

21.01.2026
Court No.13
Item No. 6
sp

FMA 300 of 2024
With
CAN 1 of 2025
Nitai Chandra Mandal
Vs.
The State of West Bengal & Ors.

Mr. Samiran Mandal,
Mr. S.C. Dhara.

... For the appellant.

Mr. Pinaki Dhole,
Mr. Avishek Prasad.

.. For the State.

Mr. Nitish Samanta.

... For the respondent no. 6.

Mr. Abhinaba Dan,
Ms. Shreyashee Mitra.

... For the School Authority.

1.The appeal is directed against judgment and order dated 19th September, 2023 passed by a Single Bench of this Court.

2. The facts of the case are, inter alia, that that the appellant/writ petitioner participated in a selection process for the post of Clerk in Baidyanathpur High School (H.S.), Bankura. The selection process was initiated by the school after due permission from the D.I. of Schools (SE), Bankura. Following the 2005 Rules of Recruitment, the school applied before the concerned Employment Exchange for sponsoring 20 names.

3. The appellant/writ petitioner after the selection process was complete was empanelled in the second position. The candidate in the first position did not join the particular school. The applicant thereupon became entitled to join the post.

4. The panel prepared by the Selection Committee was approved by the Managing Committee of the school and sent to the D.I. of Schools (SE), Bankura for approval.

5. Since the D.I. was not taking a decision in the matter, the appellant/writ petitioner filed W.P. 31480 (W) of 2017, which was disposed of by a Single Bench directing consideration of the petitioner's representation.

6. The D.I. thereafter passed an order dated 30th May, 2018, rejecting the entire panel. The ground for rejection by the D.I. was that in addition to Employment Exchange, the school ought to have advertised the post in question.

7. Across the bar today, the learned counsel for the D.I. has relied upon a decision of the Supreme Court in the case of ***Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and others*** reported in ***(1996) 6 Supreme Court Cases 216***. In the said decision, it was mandated by a three-Judge Bench of the Supreme Court that in addition to Employment Exchange, advertisement should be made

mandatory in respect of recruitment to any Government post under Article 16 of the Constitution of India.

8. The D.I., however, relied upon a decision of the Supreme Court in the case of ***State of Karnataka & Ors. Vs. Uma Devi (3) & Ors.*** reported in ***(2006) 4 SCC 1***, particularly para 30 thereof, to hold that since no advertisement was published, the selection process is vitiated.

9. Based on the above, the Trial Judge, found that the respondent authorities were not unjustified in cancelling the selection process for want of advertisement. The Single Bench refused to exercise discretionary jurisdiction under Article 226 of the Constitution of India.

10. It is now well-settled that recruitment process can be undertaken both after receiving sponsorship from Employment Exchange as well as by public advertisement. The 2005 Recruitment Rules of the State prescribes that recruitment of Group-C post should be made after the Employment Exchange concerned is requested to sponsor the names. It is only when adequate numbers of names are not sponsored that a public advertisement inviting application is to be resorted.

11. The argument of the learned counsel for the appellant, to the extent that the selection process was in terms of the Rules framed by the State and hence could not have been cancelled by the State itself, cannot be

faulted. There was only one vacancy and 20 candidates were sponsored by the concerned Employment Exchange. The appellant/writ petitioner was a reserved category candidate and was rightly placed at the second position in the panel.

12. It is equally possible for the respondent State to contend that in view of the dicta of the Supreme Court both in ***Uma Devi Case (supra)*** and ***K.B.N. Visweshwara Rao (supra)***, both advertisement and sponsorship through Employment Exchange are required to be followed in any recruitment process, cannot also be faulted.

13. This Court is, therefore, inclined to apply the accepted doctrine in administrative law that, when two views are possible in a given facts and circumstances and the authority takes one view, a Writ Court cannot and should not impose the other view on it.

14. In the backdrop of the above, the refusal by the Single Bench to exercise discretion under Article 226 of the Constitution of India hence calls for no interference. The appellant was possibly within a recruitable age at the time when the writ petition was filed. With the passage of time, he may have crossed the age limit as on date.

15. This Court, therefore, is of the view that the appellant's interest should be protected if he is allowed to participate in any future recruitment process for the said

post of 'Clerk' in any school in the district of Bankura. If a selection process initiated by a School Service Commission, the appellant/writ petitioner shall be entitled to participate in the same and his age shall not stand in the way of such participation.

16. The aforesaid benefit is reserved to the appellant/writ petitioner for a period of one year from date or any fresh selection process initiated by the School Service Commission, whichever is later.

17. With the aforesaid observations, FMA 300 of 2024 along with CAN 1 of 2025 shall stand disposed of.

18. There shall be no order as to costs.

19. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)