

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman.

& The Hon'ble Sayeed Ahmed Baba, Administrative Member.

Case No. –MA-111 of 2021 (OA-11 of 2021).

Sahim Hossain and Others. – Versus – The State of West Bengal and Others.

Serial No. and
Date of order

3
18.01.2022.

For the Applicants

: Mr. S. Sanyal,
Mr. D. Chatterjee,
Mr. J. Chakraborty,
Mrs. R. Ghosh,
Mr. S. Roy Chowdhury,
Advocates.

For the State Respondents

: Mr. K. K. Bandyopadhyay,
Senior Advocate.
Mr. G. P. Banerjee,
Mr. J. Majumdar,
Mr. A. Roy Chowdhury,
Advocates.

For the Public Service Commission, West
Bengal.

: Mr. P. K. Roy,
Mr. S. Bhattacharjee,
Advocates.

The application for addition of party, MA-111 of 2021, has been filed to add Sajal Adhikary and Apu Ghosh as party respondents in the original application, being OA-11 of 2021.

While dealing with the miscellaneous application we refer to facts and orders passed by the Tribunal and the High Court which are necessary for its adjudication.

OA-11 of 2021 came up for hearing before the single Bench of the Tribunal pursuant to the notification dated 24th December, 2020 issued in exercise of the powers conferred under sub section (6) of section 5 of the Administrative Tribunals Act, 1985 on 8th January, 2021 when after hearing the learned advocates for the parties it was held since the matter involves an important question of law and in view of the proviso 2 sub-section 5 (6) of the Act, the matter be placed before the Division Bench as and when it sits and the matter was directed to appear under the heading Admission Hearing on 15th January, 2021. Thereafter, the original applicants moved the High

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Court by filing a writ petition, being WPST 17 of 2021. It appears the matter came up for hearing before the High Court on 23rd February, 2021. Thereafter, the writ petition was heard on 25th February, 2021 when the following order was passed :

“At the time of hearing Mr. Bandopadhyay, learned senior counsel appearing for the respondent Nos. 1 and 2 pointed out that before the statement was made by him on the last date of hearing, seventy candidates had been joined after their medical examination and verification of documents. However, even if any further appointment letters have been issued, no other candidate is being permitted to join service.

On the request of the learned counsel for the Commission, adjourned to March 3, 2021.”

The matter came up for hearing on 3rd March, 2021 when after hearing the learned advocates for the parties an order was passed which is as under :-

“Mr. Majumdar, learned Additional Advocate General appearing for the Public Service Commission fairly submitted that the Commission will upload the result with the marks obtained by all the candidates in the written test and the interview on the website of the Commission within two days from today.

Adjourned to March 11, 2021.”

Thereafter, the matter came up for hearing on 23rd March, 2021

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when, while disposing of the writ petition, an order was passed, the relevant portion of which is as under :

“Considering the aforesaid facts, while setting aside the impugned order dated February 18, 2021, declining interim relief to the petitioners, we deem it appropriate to remand back the matter to the Tribunal to consider all the arguments raised by the learned counsels for the parties afresh, in the light of the issues which have arisen after the merit list and select list have been uploaded on the website of the Commission.

The matter regarding interim relief be decided by the Tribunal on or before April 09, 2021.

In case the parties wish to supplement the pleadings already filed by them the same may be done immediately so that sufficient time is there for hearing and disposal of the prayer for interim relief.

Till the prayer for interim relief is decided by the Tribunal, the appointment of the selected candidates shall remain stayed.

The writ petition is disposed of accordingly.”

Thereafter on 13th April, 2021 supplementary affidavit was filed by the original applicants. The original application along with the supplementary affidavit came up for hearing before the Tribunal on various dates. The State respondents and the Public Service Commission, West Bengal, had filed their respective replies. It may be noted that subsequently the matter was heard by the Division Bench

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when the present application, being MA-111 of 2021 for addition of parties was filed on 1st December, 2021. The State respondents filed reply to the miscellaneous application which is on record.

