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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 22971 of 2023

Md. Montaj Ali & Anr.

-Vs-

State of West Bengal & Ors.

Mr. Baidurya Ghosal,
Mr. Sourav Mukherjee,
Mr. Saikat Mukherjee,

... for the petitioners

Ms. Kakali Samajpati,
Ms. Tuli Sinha

... for the State

The Government of West Bengal, Department of Fire and Emergency Services published an order dated 19th January, 2012 bearing no. 138/FES/O/2E-04/12 stating therein that 2000 appointments will be given as Auxiliary Fire Operators on contractual basis for a period of one year against the existing post in the Directorate of Fire and Emergency Services from out of enlisted civil defence volunteers, who were specifically trained as fire operators. This is, however, not a public notice inviting applications for employment. By another order of even date bearing no. 139/FES/O/2E-04/12, the qualification for being appointed as Auxiliary Fire Operators on contractual basis was provided. In this order also, the number of persons to be engaged as Auxiliary Fire Operators on contractual basis is stated

to be 2000. By a notification dated 7th February, 2012 bearing no.WBFES-8/1110/12, the Director, Directorate of Civil Defence, Government of West Bengal was requested by the Director General, West Bengal Fire and Emergency Services to send a list of civil defence volunteers including those specially trained in fire fighting operation from out of empanelled civil defence volunteers for the post of Auxiliary Fire Personnel at a consolidated pay of Rs. 289/- per day subject to maximum engagement of 22 days in a month on contractual basis for a period of one year. The number of post of Auxiliary Fire Operators to be filled up from the civil defence volunteers was reduced to 1692 by an order dated 8th November, 2012 bearing no. 1689/FES/O/2E-04/2012. This was followed by a further order dated 22nd January, 2013 bearing no. WBFES/DG/1316/13, by which the number of vacancies available in the various districts for engagement of Auxiliary Fire Operators were notified.

Challenging those orders, several writ petitions were filed, which were disposed of by an order dated 30th November, 2015. In the operative portion of the said order, the Director General, West Bengal Fire & Emergency Services, was directed to revisit the vacancy position throughout the State of West Bengal and if vacancies are available to consider the petitioners' case for being appointed to the posts-in-question, provided of

course, that the candidates so considered are otherwise eligible and/or entitled to, in accordance with law.

It appears that the Director General has revisited the issue in terms of the order dated 30th November, 2015 and as such, the number of vacancy as Auxiliary Fire Operators was increased by 88 further posts. The matter appears to have a chequered history subsequent thereto. The orders passed for temporary engagement as Auxiliary Fire Operators had been challenged by different persons at different stages. One of such writ petition being W.P. 7282(W) of 2016 (Tanmoy Sen and others –versus- The State of West Bengal and others) was disposed of by directing the respondent no. 3 in the said writ petition to ensure that the three best candidates from among the sixteen candidates whose candidature fell for consideration in the said writ petition are taken on contractual basis as Auxiliary Fire Operators. Another writ petition being W.P. 8532 (W) of 2016 (Sandip Chandra & Ors. Vs. The Government of West Bengal) was disposed of by an order dated 28th July, 2026 directing the respondents to bring the selection process to a logical conclusion. In yet another writ petition being W.P. 11544 (W) of 2016 (Mozammel Haque & Ors. Vs. State of West Bengal & Ors.) an order was passed on 14th July, 2016. In the said order dated 14th July, 2016, it was specifically clarified that the incidents prior to 30th November, 2015 cannot be taken

into consideration and the respondent no. 2 in the said writ petition shall communicate to each of the petitioners the fate of their candidature. Yet another writ petition, being WPA 26263 of 2018 was disposed of on 11th January, 2023 by directing the Director General, West Bengal Fire and Emergency Services, being the respondent no.2 therein to consider the prayer of the petitioner once again for giving him contractual engagement as a Auxiliary Fire Operator. Ultimately, on 10th March, 2023 in compliance with the order dated 11th January, 2023 passed in WPA 26263 of 2018 the petitioner's candidature was considered.

From the particulars disclosed by the State respondents with the report in the form of an affidavit, it appears that the petitioners have been rejected on the ground being over-aged as submitted by the petitioners.

This contention is, however, disputed by the State. It is submitted by the State that apart from being over-aged, the petitioners have not been able to obtain marks to bring them within the ambit of being selected. It is further submitted by the State that there were 5 vacancies available for the district – Nadia against which the petitioner's application was considered. The 5 best candidates as per the marks obtained by them have been selected and given appointment. Once such appointment has been given. There are no vacancies against the vacant posts earmarked for engagement of

Auxiliary Fire Operator on temporary basis for giving appointment and as such, the recruitment process has come to an end.

Assuming without admitting that the petitioners could not have been disqualified on the ground of being over aged in 2023 as on the date of advertisement in the year 2012 for appointing Auxiliary Fire Operator on contractual basis from out of the sponsored candidates i.e. empanelled civil defence volunteers, as the petitioners were all within the eligible age group in 2012 as held in **1990 (2) SCC 669 [A.P Public Service Commission, Hyderabad & Anr. Vs. B. Sarat Chandra & Ors.]** then also with the vacancies having been filled up there is no scope of appointing the petitioners either by considering their representation or by setting aside the order, being the subject matter of the writ petition by giving the petitioners age relaxation. That apart and in any event, the engagement was for a period of one year. If a candidate who was selected immediately after 2012 on having fulfilled the age criteria on the date of his engagement then also after one year if the said candidate surpassed the age limit he would have been discontinued since the engagement was purely on contractual basis.

It is well-settled law that filling up the vacancies brings the selection process to an end as held in **2010 (12) SCC 204 [Public Service Commission**

Uttaranchal vs. Mamta Bisht & Ors.] Moreover, the orders dated 12th May, 2016 passed in WP 7282 (W) of 2016, order dated 28th July, 2016 passed in WP 8532 (W) of 2016 and the order dated 14th July, 2016 passed in WP 11544 (W) of 2016 also settles down the position. It is also required to be noted that subsequent vacancies have been notified and was the subject matter of challenge in other bunch of writ petitions. The orders passed in those writ petitions clearly say that the vacancies notified subsequent to the initiation of 2012 recruitment process has been sought to be filled up through another recruitment process for the year 2019, the vacancies in respect whereof have been clearly notified. It is correct that a person who fulfilled the eligibility criteria when his name was sponsored against the 2012 recruitment process cannot be subsequently held to be disqualified for over-aged is contrary to the settled position of law and no candidate can be eliminated for the same, but going by the position as it stands today and the number of years that have surpassed in between it will lead to further anomaly if the petitioners' representation is directed to be considered after setting aside the order of the Director General, West Bengal Fire & Emergency Services as prayed for in the writ petition.

In the light of the discussions made hereinabove, the writ petition fails and is disposed of without passing any order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)