

66. 08.01.2024
bd. Ct.15

W.P.A. 3856 of 2018
IA No. CAN 1 of 2019 (Old No. CAN 7812 of 2019)

Sri Debasish Rajak & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Amritam Mondal

Ms. Ananya Chakraborty

Ms. Shipra Naskar

... for the Petitioners.

Mr. Tapan Kumar Mukherjee

Mr. Somnath Naskar

... for the State.

In the writ petition in effect the order dated 25th May, 2017 passed by the Secretary to the Government of West Bengal Urban Development & Municipal Affairs Department is under challenge whereby the selection made by the concerned authority of Raghunathpur Municipality has been set aside upon placing reliance on the report submitted by the enquiry officer.

According to the writ petitioners, based on a permission accorded by the Director of Local Bodies and Joint Secretary to the Government of West Bengal issued vide memo dated 6th February, 2013 and subsequent memo dated 29th November, 2013 selection process was initiated for filling up the posts of Store Keeper, Driver, Head Clerk and Sub-Assistant Engineer. It is submitted on behalf of the petitioners that they were selected by the concerned authority of Raghunathpur municipality but ultimately the appointment was not given in view of the order passed by the Secretary to the Government of West Bengal Urban Development and Municipal Affairs Department being

respondent no. 1. In support of the contention made on behalf of the petitioners reliance has also been placed on the memo dated 22nd February, 2016 issued by the Deputy Director of Local Bodies Burdwan Division, wherefrom according to the petitioners it can be ascertained that the Deputy Director of Local Bodies found no anomaly in the selection process which was followed by the concerned authority of Raghunathpur Municipality.

Raghunathpur Municipality is not represented today. However, respondent no. 1 and Director of Local Bodies are represented by Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader who has filed affidavit on previous occasion. Mr. Mukherjee, appearing for the State respondents has made submission to defend the decision of the respondent no. 1 as contained in the memo dated 25th May, 2017 and it has been submitted that the enquiry which was conducted to find out whether the procedure adopted by the concerned authority of Raghunathpur municipality was proper or not, goes to show that the prevalent recruitment rules were not followed by the Raghunathpur Municipality while selection process was initiated after issuance of permissions dated 6th February, 2013 and 29th November, 2013.

Having considered the submissions made on behalf of the parties and on perusal of the relevant materials available on record it appears that the issue relating to validity of the selection process followed by the Raghunathpur Municipality was scrutinized by the Hon'ble Division Bench while

passing order dated 15th May, 2017 in the two appeals being MAT 2071 of 2016 and MAT 2073 of 2016. The Hon'ble Division Bench while disposing of the appeals on 15th May, 2017 granted liberty to the parties to move the appropriate forum in the event they were aggrieved by the report of the Secretary to the Government of West Bengal, Urban Development & Municipal Affairs Department, signed on 2nd May, 2017. The respondent no. 1 passed order on 25th May, 2017 negating the contention of the petitioners relating to their claims for being appointed in the posts of Raghunathpur municipality based on the selection process which was initiated in terms of the permissions accorded on 6th February, 2013 and 29th November, 2013. The reasons which are communicated in the order of the respondent no. 1 are as follows:

“ (i) Though, the recruitment process was conducted against sanctioned vacant posts and after publication of necessary advertisement in Bengali newspaper showing post-wise nature of reservation, but the Municipality authority could not produce the original/authenticated register of appointments regarding the post of Mazdoor, peon and other posts.

(ii) It is also understood from the enquiry report and the resolution of the Board of Councillors that written examination was held for 35 marks. The Municipality could not produce any supporting documents from where

it can be ascertained that the syllabus and division of 35 marks for written examination were widely circulated or intimated to all intending candidates.

(iii) The Municipality authority was requested to produce the sample question paper of the examination, but they could not produce any question paper.

(iv) The Municipality authority was requested to produce answerscripts, whereabouts of the answer scripts, etc., but they could not give satisfactory reply regarding the custody/whereabouts of the answerscripts. This shows severe lack of transparency in conducting the Written Examination.

(v) As per enquiry report, the Municipality authority was requested to produce the whereabouts/address of "Oishi Management Solutions" to which the work of conducting the selection test and preparing the result was entrusted by the selecting committee, but they could not give satisfactory reply in this regard. It is not clear who set the question and who evaluated the answer scripts. Further, the issues of printing of question papers for written examination, preserving them, coding and decoding at the time of evaluations, name of the persons who

were engaged with tabulation, and many other such facts are not clear. On physical verification of the office of the “Oishi Management Solutions” by the enquiry officer, it was learnt that the office was closed for more than one year and the whereabouts of the authorities of the office were not available for a long time. So the reliability and integrity of “Oishi Management Solutions” are doubtful.

(vi) The candidate empanelled to the post of cashier has been selected on the basis of the qualifications(s) stated in the advertisement following the provisions laid down in the West Bengal Municipal Employees’ (Recruitment) Rules, 2005 and the municipality did not follow the provisions laid down in the West Bengal Municipal Employees’ (Recruitment) Rules, 2005 since amended in 2008.”

On careful scrutiny of the reasons assigned by the respondent no. 1 in reference to the report submitted by the enquiry officer it appears that at this stage it would be improper to give direction upon the respondent authorities to give effect to the panel prepared by the Raghunathpur Municipality based on the selection process which was carried on in terms of the permissions dated 6th February, 2013 and 29th November, 2013. It does not appear that the report relied upon by the respondent no. 1 warrants interference by this Court having

considered the contents of the report. Furthermore, the contention of the petitioners based on memo dated 22nd February, 2016 of Deputy Director of Local Bodies, Burdwan Division appears to be factually not correct as on perusal of the same it transpires Deputy Director merely recorded the contentions of the said municipality. Considering the nature of irregularities highlighted in the order dated 25th May, 2017 it transpires that it is not possible to weed out the beneficiaries of irregularities/illegalities and to give effect to the rest of the panel in order to grant appointments in favour of some of the selected candidates. In this regard reliance has been placed on the judgment of the Hon'ble Supreme Court reported in **(2003) 7 Supreme Court Cases 285 (Union of India & Ors. -vs- Rajesh P.U. Puthuvalnikathu and another)**

Before parting with another issue needs to be addressed. It is the writ petition of the candidates who participated in the selection process. It is well settled, participation in the selection process *ipso facto* does not confer right upon the candidates to get appointment. Moreover, flaw has been found by the respondent no. 1 in the selection process followed by the Raghunathpur municipality; said municipality has not come up before this Court questioning observations made by the respondent no. 1 against the said selection process.

In view of the above conspectus, the writ petition stands dismissed. Application, if any pending, also stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)