

15.07.2025
(D/L-100)
Ct. No.4
(B.K.N.)

W.P.S.T. 53 of 2025

Sumodhur Banerjee
Vs.
The State of West Bengal & Others

Mr. Ekramul Bari,
Mr. Sudip Ghosh,
Mr. Bidish Ghosh

...for the Petitioner

Mr. Tapan Kr. Mukherjee, Ld. AGP,
Mr. Somnath Naskar

...for the State Respondents

1. Heard learned counsel for the petitioner and the learned counsel for the State.
2. The petitioner participated in the process of recruitment being conducted for appointment of Inspector of Drugs under the Directorate of Drug Control. The advertisement in this connection was issued on 22.02.2016.
3. The petitioner has filed some applications under R.T.I from which he has discovered that he had been awarded total 81 marks. Relying upon this information obtained under the Right to Information Act, 2005 the petitioner has moved the West Bengal Administrative Tribunal (S.A.T) by filing O.A. 637 of 2021 seeking a direction that he should be appointed pursuant to the said recruitment process.
4. Before the Tribunal he placed reliance upon a decision of this Court in the case of **Avijit Das & Ors.**

-Vs.- The State of West Bengal & Ors. in W.P.S.T. 120 of 2018. The Division Bench vide its order dated 28.01.2020 had directed the authorities to appoint the petitioner nos. 1, 3 and 4 of the said writ petition. The case of the present writ petitioner before the Tribunal is that the marks which were obtained by the present petitioner was more than the three persons, petitioners in W.P.S.T. 120 of 2018 in respect of whom the Coordinate Bench has issued a positive direction to appoint.

5. According to the writ petitioner the said direction was issued in favour of the three writ petitioners of W.P.S.T. 120 of 2018. Since the Court found that the recruitment process to be illegal and unsustainable since the evaluation of candidates was being done treating the total marks as 100; whereas under the extant rules and procedure the selection was to be done treating the total marks to be 85. Such an infirmity/illegality having been declared by the Coordinate Bench it is submitted that the petitioner would be entitled to the same relief. Judgment of the Division Bench declaring the process to be illegal is to be considered as a judgment in rem and all those who participated in the recruitment process, including the petitioner would be entitled to benefit of the judgment. In this connection he has relied upon decision of the Apex Court in the case of **Rushibhai**

Jagdishbhai Pathak –Vs.- Bhavnagar Municipal Corporation reported in ***2022 SCC OnLine SC 641***.

He has also placed reliance upon decision of the Apex Court in the case of ***Career Institute Educational Society –Vs.- Om Shree Thakurji Educational Society*** reported in ***(2023) 16 SCC 458***.

6. He thus submits that since a valid right had accrued in favour of the writ petitioner by virtue of such declaration in W.P.S.T. 120 of 2018, the order of the Tribunal dismissing the petitioner's claim, considering him to be a fence sitter is unsustainable. He submits that the Tribunal ought to have issued the same direction in favour of the writ petitioner as was issued in the case of petitioners 1, 3 and 4 in W.P.S.T. 120 of 2018.
7. The learned AGP appears on behalf of the State. He draws attention of the Court towards the order passed in W.P.S.T. 120 of 2018. He has drawn the attention of the Court to the judgment to show that even the said judgment is confined only to three of the writ petitioners therein, the other two writ petitioners, nos. 2 and 5 have not been allowed the relief. He further submits that while allowing relief in favour of the three writ petitioners therein the Coordinate Bench has specifically recorded as follows:

“The State Government is directed to appoint the petitioners 1, 3 and 4 as inspector of drugs

immediately but not later than a fortnight from date of receipt of a copy of this order.

The dates of appointment of the petitioners 1, 3 and 4 shall relate back to the date on which candidates in the merit list, who secured marks equal to or lesser than the petitioners 1, 3 and 4 came to be appointed. such petitioners shall not be entitled to any arrears of financial benefits but benefits shall flow to them on and from the dates of appointment. However, the period during which the petitioners 1, 3 and 4 could not discharge duty as inspectors of drugs shall be counted for the purpose of calculating their qualifying service for pension and other benefits, which would have accrued to them but for the delayed appointments. Insofar as seniority in service is concerned, however, they shall rank below the candidates already appointed.

Be it placed on record that we have resisted ourselves from interfering with the selection process as a whole since the private respondents have already been appointed and working as inspectors of drugs for quite some time, and also that because there are vacancies where the petitioners 1, 3 and 4 can be accommodated.

