

12.06.2024
(D/L 18)
(NKB)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

**MAT 50 of 2024
With
CAN 2 of 2024**

The State of West Bengal & Ors.
Vs.
Prasanta Kumar Bhowmick

Mr. Joyjit Choudhury
Mr. Nabankur Paul
Mr. Kumar Shantanu
... for the Appellant/State

Mr. Ekramul Bari
Sk. Intiaj Uddin
Ms. Rinka Chakraborty
... for the Respondent/Writ Petitioner

1. Heard learned counsel for the appellant as well as the learned counsel for the respondent/writ petitioner.
2. The respondent/writ petitioner was an applicant in the process of selection vide advertisement dated 19.04.2022. The same was for conducting appointment of homoeopathic pharmacists. The respondent/writ petitioner was an applicant under the Scheduled Caste (SC category).
3. It is not in dispute that the respondent/writ petitioner was placed at 33rd position in the result of the recruitment process. What transpired in between has given rise to the writ petition. On 08.02.2023, a corrigendum

was brought out by the Recruitment Board wherein the breakup of the vacancies with reference to the various categories was sought to be partially modified in the advertisement dated 19.04.2022. While in the advertisement, the number of anticipated vacancies for SC category was specified as 34, the corrigendum was to the effect that 32 vacancies were to be filled up by the SC category and remaining two of the SC category were to be filled up by persons with disability (PWD category). Since the respondent/writ petitioner was not a candidate having any disability, though he was a candidate of SC category, he could not be selected as he was at serial no. 33, i.e. just one in excess of the number of the vacancies existing for SC category.

4. In these circumstances, he approached the writ court raising a plea that modification of the advertisement amounted to changing the rules of the game in the midst of the recruitment process. It was his case that such change in the rules of the game is impermissible putting the respondent/writ petitioner to grave prejudice and serious disadvantage and, therefore, not sustainable.

5. The learned Single Judge has allowed the writ petition and directed that the recruitment process should be carried on in accordance with the advertisement dated 19.04.2022. The corrigendum has been held to be inapplicable to the recruitment process.
6. The learned counsel for the appellant/State referring to the provisions of the Administrative Tribunals Act (hereinafter referred to as Act), submitted that the recruitment process was in respect of a civil post under the State Government. The recruitment and matters concerning recruitment process of such civil post within the State Government were subject to jurisdiction before the State Administrative Tribunal in terms of Section 15 of the Act. The relevant extract of Section 15 reads as follows:

“15. Jurisdiction, powers and authority of State Administrative Tribunals –

(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to -

(a) recruitment, and matters concerning recruitment, to any civil

service of the State or to any civil post under the State;

(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation [or society] owned or controlled by the State Government;”

7. In this connection he relies upon a decision of the Hon’ble Apex Court in the case of **S. Subramaniam Balaji Vs. State of Tamilnadu & Ors.** reported in **(2013) 9 SCC 659**. Paragraphs 82 and 83 of the said judgement have been relied upon to contend that in the instant case the issue of jurisdiction is not with reference to pecuniary or territorial limits but is founded on the subject matter in issue. He, therefore, submits that having regard to the observations of the Hon’ble Apex Court in the said judgement, the issue of jurisdiction may be raised even in this appellate proceedings. Reliance has been placed on paragraphs 82 and 83, which reads as follows:

“82. Admittedly, the respondents never raised any objection relating to the jurisdiction in the High Court or

even in the pleadings before this Court. It is only in the oral submissions that this issue has been raised.

83. In the matters relating to pecuniary jurisdiction and territorial jurisdiction, the objection as to jurisdiction has to be taken at the earliest possible opportunity. But, this case relates to the jurisdiction over the subject matter. This is totally distinct and stands on a different footing. As such, the question of subject-matter jurisdiction can be raised even in the appeal stage. However, as this petition is fit for dismissal dehors the jurisdiction issue, the jurisdiction issue is left open.”

