

13.03.2023

WPST 134 of 2022

Court : 04
Item : 75
Matter : WPST
Status : DO
Bench id : 266048
Transcriber : NANDY

Suroj Sk. & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharya, Senior Advocate

Mr. Raju Bhattacharya, Advocate

Mr. Tanweer J. Mondal, Advocate

.....for the Petitioners

Ms. Sanghamitra Nandy, Advocate

.....for the PSC

Ms. Saheli Mukherjee, Advocate

.....for the State

The eloquent submission of the learned Advocate for the petitioners, prima facie, impresses us to interfere with the impugned order, more particularly, as the manner in which it has been passed but after hearing the respective Counsel and the facts disclosed in the writ-petition and the actual relief sought for, we do not feel that it is a fit case to accede to the prayer of the writ-petitioners.

The matter relates to West Bengal Civil Service (Executive) Examination, 2017 for the Group 'C' services and posts. The result was published and the petitioners found their names in the said list yet they were not offered post. The challenge was made before the Tribunal and the Public Service Commission filed a 'Exam Committee Report' relating to four candidates including the petitioners and submitted that unless legal opinion is sought from the Senior Legal Counsel, the Commission is not in a position to take a final decision thereupon. Solely on the *ipse dixit* of such submissions made by the Public Service Commission, the writ-petition was disposed of directing the said authority to take a legal opinion and a final decision thereupon.

The Counsel for the petitioner is very much critical on the mannerism in which the writ-petition was disposed

of and submits that such orders are never invited nor contemplated in the judicial dispensation of justice. It is no doubt true that the moment the allegation is made with regard to the denial of an opportunity or justice; mere giving a chance to the authority to take a decision in absence of any legal opinion, the judicial proceeding should not be foreclosed on such submission. Once the litigation reached to the forum, should be decided on merit when the allegation is made to an infringement of a legal right as it is the ardent duty of the forum to decide whether such right has been infringed or the persons seeking relief is entitled to such right. The litigant should not receive the death keeping such right in lurch as it augments further round of litigation and may impliedly delay the rendering of justice to the litigant. The proper course would have been to keep the tribunal application pending and direct the Commission to take the legal opinion and communicate the decision but disposal on such score is neither appreciated nor warranted as it simply encourage the litigation between the parties without rendering complete and effective justice.

Be that as it may, we initially decided to interfere with the said order, but our attention is drawn to a memorandum no. 392-PSC dated April 6, 2022 annexed as annexure 'P-14' to the writ-petition. The said memorandum is issued by the Joint Secretary of the Public Service Commission, West Bengal in due implementation of the impugned order and communicating the final decision of the said authority.

Mr. Bhattacharya, learned Advocate appearing for the petitioners, is very much vocal on such memorandum as according to him the authorities have consciously and motivatedly suppressed the reasons for rejection of the

candidature of the writ-petitioners and the order which *per se* is bereft of reason, is no order in eye of law.

We appreciate the aforesaid contention but considering that the issuance of the said memorandum in due implementation of the impugned order gives rise to a fresh cause of action and, therefore, taking advantage of the instant writ-petition or challenging the parent order which had been implemented but subsequent orders passed thereupon, if allowed to be challenged in the writ-petition, it may tantamount to jumping of the forum. The purpose and object for establishing the Tribunal under Article 323A of the Constitution of India is to provide a specialized forum/tribunal for a specific class of cases to be dealt with, with promptitude and alacrity and reduce the burden of the High Court which is grappling with the menace of heap of pendency of cases through-out the Country.

Even the Constitution Bench in case of ***L. Chandra Kumar Vs. The State of Maharashtra & Ors., reported in (1997) 3 SCC 261***, has held that the Tribunal constituted under Article 323A of the Constitution of India acts as a Court of first instance. However, the Constittion Bench held that the powers conferred upon the High Court under Article 226 and the Supreme Court under Article 32 of the Constitution of India is a basic structure which cannot be permitted nor taken away, through a legislative fiat and, therefore, the aggrieved person has a remedy to approach the Division Bench of the High Court under Article 226 of the Constitution of India assailing and/or challenging the order of the Tribunal.

In view of the above, if the memorandum dated 06.04.2022 is independent and raises a fresh cause of action; the aggrieved person can challenge the said

memorandum before the Tribunal and cannot bypass the same in the guise of challenging the order disposing of the tribunal application.

The matter can be viewed from another angle. If the impugned order dated 06.12.2021 is interfered with or set aside by this Court, it has an impact on the existence of the memorandum dated 06.04.2022 and a person can get away with the said memorandum without any declaration made by the competent forum.

We, therefore, do not find that it is a fit case where we should interfere with the order impugned. However, disposal of the writ-petition shall not act a deterrent to the petitioner in challenging the said memorandum dated 06.04.2022 before the appropriate forum and all points available to the writ-petitioner, if taken therein, shall be decided without being swayed by the fact that his Court disposed of the writ-petition or the estoppels of issue we applied as the said memorandum was not regarded as a matter of concern in deciding the said application.

With these observations, **WPST 134 of 2022** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

