

07.04.2025

MONDAY

Court : 4
Item : 3
(AD)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

W.P.S.T. 219 of 2024

**Anupam Naskar
Versus
The State of West Bengal & Ors.**

Mr. Victor Chatterjee,
Mr. B. Basak

.....for the petitioner.

Mr. Santanu Kumar Mitra, Sr. Adv.,
Mr. Amartya Pal.

.....for the State.

Ms. Shraboni Sarkar,
Ms. Krishna Yadav.

.....for the P.S.C.

1. The petitioner approached the Tribunal by O.A. No. 56 of 2024 for the relief by way of direction upon the respondent to appoint the petitioner based on his aggregate marks in the process of recruitment for the post of Krishi Prayukti Sahayak (hereinafter referred to as “KPS”). The Tribunal was of the view that it would be just and proper if the matter is heard by a Bench comprising of two Members (Judicial and Administrative). The petitioner complaints that the Tribunal continues to be presided over by a Single Administrative Member since last more than 2 years. The Single Administrative Member admitted the original application on 29.01.2024 fixing a date on 30.07.2024. The parties were

directed to exchange pleadings in the meantime. Again when the matter was listed on 30.07.2024, the Single Administrative Member was of the view that it would be just and proper if the matter is heard by a Division Bench. The matter was thus fixed on 28.11.2024. In view of the fact that the Judicial Member has not been appointed, the matter could not be taken up on 28.11.2024 also. The learned Counsel for the petitioner thus submitted that the petitioner is left remediless.

2. The fact that there is only one Administrative Member in the State Administrative Tribunal for the last more than 2 years is not denied by the learned Counsel for the State. He, however, raises an objection that the petitioner cannot approach the writ Court directly in the present matter which is amenable to the jurisdiction of the State Administrative Tribunal. It is the clear mandate of the Apex Court in the case of ***L.Chandra Kumar vs. Union of India and Others*** reported in ***(1997) 3 SCC 261*** as also decision of the Apex Court in the case of ***Rajeev Kumar and Another vs. Hemraj Singh Chauhan and Others*** reported in ***(2010) 4 SCC 554*** that the Tribunal is the Court of first instance for such matters.

3. The learned State Counsel has also raised the issue of the petitioners being fence sitters. According to him, the Original Application was filed after a long delay of about 5 years. The petitioner is claiming parity with the applicant of O.A. No. 940 of 2019. The petitioner cannot be granted relief based on parity with the applicant of O.A. No. 940 of 2019, for the simple reason that the applicant therein had approached the Court within the time specified for invoking the jurisdiction of the Tribunal, and immediately after the recommendations were made on 06.10.2018. The O.A. No. 940 of 2019 was allowed on 19.06.2023. When the petitioner found the applicant of O.A. No. 940 of 2019 to have succeeded in the litigation, then also he has waited for some time and thereafter filed the O.A. in the year 2024. The petitioner was not diligent of his rights. As many as 806 candidates were recommended on 16.10.2018 pursuant to the recruitment process.
4. The writ petitioner's application before the Tribunal itself, is, therefore, fit to be rejected on the ground of delay and laches, being hit by limitation under the Administrative Tribunals Act. The application is also fit to be rejected on the ground that the writ petitioners being fence

sitters cannot be permitted to claim parity with the applicant of O.A. No. 940 of 2019.

5. Learned Counsel for the petitioner, on the other hand, has submitted that it is incumbent upon the State to extend the same relief to the petitioner that has been granted to the applicant of O.A. No. 940 of 2019. The technical issue of delay, laches and limitation when pitted against substantial justice, the substantial justice is required to be given preference. The learned Counsel has also relied on judgments in support of his submissions.

6. We have considered the submission of the parties on this point and find that it is an undisputed fact that the State Administrative Tribunal has been functioning now since quite long with a Single Administrative Member. The Single Administrative Member has expressed in the order/s passed in the original application that the petitioner's application is required to be considered by a Division Bench. In absence of there being any second member in the Tribunal a situation has arisen where the petitioner has been waiting for consideration of his application before the Tribunal now since the last more than 9 months.

7. Under such circumstances, if there be a

situation of urgency and in a circumstance where the issue brought before the Tribunal cannot await the coram of the Tribunal to be completed by appointment, then there may not be any fetter on the writ Court to exercise its jurisdiction, but in an appropriate case.

8. In the present case it is not in dispute that final recommendation of the recruitment process was made on 06.10.2018 and the Original Application has been filed by the petitioner before the West Bengal Administrative Tribunal in the year 2024. Since the petitioner has waited so long we do not consider it a fit case where we should exercise our extraordinary discretion under Article 226 in favour of the petitioner to take up the issue when the same is pending before the Tribunal under the Administrative Tribunals Act. No such extraordinary or urgent circumstances are made out necessitating consideration of the petitioner's case by us under Article 226. We have taken note of the submission of the parties advanced during the Court proceedings but we make it clear that anything observed in the present matter may not be considered to have any persuasive value on the merits of the pending order before the Tribunal. We have left all issues open.

9. We find no reason to take up the matter when the same is pending before the Tribunal and leave it open to the parties to pursue the matter before the Tribunal.
10. The writ petition is accordingly dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J)