8. After making his submissions on the point of jurisdiction, he has also made some submissions with reference to the merits of the matter. He has submitted that the plea raised by the respondent/writ petitioner that the corrigendum amounted to change in the rules of the recruitment process is not tenable. The original advertisement contained only the number of “anticipated vacancies” and the same was not final as is evident from the bare reading of the advertisement. After the anticipated vacancies were finalized keeping in view the statutory requirement under the Rights of Persons with Disabilities Act, 2016, to provide horizontal reservation within the various categories in terms of the gazette notification dated July 19, 2019

issued by the State Government, the corrigendum was issued. In this connection, he has also placed reliance on the decision of the Hon'ble Apex Court in the case of ***Marripati Nagaraja & Ors. Vs. Government of Andhra Pradesh & Ors.*** reported in ***(2007) 11 SCC 522***. Referring to paragraph 17 of the said judgement, it is submitted that merely by virtue of being an applicant in a recruitment process one does not acquire indefeasible right of being selected. The right is only of being considered and the consideration has to be in terms of the rule, as amended from time to time.

9. Another aspect of the issue which has been highlighted by the learned State counsel referring to the supplementary affidavit filed is that long before the learned Single Judge issued directions for carrying on the recruitment process in terms of the original advertisement dated 19.04.2022, the selected candidates had already been recommended, that also as early as on 15.02.2023. In fact, the notification of the selected candidates had also been issued on July and August, 2023. These facts, however, were not before the writ court as neither the respondent/writ

petitioner nor the State counsel has brought these facts before the writ court.

10. The learned counsel for the respondent/writ petitioner has firstly addressed the court on the issue of maintainability. He has placed reliance on a judgement of the Hon'ble Apex Court dated 01.02.2023 passed in ***Civil Appeal No. 5393 of 2010***, in the matter of ***M/s Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.*** He has relied upon the said judgement to submit that there is no absolute bar to exercise of writ jurisdiction even if an alternative remedy exists. It is submitted that the issue of jurisdiction under Article 226 is founded on a rule of discretion. He submits that there is a long line of decisions in this regard and it is for the writ court to decide based on sound principles and settled law as in which case the jurisdiction under Article 226 is to be exercised, or not.
11. Wherever substantial justice to be meted out the writ court should invoke its jurisdiction and take up the matter. It is relying on such settled principles that the writ court has exercised its jurisdiction and, therefore, the issue regarding maintainability raised by the

appellant in the instant proceedings deserves to be rejected.

12. In so far as issue on merits, it is submitted that the corrigendum dated 08.02.2023 amounted to a change of the rules of the game. The same was impermissible in view of the settled law. The writ court has, therefore, rightly interfered with the matter.
13. Having considered the rival submissions, we find that the issue of maintainability raised by the appellant merits consideration. Paragraphs 82 and 83 of the Hon'ble Apex Court's decision in the case of **S. Subramaniam Balaji (supra)** is clear to the extent that the issue of jurisdiction with reference to the subject matter, as in the instant case, which is evident from bare perusal of Section 15 of the Act, quoted above, is an issue which can be raised even at the appellate stage. Section 15 of the Act is clear and leaves no room for ambiguity since the recruitment process in question is one in respect of appointment to a civil post under the State Government and it is not in dispute that the State Administrative Tribunal is in existence in the State of West Bengal.

14. We, therefore, find substance in the objection on maintainability of the instant proceedings based on the issue of jurisdiction raised by the learned counsel for the appellant with reference to Act.
15. The other submissions made by the learned counsel on merits of the matter have also been considered and have been noted above but since we are persuaded by the plea of non-maintainability of the writ petition in view of the provisions contained in the Administrative Tribunals Act, there is no occasion to express any opinion on the merits of the submissions advanced by the parties.
16. The respondent/writ petitioner if so desire would be at liberty to approach the Tribunal. While doing so it is needless to say that the issue of pendency of the instant proceedings would be available to him to meet the point of delay if the same arises.
17. The order of the Hon'ble Single Judge is set aside.
18. At this juncture, it is submitted by the learned counsel for the respondent/writ petitioner that in case he approaches the Administrative Tribunal within 15 (fifteen) days, the Tribunal be directed to consider his

prayer for interim relief. In view of the findings recorded in the instant order regarding maintainability of the writ proceedings, we do not deem it appropriate to express any opinion in this regard and leave it for the Tribunal to decide in accordance with law.

19. The appeal is allowed. Pending applications, if any, stand disposed of.

(Madhuresh Prasad, J.)

(Partha Sarathi Chatterjee, J.)