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01.10.2024
d.p.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A 2054 of 2024

**Sekhar Sarkar
-versus
The State of West Bengal & Ors.**

**Mr. Ekramul Bari,
Sk. Imtiaj Uddin,
Ms. Rinka Chakraborty.
...For the Petitioner.**

**Mr. A. Banerjee,
Ms. Rima Sarkar.
...For the State.**

**Mr. Subhrangsu Panda,
Ms. Ina Bhattacharya.
...For the Respondent
Nos. 3 and 4.**

1. Affidavit-of-service filed in Court today is taken on record.

2. The petitioner participated in the recruitment process initiated by the West Bengal College Service Commission under the PWD (B) category. His name figured in serial no. 2 of the provisional merit panel published by the West Bengal College Service Commission.

3. Specific case of the petitioner is that there is a vacancy in PWD (A) category because of non-joining of one of the merit listed candidate. The petitioner seeks to be appointed in the said vacancy.

4. The order dated 8th July, 2019 of the Labour Department, Government of West Bengal published in

the Kolkata Gazette Extraordinary deals with the Rights of Persons with Disabilities Act, 2016.

5. It mentions that if any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reason, such vacancy shall be filled up through the procedure as mentioned in Section 34 (2) of the Rights of Persons with Disabilities Act, 2016.

6. Section 34(2) of the Act, 2016 lays down that where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability subject to the proviso mentioned in the Section.

7. From the aforesaid provisions of law, it appears that the vacancy which cannot be filled up in a particular year is required to be carried forward in the succeeding recruitment year.

8. In the instant case, the vacancy in the PWD (A) category could not be filled up because of non-joining of the merit listed candidate. For filling up the same, the employer is required to carry forward the vacancy in the succeeding recruitment year. Only if the vacancy still cannot be filled up, then the same may be filled up by interchange among the five categories.

9. The appropriate authority is directed to take steps in accordance with law to fill up the said vacancy.

10. The writ petition stands disposed of.

11. Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)