

**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 352 of 2012

Ashim Ghosh & Ors.
VS.
The State of West Bengal & Ors.

For the Writ Petitioner : Mr. Arup Kumar Lahiri,
Mr. Lakshmi Kanta Pal
Mr. Bandhu Brata Bhula

Hearing concluded on : 16.08.2023

Judgement on : 16.08.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated July 2, 2012 passed in O.A. 925 of 2010 by the West Bengal Administrative Tribunal.

2. By the impugned order, the learned Tribunal, did not accept the plea of the writ petitioners for treating their appointments with retrospective effect and granting them reliefs.

3. Learned advocate appearing for the writ petitioners submits that, the writ petitioners were wrongfully denied the appointment from a particular date. Writ petitioners participated in a selection process. The panel for the district of Malda, Uttar Dinajpur and Darjeeling were prepared and the selected candidates were sent for training. So far as the Birbhum district is concerned, where the petitioners participated, the panel was sought to be cancelled. A number of litigations followed. The panel was set aside by the learned Tribunal. Writ petitions were ultimately moved before the High Court. He submits that, the writ petitioners should be treated to be in employment from 1999. In support of such contentions, he relies upon **(2008) 2 SCC (L&S) 586 (Balwant Singh Narwal & Ors. Vs. State of Haryana & Ors.)** and **(2013) 11 SCC 618 (Kshiti Goswami & Ors. Vs. Subrata Kundu & Ors.)**.

4. None appears for the State despite notice.
5. The records of the case, demonstrates that, the writ petitioners were sponsored by the local employment exchange for selection for appointment to the post of 'fire operators' in the West Bengal Fire and Emergency Service, Birbhum District. Writ petitioners participated in such selection process. A panel was prepared. The writ petitioners were included in the panel of selected candidates for the district of Birbhum. Panels for the districts of Malda, Uttar Dinajpur and Darjeeling were also prepared. Candidates for the panel of the districts of Malda, Uttar Dinajpur and Darjeeling were sent for training in 1996.
6. Since the writ petitioners were not given any appointment, they approached before the learned Tribunal by way of an original application being O.A. 701 of 1997 seeking grant of appointment. Such original application was dismissed by the learned Tribunal.
7. Being aggrieved by the order dated August 28, 2001 of the learned Tribunal, dismissing O.A. 701 of 1997 the writ petitioners filed a writ petition being WP.ST 951 of 2001.

8. By an order dated September 22, 2003, the High Court was pleased to set aside the impugned order of the learned Tribunal. The High Court also cancelled the panel and directed the respondents to grant appointment to the petitioners from the panel prepared for the district of Birbhum.

9. The writ petitioners were given appointment as 'fire operators' in September 2004 without any notional benefits from 1999.

10. The writ petitioners, thereafter, filed an original application being O.A. 925 of 2010 seeking a mandate upon the authorities to grant notional service benefits to the petitioners from 1999.

11. By the impugned order dated July 2, 2012, the learned Tribunal was pleased to reject such claim. However, the learned Tribunal directed that the authorities may consider grant of notional benefits from the date of the order of the High Court being September 22, 2003.

12. Writ petitioners are seeking benefits for periods, for which they did not work. According to the writ petitioners,

they were wrongfully denied appointment and, therefore, they are entitled to notional benefits in respect of period in which, they were denied the employment.

13. As noted above, the Birbhum district panel in the selection process was cancelled. Cancellation of the panel was challenged before the learned Tribunal. Learned Tribunal negated such challenge. The High Court by the order dated September 22, 2003 set aside the order for cancellation of the panel and directed grant of employment. The High Court, did not direct that coupled with the grant of appointment, the petitioners would be entitled to notional benefits from the date when they participated in the selection process or from the date of the cancellation of the panel or from the date of preparation of the panel. In fact, the High Court took note of the fact that persons were appointed to the posts from the central panel for the Birbhum district and directed that the appointment from the central panel cannot be disturbed. The High Court, therefore, never intended that the writ petitioners would receive any notional benefits for a period anterior to their appointment.

14. All the writ petitioners were granted appointment in September 2004. For a period of six years they did not agitate their claim on account of notional benefits in their employment.

15. All the writ petitioners, apparently, worked for a period of time, which qualifies them to receive pensionary benefits. None of them are prejudiced to such extent. Moreover, they are bound by the order of the High Court.

16. In *Balwant Singh Narwal & Ors.* (supra), the factual situation was absolutely different. Portion of the panel was granted appointment while other candidates in the same panel were denied appointment. In such context, it was said that the writ petitioners before the Supreme Court should be placed at the same position as that of the other persons, who were granted appointment from out of the panel.

17. *Kshiti Goswami & Ors.* (supra) was rendered in a contempt proceedings. There, the authorities were directed to grant appointment strictly in accordance with the merit list. On the failure of the authorities to do so, the contempt

jurisdiction was exercised. The factual scenario again, is different.

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

19. **WP.ST. 352 of 2012** is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

20. I agree.

(Md. Shabbar Rashidi, J.)

KAUSHIK CHATTERJEE