List the writ petition on 11th February, 2020 for consideration of the claims of the petitioners 2 and 5. It is made clear that similar relief granted to the petitioners 1, 3 and 4 may be extended to the petitioners 2 and 5, should they succeed in their claim that they had requisite experience and were thus eligible for consideration of their candidature.”

8. Referring to this judgment, as extracted above he submits that the Division Bench while allowing the relief has taken into consideration the fact that the recruitment process was complete and third party rights had accrued in favour of the earlier appointees in the recruitment process. This Court, therefore, has refrained from interfering with the entire selection process, and confined relief to the three writ petitioners therein. The judgment, therefore, by no

stretch of imagination can be said to be a judgment in rem, granting any benefit which can be availed by any other candidate.

9. We have considered the rival submissions. A bare perusal of the judgment passed by the Coordinate Bench makes it abundantly clear that the Division Bench has confined the relief to three writ petitioners therein. The reason for granting the relief is the infirmity detected in the recruitment process by the Division Bench. Equities have been balanced by the Division Bench by taking note of the fact that since the recruitment process is complete, third party rights have accrued, and vacancies do not remain, the relief has been extended only to the three writ petitioners therein.
10. The judgment relied upon by the writ petitioner in the case of ***Rushibhai Jagdishbhai Pathak (supra)*** has no application to the facts and circumstances of the present case. The relief for consideration by the Apex Court in the said case was grant of a particular scale. The Apex Court has taken into consideration several earlier decisions rendered by it on the point that the law recognizes a continuing cause of action in the case of salary or pension. Such is not the case in the present writ proceeding.
11. In the present case the petitioner having participated in the recruitment process conducted by an

advertisement issued in 2016, has for the first time awaken from slumber in 2021 by filing an R.T.I application to agitate his claim for parity with writ petitioners of W.P.S.T. No. 120 of 2018, who unlike the petitioner had diligently approached this Court. When those petitioners approached the court vacancies were still in existence, and therefore, this Court granted them relief.

12. The SAT has declined relief to the writ petitioner/applicant after due consideration of the fact that the judgment in favour of the writ petitioners on WPST 120 of 2018 was limited to the petitioners therein. The Tribunal has also considered the order passed in WPST 120 of 2018 wherein the Division Bench, of this Court has expressly resisted from interfering with the selection process as merely having regard to the third party rights have not accrued at the time of giving relief to the petitioners on WPST 120 of 2018.

13. The petitioners on WPST 120 of 2018 were granted reliefs by order of a coordinate Bench dated 18.09.2023, in the writ proceedings wherein the order of the SAT dated 27.09.2018, passed in OA No. 1046 of 2017 was under challenge. It is thus evident that the writ petitioners who were granted reliefs in WPST 120 of 2018, had diligently approached the Tribunal in the year 2017, itself seeking reliefs in respect of the

recruitment process initiated by advertisement of the year 2016.

14. In the facts and circumstances as above we find no infirmity in the order of the Tribunal passed on consideration of the delay, latches on the part of the present writ petitioner as also the fact that the third party rights had accrued on account of such delay and latches. The Tribunal has also rightly considered the fact that the order passed in the WPST 120 of 2018, was limited to the writ petitioners and by no stretch of imagination the judgment can be read to be a judgment in rem. We, therefore, consider it appropriate to take into consideration of a decision of the apex Court in the case of ***State of Uttar Pradesh & Ors. -Vs.- Arvind Kumar Srivastava & Ors.*** reported in ***(2015) 1 SCC 347***. In the said judgment the apex Court has considered the principles as regards a belated claim for party, on the basis of an earlier judgment, in service matters. The apex Court has summed up the legal principles in paragraph 22 of the Judgment which reads as under:

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. The principle needs to be applied in service

matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reasons that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. however, the exceptions may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand if the judgment of the court was in personam, holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

15. Thus we find that in the facts and circumstances of the present case the petitioner cannot be permitted to claim parity with writ petitioners of WPST 120 of 2018, since they have procrastinated and approached the Court by filing an Original Application in the year

2021, only after this Court passed an order in WPST 120 of 2018 on 2.01.2020, to appoint the petitioners No. 1,3 and 4 of the said Writ Petition. Having regard to the exposition of the legal principles in the case of ***Arvind Kumar Srivastava & Ors. (supra)*** extracted above, we have no hesitation in holding that the petitioner is a fence sitter. We thus find no reason to interfere with the order passed by the SAT in OA 637 of 2021.

16. The writ petition is dismissed.

17. There will be no order as to costs.

18. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)