

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

**Present-**

**Hon'ble Justice Soumitra Pal, Hon'ble Chairman.**

**Case No. – OA 11 of 2021.**

**SAHIM HOSSAIN & ORS - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. and  
Date of order

For the Applicants

: Mr. Subir Sanyal,  
Mr. Dibyendu Chatterjee,  
Ms. Reshmi Ghosh,  
Advocates.

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18.02.2021

For the State Respondent  
nos. 1 and 2

: Mr. Kalyan Bandyopadhyay, Senior Advocate.  
Mr. Goutam Pathak Banerjee,  
Mr. S. Sengupta,  
Advocates.

For the P.S.C.W.B.

: Mr. S. Bhattacharjee,  
Advocate.

The matter is taken up by the single Bench pursuant to the Notification No. 949-WBAT/2J-15/2016 dated 24<sup>th</sup> December, 2020 issued in exercise of the powers conferred under sub section (6) of section 5 of the Administrative Tribunals Act, 1985.

This application was filed on 7<sup>th</sup> January, 2021. On 11<sup>th</sup> January, 2021, the matter appeared under the heading “New Application”. After hearing Mr. S. Sanyal, learned advocate for the applicant and Mr. G.P. Banerjee, learned advocate for the State respondents and Mr. S. Bhattacharjee, learned advocate for the Public Service Commission, West Bengal, the matter was directed to appear on 18<sup>th</sup> January, 2021 under the heading “Admission Hearing”.

On 18<sup>th</sup> January, 2021 Mr. Banerjee submitted since an important question of law is involved, the matter may be taken up by the Division Bench. Such submission was adopted by Mr. Bhattacharjee. After hearing the parties, an order was passed, the relevant portion of which is as under :-

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*“...Since in my view the matter involves an important question of law and in view of the proviso to sub section (6) of Section 5 of the Administrative Tribunals Act, 1985, the matter may be placed before the Division Bench as and when it sits. Let the matter appear under the heading “Admission Hearing” on 15<sup>th</sup> February, 2021....”*

Against the said order, the applicants moved the High Court by filing a writ petition being, W.P.S.T. No. 7 of 2021 (Sahim Hossain & Ors – vs- The State of West Bengal & Ors), which was disposed of on 29<sup>th</sup> January, 2021 by passing an order, the relevant portion of which is as under :-

*“...Under this section, in our opinion, the Chairman or any other Member authorised by the Chairman in this behalf can function as a single-member bench to hear out any matter of any class which includes the original application. We are further of the opinion that the petitioners should not suffer because of the prevailing situation in the tribunal.*

*We request the Hon’ble Chairman of the tribunal to exercise his powers under this section and constitute a bench so that the original application filed by the applicants before the tribunal is heard out, not later than three months of communication of this order.*

*Let this order be communicated by the Registrar General of this court to the Hon’ble Chairman, West Bengal State Administrative Tribunal immediately.*

*We also direct that a period of two weeks from date, the respondents shall not take any further steps with regard to the notified appointments in question in relation to the posts of Sub-Inspector, Food & Supplies Department, Government of West Bengal and also shall not*

*take any further action with regard to the notification without obtaining express leave of the tribunal.*

*WP.ST No. 7 of 2021 is disposed of accordingly.”.*

Thereafter, the matter came up before the Tribunal on 10<sup>th</sup> February, 2021 and after hearing the learned advocates for the parties, the matter was directed to appear under the heading “Admission Hearing” on 15<sup>th</sup> February, 2021. On 15<sup>th</sup> February, 2021, the matter was taken up for hearing. Learned advocates for the applicants, the Commission and the State respondents were heard and the matter was directed to appear today, that is, on 18<sup>th</sup> February, 2021, to enable Mr. Sanyal to give reply.

Before I proceed further, since the matter is taken up by the Bench sitting singly, it is appropriate to refer to the judgement of the Supreme Court in Dr Mahabal Ram -Versus- Indian Council of Agricultural Research and Others (1994) 2 Supreme Court Cases 401, particularly the law laid down in paragraph 6 thereof, the relevant portion of which is as under :-

*“.....On the other hand, we are prepared to safeguard the interests of claimants who go before the Tribunal by holding that while allocating work to the Single Member – whether judicial or administrative- in terms of sub-section (6), the Chairman, should keep in view the nature of the litigation and where questions of law and for interpretation of constitutional provisions are involved they should not be assigned to a Single Member. In fact, the proviso itself indicates Parliament’s concern to safeguard the interest of claimants by casting an obligation on the Chairman and Members who hear the cases to refer to a regular bench of two members such cases which in their opinion require to be heard by a bench of two members. We would like to add*

*that it would be open to either party appearing before a Single Member to suggest to the Member hearing the matter that it should go to a bench of two Members. The Member should ordinarily allow the matter to go to a bench of two Members when so requested. This would sufficiently protect the interests of the claimants and even of the administrative system whose litigations may be before the Single Member for disposal.....”.* (Emphasis supplied)

Since the High Court by order dated 29<sup>th</sup> January, 2021 had directed the matter to be heard, the matter is being heard.