Mr. S. Sanyal, learned advocate appearing on behalf of the applicants relying on the miscellaneous application submitted that though the applicants on 25th February, 2021 for the first time came to know about the appointment of seventy candidates, as the State respondents did not provide details of the 70 candidates and the applicants were unaware of the details of the said candidates, till 1st December, 2021 they could not file the application for addition of parties for adding the candidates who have joined. Since the applicants have got the details of the two candidates – Sajal Adhikary, who had joined at Food and Supplies Department, Purba Medinipur and Apu Ghosh who had joined at Food and Supplies Department, Jalpaiguri during the pendency of the original application and Sajal Adhikary and Apu Ghosh have not taken steps before the Tribunal to vacate the interim order, the application for addition of party has been filed. As the State and the Public Service Commission, West Bengal did not disclose the details of the candidates who have been appointed, the delay or defect in moving the application for addition of parties is for the laches on the part of the State respondents. Referring to Order 1 Rule 10(2) of the Code of Civil Procedure, it was submitted as Court may add parties for complete adjudication and to settle all questions involved in the matter, order may be passed for adding Sajal Adhikary and Apu Ghosh as party respondents by amending the original application. In support of his submission reliance has been placed on the judgments in Amit Kumar Shaw –vs- Farida Khatoon : (2005) 11 SCC 403 and B. N. Das And Ors. –vs- Bijaya Ketan Mohanty : AIR

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Mr. K. K. Bandyopadhyay, learned senior advocate submitted that the application for addition of party is defective and is not maintainable as the addresses of the two candidates who have joined have not been stated. Since during submission of the original application it was made clear on behalf of the respondents that candidates appointed or whose names are appearing in the panel have not been made party respondents, since at this stage the applicants and the respondents have concluded their respective arguments on the main application, that is, OA-11 of 2021 and the original applicants were to reply to the submission advanced by the State respondents and Commission, the application is not maintainable. Relying on the reply to the miscellaneous application it was submitted since in terms of the liberty granted by the Division Bench of the High Court the original applicants filed supplementary affidavit and thereafter replies were filed to the said affidavit and as in the reply it was categorically stated by the State respondents that in the original application and the case made out in the supplementary affidavit by the applicants suffer from non-joinder of parties, the miscellaneous application be dismissed. Since the applicants chose not to file rejoinder to the reply to the supplementary affidavit filed by the State respondents, in the absence of specific denial of the averments in the reply, the statements in the reply should be construed to have been admitted in terms of the doctrine of non traverse under order VIII Rule 5 of the Code. Submission was after completion of pleadings, final hearing of the original application and the supplementary affidavit commenced on and from 8th November, 2021 and the learned counsel for the applicants completed his submission on 9th November, 2021. The learned counsel for the Commission started his submission and had

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concluded on 17th November, 2021. The learned counsel for the State respondents made his submission on 17th November, 2021, 24th November, 2021 and concluded his submission on 26th November, 2021. Relying on the judgment of the Supreme Court in C. P. John – vs – Babu M. Palissery : (2014) 10 SCC 547, particularly the law laid down in paragraphs 40 and 43 thereof it was submitted that the original application should be dismissed as it suffers from non-joinder of parties. Since the applicants did not deem it necessary to add any of the candidates as party respondents in spite of having full knowledge of the order dated 23rd March, 2021 when the merit list and final list were uploaded by the Commission, the applicants cannot plead for addition of parties for their deliberate laches so the application is in gross abuse of the process of law. Submission was that the miscellaneous application is to frustrate the entire process of final hearing.

Mr. P. K. Roy, learned advocate for the Commission submitted the applicant at the very outset were aware that successful candidates have not been made parties. Submission was the attitude of the applicants is to thwart the process of justice as selected candidates were not made parties intentionally. Since pleadings were complete and the original applicants were only to reply to the submission made on behalf of the Commission, the applicants are trying to delay the process of justice with an ulterior motive.

It is evident from the order dated 25th February, 2021 passed in WPST 17 of 2021 that seventy candidates had joined their posts after their medical examinations and verification of documents and on 3rd March, 2021 directions were issued by the High Court for uploading the marks of all the candidates in the written test and interview.

