

20.02.2025
(D/L-8)
Ct. No.4
(B.K.N.)

**W.P.S.T. 263 of 2013
With
CAN 3 of 2023**

**Palu Majumder & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Vinay Mishra,
Mr. Mukteswar Maity
...for the Petitioner

Mr. Susovan Sengupta,
Mr. Subir Pal
...for the State

In Re: CAN 3 of 2023

CAN 3 of 2023 is allowed without objection since the parties have agreed to proceed with the matter on merits.

In Re: W.P.S.T. 263 of 2013

1. The petitioners participated in an interview based selection process for appointment of Lift Man in the department. A panel thus came to be prepared. The petitioners found place at serial 11 to 16 of the 20 candidates whose merit list was published. The persons finding place at Serial No. 1 to 10 were recruited. The remaining 10 including these six petitioners, however, were not included. It is the petitioners' case that the panel had been kept alive for making further recruitment based on this merit list subject to availability of vacancies.

2. It is submitted by the learned counsel for the petitioner that by raising a factually incorrect plea regarding there being an embargo on further appointment and regarding there being no vacancies the petitioners were not being offered appointment. In the circumstance they approached the State Administrative Tribunal by filing O.A. 1364 of 2004 and five other Original Applications which were heard as analogous cases and disposed of by a common order on 13th May, 2010 by the West Bengal State Administrative Tribunal. The Tribunal was pleased to direct the authorities to appoint the petitioners subject to availability of vacancies. In spite of such direction the authorities have not offered appointment to the petitioners though the vacancies existed. In this connection he relies on one speaking order passed in compliance of an order passed by the State Administrative Tribunal in the case of some Sri Ashoke Prasad & 24 others Applicants in O.A. 187 of 2002. By referring to the same he submits that it is apparent from the speaking order dated 4th May, 2004 that there was no embargo and that vacancies existed against which the petitioners could have been considered and appointed. In spite thereof since they were not being considered petitioners were

compelled to approach the contempt jurisdiction of the Tribunal.

3. In the contempt proceedings the Secretary of the department concerned (Public Works Department) produced a compliance report dated 5th August, 2010. As per the compliance report the panel of twenty candidates referred to by the petitioners' counsel ceased to exist and, therefore, there was no scope for any further appointment from the panel prepared in the year 1998 (about ten years back).
4. The petitioners assailed this order before the State Administrative Tribunal. The O.A. 192 of 2011 and five other Original Applications filed by the present petitioners individually were taken up with consent to be considered and disposed of by a final order.
5. Having regard to the submissions advanced before the Tribunal, as noted above, the Tribunal thought it appropriate to requisition the departmental files so as to ascertain the veracity of the petitioners' claim. Upon going through the records the Tribunal has recorded a factual finding that in the month of December, 1996 names were requisitioned from the Director of the Employment Exchange in respect of ten declared vacancies of Lift Man in the department. It is for filling up these ten posts that the recruitment process, based on interview was initiated. The empanelment was thus made in order

of merit of twenty candidates wherein the petitioners' name figured after 10, that is from 11 to 16. The petitioners, therefore, were beyond the zone of consideration having regard to the number of vacancies for which the process of recruitment had been initiated. There was no question of any further recruitment being made contrary to and in excess of declared number of vacancies in the recruitment process in question.

6. The Tribunal also found from the records that the panel had been cancelled by an order passed by the authorities in the year 2010 itself. In view of such finding the Tribunal did not find the petitioners' claim for appointment to be sustainable and dismissed the Original Application filed by the petitioners.
7. We find no reason to interfere with the factual findings recorded by the Tribunal upon perusal of the departmental files that the recruitment process had been initiated for ten vacancies only. There is no document on record to show that the recruitment process have been initiated for the purpose of creating a panel from which recruitment was to be made even after ten persons were appointed from the panel.
8. In view of such circumstances we are not inclined to accept the petitioners' contention as it would

amount to allowing a panel created more than a decade back to remain as a perennial source of appointment therefrom, which cannot be countenanced.

9. In this case we consider it appropriate to take note of the settled legal position regarding the scope and intent of a waiting list or panel. The Apex Court in the case of ***State of Bihar and Others -Vs.- Amrendra Kumar Mishra*** reported in **(2006) 12 SCC 561** has taken note of the legal position in paragraph 12 of the judgment which reads as follows:

“12. Yet again in *Surinder Singh v. State of Punjab* this Court stated the law thus: (SCC p. 494, para 15)

“15. *Prem Singh* case was decided on the facts of that case and those facts do not hold good in the present case. In the case of *Gujarat State Dy. Executive Engineers' Assn.* this Court has explained the scope and intent of a waiting list and how it is to operate in service jurisprudence. It cannot be used as a perennial source of recruitment filling up the vacancies not advertised. The Court also did not approve the view of the High Court that since vacancies had not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed. Candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative.”

10. This Court is bound by the enunciation of law taken note of by the Apex Court and, therefore, is of the opinion that by virtue of the panel having

been cancelled in the year 2010 itself, the petitioners whose names were not figuring in the first ten candidates, could not claim any right to be considered, much less appointed, that also from a penal which was created more than a decade back.

11. The writ petition is accordingly dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)