

05
06.03.2025
Ct. No. 11
Jayanta

MAT 1976 of 2024
with
IA No. CAN 1 of 2024
&
IA No. CAN 2 of 2025

State of West Bengal & Ors.
vs.
Uday Mukherjee & Ors.

Mr. Amal Kumar Sen, Ld. AGP
Ms. Sahina Sumi
.....For the Appellants.
Mr. Haradhan Mondal
.....For the respondent nos. 1 to 3.

The present appeal has been preferred by the State and its functionaries challenging an order dated 21st June, 2024, passed by the learned Single Judge in the writ petition being WPA 7922 of 2023 which was preferred by the writ petitioners being the private respondents herein, *inter alia*, praying for issuance of necessary direction upon the respondents therein to complete the selection process for the post of Kala-Azar Technical Supervisor (in short KTS) for Kala-Azar endemic blocks of District Purba Bardhaman.

As we have invited Mr. Sen, learned Additional Government Pleader appearing for the appellants to advance his arguments on merit, the delay in preferring the present appeal is condoned and the application being CAN 2 of 2025 is disposed of.

For engagement of six KTS, a recruitment notice was issued on 22nd July, 2022 by the appellant no. 4. Pursuant thereto, the writ petitioners applied and after being shortlisted they were called for an interview by a notice dated 24th January, 2023. Surprisingly thereafter by a notification dated 16th March, 2023 issued by the appellant no.4, a fresh recruitment process was initiated for engagement of six KTS. Aggrieved thereby, the private respondents herein preferred a writ petition which was disposed of by an order dated 18th December, 2023 observing, *inter alia*, that the notification dated 16th March, 2023 shall stand quashed and set aside. Aggrieved thereby, an appeal was preferred by the State and its functionaries. By an order dated 15th May, 2024 the appeal was disposed of with leave to apply for recalling or modification of the order passed by the learned Single Judge. Pursuant thereto, a recalling application was filed stating, *inter alia*, that the Court was not properly assisted by the learned advocate, who entered appearance on behalf of the State respondents. In the said application further documents were brought on record as regards cancellation of the earlier notice dated 22nd July, 2022. Thereafter, the recalling application as well as the writ petition and the contempt application being WPCRC 46 of 2024, were disposed of by the order impugned in the present appeal.

Mr. Sen, argues that in the notice dated 16th March, 2023 it was clearly indicated that in view of a new policy

decision the post of KTS has been converted to Vector Borne Disease Technical Supervisor and that accordingly the earlier recruitment process had been cancelled. The learned Single Judge by the impugned order has erroneously interfered with such policy decision of the State.

He further submits that the learned Single Judge ought to have appreciated that by virtue of the new policy decision, the vacancies pertaining to the post of KTS stood abolished and that as such the earlier selection process for engagement of KTS could not have been continued. Such arguments, as advanced, were glossed over by the learned Single Judge and no finding was returned on the same. Such infirmity warrants of this Court.

He argues that it is not correct to say that if a number of vacancies are notified for appointment and adequate numbers of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed. The State is under no obligation to fill up all or any of the vacancies which already stood abolished. The learned Single Judge ought to have appreciated that no legal right of the writ petitioners stood infringed warranting any interference.

Mr. Mondal, learned advocate appearing for the respondents denies and disputes the contention of the appellants and submits that the State cannot act in an arbitrary manner. The writ petitioners applied on the

basis of the recruitment notification issued by the State. They emerged to be successful and were shortlisted and were also called for interview for engagement as KTS. Abruptly thereafter, the entire process was cancelled by a notification dated 16th March, 2023. Such cancellation is devoid of reasons and is absolutely unreasonable and arbitrary. In the said conspectus, the learned Single Judge rightly exercised discretion in favour of the writ petitioners.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

There is no dispute as regards the proposition of law that mere participation or empanelment does not create any indefeasible right to be appointed. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bona fide* and for appropriate reasons.

A perusal of the notification dated 16th March, 2023 and the memo dated 27th February, 2023 do not disclose any reason as to why the earlier recruitment process of KTS was cancelled. In view thereof, the learned Single Judge rightly exercised discretion in favour of the writ petitioners.

The argument of Mr. Sen that the KTS posts, which were sought to be filled up by the recruitment notice dated 22nd July, 2022, have been abolished and as such

no direction can be issued for appointing the writ petitioners in the post of KTS, is not acceptable to us since from the subsequent notification dated 16th March, 2023, it would be evident that the appellants had initiated steps for recruitment in the self-same post of KTS for Kala-Azar endemic blocks of District Purba Bardhaman, as advertised *vide* memo dated 22nd July, 2022, adopted under National Vector Borne Disease Control Programme. It appears that the memo dated 16th March, 2023 had been issued disowning the earlier obligation on the part of the State to complete the earlier selection process for engagement of six KTS.

For the reasons discussed above and as we do not find any patent error of law in the order impugned, no interference is called for in the present appeal.

The appeal and the stay application, are, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)