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Significantly, on 23rd March, 2021 High Court while setting aside the order dated 18th February, 2021 passed by the Tribunal declining interim relief to the applicants, remanded the matter to the Tribunal. It was directed that the Tribunal should consider all arguments raised by the counsel for the parties afresh in the light of the issues which have arisen after the merit list and select list have been uploaded on the website of the Commission. It was also directed that the matter regarding interim relief should be decided by the Tribunal on or before 9th April, 2021 and in case parties wish to supplement the pleadings already filed by them “*the same may be done immediately*”. Therefore fact is on 25th February, 2021 the applicants came to learn that seventy candidates have been appointed. By order dated 3rd March, 2021, the applicants also came to learn about the marks obtained by all the candidates in the written test and interview.

The applicants pursuant to the leave granted on 23rd March, 2021 by the High Court had filed supplementary affidavit on 13th April, 2021 wherein they have cited instances where a few reserved candidates, who have got empanelled under unreserved category after availing age relaxation. Thereafter reply and rejoinders have been filed, which are on record. Subsequently the application for addition of parties being MA-111 of 2021, was filed on 1st December, 2021 to add Sajal Adhikari and Apu Ghosh as party respondents.

We find in the original application the applicants have challenged the entire selection process for the post of Sub-Inspector in the subordinate Food and Supplies Service, Grade-III under Food and Supplies Department, Government of West Bengal, 2018 conducted by the Public Service Commission, West Bengal without impleading the

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successful candidates as party respondents. From the order dated 25th February, 2021 passed in WPST 70 of 2021 even after the original applicants came to learn that seventy candidates had already joined, neither the applicants were diligent to file an application for addition of party nor any application was filed before the Tribunal seeking the names and details of the successful candidates from the State or Commission. Even after leave was granted by the High Court by order dated 23rd March, 2021 to supplement the pleadings already filed by them, the original applicants chose not to avail the liberty granted. It is surprising that the applicants, after submission of the replies by the State respondents and Commission, had filed the application for addition of party on 1st December, 2021 without disclosing the cause of delay and/or how they were sufficiently prevented from filing the application at an earlier stage though liberty was granted by the High Court by order dated 23rd March, 2021 passed in WPST 17 of 2021. The order dated 23rd March, 2021 is of much significance to the facts of the case. For the reasons as aforesaid, the provisions contained in Order 1 Rule 10(2) will not come to aid of the original applicants in the absence of such explanation for delay. In short, the application for addition of parties lacks bonafides.

Further the Order 1 Rule 10 of the Code cannot be made applicable in view of the specific provision in section 22(1) of the Administrative Tribunals Act, 1985, wherein it has been stipulated that “*A Tribunal shall not be bound by the procedure laid in the Code of the Civil Procedure 1908 (5 of 1908), but shall be guided by the principles of natural justice....*”. Assuming the principles of the Code are applicable, the said principles of the Code cannot be made applicable at this belated stage for the reasons as already discussed hereinbefore.

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Moreover as the applicants have not filed rejoinder to the reply filed on behalf of the State respondents, the statements made in the reply to the miscellaneous application are deemed to be correct. The judgement in Amit Kumar Shaw (supra) does not come to the aid of the original applicants as in paragraph 17 thereof it has been held "*The applicants have properly, sufficiently satisfactorily explained the delay in approaching the Court*" which the present application for addition of party patently lacks. Therefore, the ratio of law in Amit Kumar Shaw (supra) cannot be made applicable in the present case considering the stage of filing of the present miscellaneous application. The judgement in B.N. Das (supra), particularly the law laid down in paragraph 3 thereof, is not applicable in view of the order passed by the High Court on 23rd March, 2021 in WPST No. 17 of 2021 and for the reasons as stated hereinbefore. The law laid down in C.P. John (supra), particularly in paragraph 43 thereof, deprecating the practice of rectifying the defects at a belated stage, is applicable to the present case.

Hence, the application for addition of parties, being MA-111 of 2021 is dismissed. No order as to cost.

(SAYEED AHMED BABA)
MEMBER (A)

(SOUMITRA PAL)
CHAIRMAN

S.K.G/S.M.

ORDER SHEET

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