

17-11-2023

ct no. 13

Sl. 2

sp

WPA 21973 of 2023

Annesha Ghosh & Ors.

-Versus-

The State of West Bengal & Ors.

Mr. Ashis Kumar Chowdhury,
Mr. Rajib Ghosh,
Mr. Babhru Bahan Bera

...for the petitioners

Mr. Tapan Kr. Mukherjee,
Mr. Pinaki Dhole,
Mr. Ritesh Kr. Ganguly

... for the State

Ms. Piyali Sengupta,
Mr. Victor Chatterjee

...for the PSC

1. The petitioners are aggrieved by a process of recruitment for the post of Supervisor under the Integrated Child Development Scheme (ICDS) under the Department of Women and Child Development and Social Welfare, Government of West Bengal. The recruitment notice was dated February 25, 2019.
2. In terms of the Scheme implemented in the State of West Bengal, 50% of the Supervisors are recruited through the Public Service Commission by the State and the said persons are entitled to pension and other retiral benefits. Therefore, they come within the expression 'Civil Post' under Articles 309, 310 and 311 of the Constitution of India.

3. The entire recruitment process is conducted by the State Public Service Commission constituted under Article 320 of the Constitution of India.
4. In that view of the matter, this Court is of the view that the objection as regards the maintainability of the writ petition raised by the learned Senior Counsel Mr. Mukherjee appearing on behalf of the State merits consideration.
5. Counsel for the petitioners would rely upon a decision of a Co-ordinate bench of this Court dated **September 19, 2023** in the case of ***Papiya Ghosal (Maity) & Ors. v. State of West Bengal & Ors.***, which had entertained and disposed of a similar writ petition in respect of the same selection process.
6. It appears to this Court that the objection as regards the maintainability was not urged or raised in the said writ petition.
7. Counsel for the petitioners would also rely upon a decision of a Division Bench of the Delhi High Court dated **May 27, 2011** in the case of ***Akhil Bhartiya Anganwadi Kamgar v. Union of India & Ors.*** in ***WP (C) No. 1158 of 1992***. It is argued that the Delhi High Court had entertained the writ petition of Anganwadi workers. The said

Anganwadi workers function under the aforesaid ICDS and hence the instant writ petition should also be entertained and must be deemed as maintainable before this Court under Article 226 of the Constitution of India.

8. This Court has carefully heard the arguments of the learned counsel for the petitioners as well as the State. The decision of the Delhi High Court was in the context of claims of Anganwadi workers and Anganwadi helpers. In the instant case, the petitioners are aggrieved by a recruitment process to the post of Supervisor. Admittedly the post in question is a 'Civil Post' to the extent that 50% of Supervisors recruited through the State Public Service Commission. The other 50% are engaged from NGOs through whom the ICDS scheme is implemented.
9. It is, therefore, clear that the posts of Supervisor which is subject matter of the instant case is a 'Civil Post', any grievance with regard to recruitment or any service dispute in connection with a civil post under the State must, therefore, be raised before the State Administrative Tribunal, i.e., in the instant case, the West Bengal State Administrative Tribunal. For availability of

effective efficacious and alternative remedy, the writ petition is not entertained.

10. This Court is also reminded paragraph 99 of the Supreme Court decision in the case of **L. Chandra Kumar vs. Union of India and others** reported in **(1997) 3 SCC 261**, where it is laid down that the parties aggrieved by any action of the State relating to any civil post should first approach the Tribunal specially constituted therefor and it is only thereafter that the High Court can be approached under Article 226 of the Constitution of India.
11. The petitioners may approach the West Bengal State Administrative Tribunal on the self-same cause of action.
12. Counsel for the petitioners submits that the West Bengal State Administrative Tribunal is not functional. There is only one non-judicial member. The judicial member's appointment is pending consideration before the High Court.
13. The State relies upon a decision dated **March 1, 2023** passed by a Division Bench of this Court in the case of **Jahangir Ali and others vs. The Chairman, West Bengal Police Recruitment Board and others** in **WP. ST 77 of 2022**. In the said

decision, the Division Bench has clarified that even a Single Bench member of the Tribunal can entertain and hear out an application under the Administrative Tribunals Act. It is only when the said Single Bench member is of the view that the matter is required to be heard by a Two-Judge bench of the Tribunal, that such matters are taken up by a Two-Judge bench.

14. Since there is one functional member at the WBSAT, in view of the dicta of the Supreme Court in the case of ***L. Chandra Kumar (supra)***, the petitioners may approach the Tribunal. In the event of any grievance against any order of the Tribunal, the petitioners may approach the appropriate determination of this High Court by way of a writ petition under Article 226 of the Constitution of India.
15. With the aforesaid observations, the writ petition shall stand disposed of with a direction to the WBSAT to hear out any application that may be filed by the petitioners, expeditiously and with urgency.
16. There shall be no order as to costs.

17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)