



offering employment in the Recruitment process, 2017 as initiated for the posts of Group- 'D' in various offices under West Bengal Government,

b) Direct the respondents to declare due vacancies for the respective categories in respect of Recruitment process, 2017 for the Group- 'D' staffs under the State of West Bengal in accordance with the Reservation Policy, statutory rules framed in this regard as per Model 100 Point Roster framed in this regard.....”

The application, being OA-943 of 2017, Pranab Roy & Another Vs. The State of West Bengal & Others was filed by the applicants praying for certain reliefs, the relevant portion of which is as under:-

“ a) An order do issue directing the concerned respondent authorities to cancel / revoke / withdraw / set - aside / rescind / quash the entire selection process for recruitment to the post of Group “D”, 2017, conducted by the West Bengal Group “D” recruitment Board, and after cancellation to declare vacancies according to the Labour Department’s Notification No. 500 (100)-Emp / 1M-43 / 94 Calcutta, the 07<sup>th</sup> October, 1997 within a stipulated time period.

b) An Order do issue directing the respondent authorities to set apart 30% reservation of the vacancies, according to Labour Department’s Notification for different categories, meant for exempted category falling under ST / SC / OBC community within a stipulated time period.

c) An order do issue directing the respondent authorities to transmit all the records pertaining to the said selection process for the post of Group “D”, 2017, before this Hon’ble Tribunal so that conscionable justice can be done. ....”

An application being MA-119 of 2018 was filed for adding five applicants as party respondents in OA-943 of 2017. On 27<sup>th</sup> July, 2018 it was taken up for hearing. The said application was allowed directing the five applicants therein to be added as applicants to the Original Application being OA-943 of 2017 by amending the cause-title.

It appears from records that the application OA -723 of 2017, filed on 3<sup>rd</sup> August, 2017, was admitted on 10<sup>th</sup> November, 2017 and directions were issued to file reply and rejoinder.

It also appears that the application OA-943 of 2017, filed on 17<sup>th</sup> October, 2017, was admitted on 20<sup>th</sup> November, 2017. Directions were issued to exchange reply and

rejoinder. On the said date an order was passed directing that the entire selection process including any appointment made in favour of any of the candidates on the basis of the selection process challenged in the application would be subject to the result of the application.

Learned advocates in both the applications during final hearing had submitted that as the issues raised in the two applications are similar, the matters be heard analogously. Accordingly the two applications, after exchange of reply and rejoinder, were heard analogously.

Mr. Bratindra Narayan Roy, learned advocate appearing on behalf of the applicants in OA-723 of 2017, submitted that though pursuant to the notification issued by the Government of West Bengal from time to time 30% vacancies are to be reserved for candidates belonging to exempted category for the purpose of filling of all non PSC posts arising in the State Government establishment, since vacancies are 6000 the reservation should have been 1800 instead of 513 which is illegal. Since reservation of vacancies emanates from the Constitution and though Roster has been prepared in accordance with the reservation policy, however it is evident from the advertisement that the same has not been adhered to which is violative of Articles 14, 16, 21 and 38 of the Constitution. Since Constitution mandates reservation for a certain category of candidates, the authorities cannot eat into the reservation of seats while dealing with public appointment as has been done while issuing advertisement for recruitment. Though the mandate of the Constitution has been given legislative effect by the State by enacting the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in service and posts) Act, 1976 and the West Bengal Backward Classes (Other than Scheduled Castes and Scheduled Tribes) (Reservation of vacancies in Service And Posts) Act, 2012, however that has not been maintained by the State while issuing the advertisement for recruitment. Since Reservation is a Constitutional obligation which is protected by enacting the statutes and though 100 Point Roster should have been maintained, it has been given a go-by by the authority. If the said process is not followed the entire selection and recruitment process are void and the applications are maintainable. Submission was that the respondents in their respective replies have not at all controverted the points raised in the application. In support of his submission, Mr. Roy has relied on the judgments in *Rajkumar Vs. Shakti Raj*; (1997) 9 SCC 527, particularly the law laid

down in paragraph 16 therein and in Bhupendranath Hazarika Vs. State of Assam; (2013) 2 SCC 516 particularly paragraph 61 therein in support of his submission.

Mr.Sankha Ghosh, learned advocate appearing in OA-943 of 2017 adopted the submission advanced by Mr.B.N.Ray in OA-723 of 2017.

