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

WPA 4806 of 2024

Md. Hamidul Sekh & Ors.

-Vs-

The State of West Bengal & Ors.

Mr. Shamit Sanyal,
Ms. Priyakshi Banerjee,
Mr. Sabyasachi Roy

... for the petitioners

The petitioners are three in number. They participated in a recruitment process for filling up 75 vacancies in the post of “Auxiliary Fire Personnel” through candidates of the age group of 20-33 years in West Bengal Fire & Emergency Services pursuant to a recruitment notice published in the ‘Anandabazar Patrika’ and ‘Karmakhetra’ respectively on 1st May, 2012 and 11th May, 2012. The recruitment process was in connection with engaging the Auxiliary Fire Personnel (AFP) on contractual basis for a period of one year.

It is the case of the petitioners that there was no provision for holding any written examination as per recruitment notice. The selection was based on minimum educational qualification of Madhyamik or equivalent and physical measurement of the candidate.

The writ petition was filed on 21st February, 2024, after about a decade from the publication of the advertisement.

Be that as it may, the prayer in the writ petition is to direct the respondents and/or their men, agents or servants to take appropriate steps for issuing appointment letter and inform about the present status of the said selection process. There are other consequential reliefs prayed for including disposal of the representations made by the petitioners.

On 27th June, 2024, this Court directed the respondents to file a report in the form of an affidavit. The report was filed on 27th January, 2025. The respondents thereafter have remained unrepresented despite service on notices on several dates, which has persuaded this Court to take up the writ petition even in the absence of the respondents.

The petitioners say that after having participated in the selection process without any demur, they may be said to have become ineligible to challenge the selection process that too at a belated stage. It is correct that a candidate upon having participated in the selection process without any demur or protest cannot fall back and challenge the selection criteria after having been found unsuccessful. In this context, we may refer to the judgment reported in **(2010) 12 SCC 576 (Manish Kumar Shahi -Vs.-State of Bihar and**

Others) and in particular the paragraph 16 thereof. The only exception as has been curled out in the judgment reported in **(2019) 20 SCC 17 (Dr (Major) Meeta Sahai -Vs.- State of Bihar And Others.)** and in particular the paragraphs 16 and 17 thereof is not applicable to this case. On a conjoint reading of the two judgments as aforesaid it is apparent. Be that as it may, the principle of estoppel will prevail but a candidate can challenge the selection process after having participated therein without any demur if the challenge is to be illegality in the selection process. The petitioners, in order to circumvent this hurdle, have submitted that there was no scope of any written examination as will be evident from the report filed by the State respondents in this proceeding. The petitioners though have participated against the vacancies declared for the District of Nadia but the vacancies appear to be pan West Bengal. The District Administration of Nadia, therefor, could not in isolation proceeded to hold a written examination when the selection process did not speak about the same.

It is the further case of the petitioners that in the report, it has been specifically stated by the respondents that the petitioner did not get the cut off marks and as such, got eliminated at the initial stage. The holding of the written examination by the Nadia District Administration was not contemplated under the

selection criteria and as such, the selection process with the introduction of such written test is tainted with illegality. Looking from another angle, it is submitted by the petitioners that there has been a change in the rule of game after the selection process had commenced whereby the essential criteria has been sought to be challenged by incorporating therein the provision of holding a written examination for the District Nadia when the other districts in the State appears to have not held any written examination.

After hearing the petitioners and considering the materials on record including the report filed by the respondents, it is clear that there was no change in the rule of game after the game had started, i.e. the selection process on having commenced. That apart and in any event, there has been inordinate delay as from the report, it is evident that the selection list was prepared in the year 2012 for filling up 75 vacancies declared in the district of Nadia. I also do not find any illegality for which the petitioners have become entitled to contend that the writ petition is maintainable after having participated without demur that too having filed the same at a belated stage. Taking up a broad view, I do not find any merit in the writ petition. The writ petition is accordingly dismissed.

(Arindam Mukherjee, J.)

