appointment, is set aside.

We find no other infirmity in the impugned order.

WP.ST 274 of 2011, WP.ST 62 of 2013 and WP.ST

86 of 2015 along with all connected applications are disposed of without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)