Mr.Goutam Pathak Banerjee, learned advocate appearing for the State of West Bengal in OA-723 of 2017 and in OA-943 of 2017 relying on the reply submitted on behalf of the State that the applications have been filed on a misconception of facts. According to him the recruitment board had received reports on vacancies in basic grade Group-D posts which are required to be filled up in accordance with the recruitment rules issued by the Finance Department by Notification dated 5<sup>th</sup> May, 2009 as amended from time to time. Submission was that each department maintained its own 100 Point Roster of vacancies in accordance with the Notification dated 1<sup>st</sup> March, 2011 issued by the Labour Department, Government of West Bengal. The total number of vacancies in the post of Group-D personnel at any point of time is to be determined after receiving the reports of vacancies maintained by the departments on the basis of 100 Point Roster. Accordingly, the Board had obtained information about the vacancies on different categories in consultation with the different departments under the State and subsequently a number of vacancies under various categories out of total vacancy of 6000 for the post in question was published by the Board for the purpose of recruitment. According to him as all formalities have been meticulously maintained there is no scope for the applicants to feel aggrieved and therefore, the application is not tenable in the eye of law. In this regard he relied on the principles of law laid down in the judgment of the Hon'ble Supreme Court in R.K.Sabharwal Vs. State of Punjab: (1995) 2 SCC 745, particularly in paragraphs 5 and 6 thereof. Moreover, it was submitted that as the applicants had admittedly appeared in the selection process pursuant to the advertisement knowing fully well about the vacancies and the reservations made they cannot now turn around and challenge the method of selection and thus the applications are not maintainable.

Mr.A.L.Basu, learned advocate appearing on behalf of the Recruitment Board relying on the judgments of the Supreme Court in Ashok Kumar Vs. State of Bihar; (2017) 4 SCC 357, submitted that the instant applications are not maintainable as the applicants, being fully aware of the selection process and having participated in the

said process and after being unsuccessful, cannot challenge the said selection process. As they had taken part in the process of selection without objection now they cannot question the method of selection and its outcome on the ground of alleged lacuna. According to him the Original Applications challenging the selection process is in the garb of a Public Interest Litigation which cannot be entertained by the Tribunal. Moreover, relying on the Notification no. 251 EMP dated 3<sup>rd</sup> December, 2013 issued by the Government of West Bengal it was submitted that there are no anomalies regarding reservation as alleged in view of the stipulations in paragraphs 5, 8 and 9 of the said notification. Submission was the respective appointing authorities while sending the requisition had followed 100 Point Roster. At the time of appointment 100 Point Roster will be followed by the appointing authorities.

As the point of maintainability of the applications has been raised on behalf of the respondents, at the outset the said issue requires to be considered first.

It is an admitted position that on 1<sup>st</sup> January, 2017 an advertisement was issued for recruitment to Group-D posts. Therein it was notified that there are 6000 vacancies out of which 513 seats are reserved. The applicants had applied for the post. Admit cards were issued. The applicants participated in the selection process. It appears that after being unsuccessful they have challenged the selection process by filing the Original applications particularly with regard to reservation of vacancies. The question is after participating in the selection process are they entitled in law to challenge the said process. In a recent judgment in *Ashok Kumar (Supra)* the Supreme Court has held that a person who knowingly participates in a selection process cannot later turn round and challenge the method of selection. In the said judgment it was held that:

“13. The law on the subject has been crystallized in several decisions of this Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla*, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar*, this Court held that :

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.”

14. The same view was reiterated in *Amlan Jyoti Borooh* wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15. In *Manish Kumar Shahi v. State of Bihar*, the same principle was reiterated in the following observations:

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.....”

In paragraph 17 of the said judgment the Supreme Court further held:-

“17. In *Ramesh Chandra Shah v. Anil Joshi*, candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that:

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

18. In *Chandigarh Admn. v. Jasmine Kaur*, it was held that a candidate who takes a

calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In *Pradeep Kumar Rai v. Dinesh Kumar Pandey*, this Court held that:

“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time.....”

Therefore, the settled position of law is that a candidate, aware of the stipulations and norms of the recruitment process, participating in a selection process, after being unsuccessful in the selection process, cannot turn round and challenge the said process.

In the instant case the applicants were aware of the advertisement in which 513 vacancies were reserved out of 6000 vacancies. They had applied to participate in the selection process. They were fully aware of the norms and the details of the total vacancies and the reserved vacancies. The applicants participated in the selection process without any protest. They were unsuccessful. Subsequently, they have filed these applications challenging the selection process. In our opinion the same is impermissible in law as laid down by the Supreme Court. Hence, the applications are dismissed as not maintainable. Interim orders are vacated.

No order as to costs.

P.RAMESH KUMAR  
MEMBER (A)

(SOUMITRA PAL)  
CHAIRMAN