

W.P.A. 16339 of 2016

**Utpal Saha Chowdhury
Vs.
The State of West Bengal & Ors.**

Mr. Shamimul Bari
Ms. Asmita Mitra
...for the petitioner

Mr. Amal Kr. Sen
Mr. Lal Mohan Basu
...for the State

Writ petition pertains to appointment in the post of Panchayat Karmee and in this writ petition the order of the District Magistrate, Malda dated 15th September, 2015 is assailed.

The learned advocate representing the petitioner questioned the order of the District Magistrate dated 15th September, 2015 on the ground that petitioner being second wait-listed candidate got identical marks which was awarded to the first wait-listed candidate and petitioner being senior in terms of age should have been given preference while giving appointment in the said post of Panchayat Karmee. Previously a writ petition was filed being WPA 6867 of 2015 which was disposed of vide order dated 22nd July, 2015 whereby the concerned District Magistrate was directed to consider the case of the petitioner and there was also direction that if vacancy

was available the case of the petitioner should be considered for appointment in accordance with law.

Petitioner contends since he is senior to the first wait-listed candidate in terms of age having received identical marks which the first waitlisted candidate received, he should have been appointed against lone vacancy which was available for the wait-listed candidate.

Mr. Amal Kr. Sen, learned Additional Government Pleader is representing the State-respondents and has made submission to defend the decision of the District Magistrate dated 15th September, 2015 and it has also been submitted that the petitioner does not have any right to be considered for the post of Panchayat Karmee since panel was published on 8th August, 2013 whereas the first approach was made by the petitioner to the concerned respondent authority on 29th January, 2015 when the panel stood expired after a period of one year.

From the submission made on behalf of the parties it appears that the concerned District Magistrate decided the issue on the basis of the point formulated by the coordinate Bench while disposing of the first writ petition by order dated 22nd July, 2015. By the said order dated 22nd July, 2015 the District Magistrate was directed to consider the candidature of the petitioner provided vacancies were available, but there was no direction given to the District Magistrate to consider the

candidature of the petitioner *qua* the candidature of the first wait-listed candidate namely, Smt. Dilruba Parvin on the contention made on behalf of the petitioner that petitioner should have been given preference while giving appointment against the lone vacancy of Panchayat Karmee considering the fact that he was senior to the said first wait-listed candidate.

Pursuant to the order dated 22nd July, 2015 the District Magistrate passed order on 15th September, 2015 where the District Magistrate is required to consider only availability of vacancy against notification for recruitment dated 5th June, 2009. It has been disclosed in the said order dated 15th September, 2015 that against the said recruitment notification dated 5th June, 2009 there were altogether 91 vacancies out of which 38 vacancies were for general category candidates and the petitioner belongs to unreserved category. It is also disclosed in the said order that out of said 91 vacancies 89 vacancies were filled up and two posts could not be filled up since one was reserved for EC (GEN) and one was reserved for scheduled tribe candidate for the reasons stated therein. The important aspect which is reflected from the said order dated 15th September, 2015 is that the vacancies were filled up by the unreserved candidates and it has been stated that out of 38 vacancies earmarked for unreserved candidates 37 vacancies were filled up from the panel and one was left for wait-listed candidate.

Accordingly same was allotted in favour of the first wait-listed candidate namely, Smt. Dilruba Parvin. Therefore, if this Court proceeds in terms of the direction as contained in the order of the coordinate Bench dated 22nd July, 2015 the important aspect is availability of vacancy which was not there as disclosed by the concerned District Magistrate. Even then question comes up if the lone vacancy which was left for wait-listed candidates was wrongly filled up by giving appointment of the first wait-listed candidate in that event petitioner being the second wait-listed candidate has got right to get appointment on cancellation of appointment of first wait-listed candidate provided petitioner approaches the Court within the lifetime of the panel.

In the present case at my hand first petitioner approached the concerned respondent authority by representation dated 29th January, 2015 after the waitlist was published on 8th August, 2013 which is beyond the prescribed period for one year during which panel was required to be kept alive. In this regard reliance is placed of the judgment of the Apex Court reported in **(1996) 9 SCC 309 (State of U.P. & Ors. Vs. Harish Chandra & Ors.)** and **(2009) 2 SCC 706 (Girdhar Kumar Dadhich & Anr. vs. State of Rajasthan & Ors.)**, wherein it has been succinctly held that the candidate does not possess right to assert after expiry of the panel.

Since in the present case the panel expired as it is disclosed by the District Magistrate after a period of one year of its publication on 8th August, 2013 the issue agitated on behalf of the petitioner cannot be delved into at this belated stage.

Accordingly, the writ petition stands dismissed.

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.)