Heard Mr. S. Sanyal, learned advocate for the applicants, Mr. K. Banerjee, learned senior advocate for the State respondent nos. 1 and 2 and Mr. S. Bhattacharjee, learned advocate for the Public Service Commission, West Bengal – the respondent nos. 3,4 and 5. The matter is admitted for hearing. Let reply be filed by 5<sup>th</sup> April, 2021. Rejoinder, if any, by 23<sup>rd</sup> April, 2021. Matter to appear under the heading “Reply/Rejoinder and Objection” on 3<sup>rd</sup> May, 2021.

So far as the prayer for interim order is concerned, referring to the application it is submitted by Mr. Sanyal that since the result of the written examination is the sheet anchor of the personality test and marks have not been allotted as evident from the annexures and as marks obtained by the candidates in the interview have not been published and total marks obtained by the candidates have been published as evident from the list of candidates recommended for recruitment to the post of Sub Inspector in the Subordinate Food & Supplies Service, Grade-III, under Food & Supplies Department, Government of West Bengal, 2018, there is lack of transparency, which is also evident as cut off marks were published after written test was held as evident from page 259 of the application. Moreover, while

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publishing the list the reservation policy has not been maintained and as such there was lack of fairness. Moreover, the Commission should have published the MCQ and key answers before proceeding with the interview. In this regard, reliance has been placed on the examination notice dated 5<sup>th</sup> February, 2020 relating to Clerkship Preliminary Examination, 2019 and the notice dated 4<sup>th</sup> Jan, 2021 of Udyan Palan Projukti Sahayak. Since the qualifying marks were not fixed before holding the examinations, there was lack of transparency and fairness. Referring to West Bengal Public Service Commission Rules of Procedure, particularly rule 3 (vii),(viii) and (ix), submission is the provisions in the rules have been given a go-by. In support of his submission Mr. Sanyal has referred to the judgements of the Supreme Court in Mohd. Altaf (2) and Others-Vs- U.P. Public Service Commission and Another (2008) 14 Supreme Court Cases 144 , K. Manjushree –Vs- State of A.P. & Anr 2008 (SC) 258, Vijoy Kumar Pandey –vs- Arvind Kumar Rai and Others (2013) 11 Supreme Court Cases 611 and the judgement of the Calcutta High Court in Swapan Kumar Maity-Vs- South Eastern Railway & Ors 2006 SCC Cal 483.

Mr. K.Bandyopadhyay, learned senior counsel appearing on behalf of the State respondent nos. 1 and 2 submits that since the list has been published and the recommendations for a panel has been made by the Commission and as the candidates recommended have not been added as parties, the application is not maintainable. Submission is it is an admitted position while inviting applications to 957 vacant posts of Sub Inspector in the Subordinate Food & Supplies Service, Grade-III, under Food & Supplies Department, Government of West Bengal, 2018, the Commission had the discretion to fix qualifying marks in the written examination. Candidates were short listed on the basis of the marks

obtained in the written test and thereafter interview was held and final recommendations were made on 30<sup>th</sup> December, 2020. Submission is the applicants without raising any protest appeared in the written test held in January, 2019. Their names were recommended for interview. They accepted the results without protest. They appeared in the interview which was held in between 1<sup>st</sup> December, 2020 and 24<sup>th</sup> December, 2020. Thereafter recommendations were made on 31<sup>st</sup> December, 2020. Since it is not a case that the applicants were not allowed to participate in the interview and as the applicants had appeared in the written examination and in the interview without protest no case has been made out for passing an interim order. Neither challenge has been made to the roster nor there is allegation of favouritism. Since large number of posts are vacant and at present there are 554 employees in the cadre strength of 2286, as recruitment is necessary, considering the balance of convenience and inconvenience, no interim order may be passed. In support of his submission, Mr. Bandyopadhyay has relied on the judgements of the Supreme Court in Shankarsan Dash –Vs- Union of India 1991Supreme (SC) 265, Union of India and Others –Vs- S. Vinodh Kumar and Others (2007) 8Supreme Court Cases 100, Sadananda Halo and Others –Vs- Momtaz Ali Sheikh and Others (2008) 4 Supreme Court Cases 619, B. Ramakichenin alias Balagandhi –vs- Union of India and Others (2008) 1 Supreme Court Cases 362, Inderjeet Khurana –Vs- State of Haryana and Others (2007) 3 Supreme Court Cases 102 , Baluram-Vs- P. Chellathangam and Others (2015) 13 Supreme Court Cases 579. Since the rules of the Commission have been strictly followed and the results have been published in accordance with the rules, particularly Rule 3(ix), no interim order may be passed.

Mr. S. Bhattacharjee, learned advocate appearing on behalf

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of the Commission submitted since 957 vacancies have been notified to be filled up, after the written examinations were held, on the basis of 1:3 ratio, total 3024 candidates were called for interview on the basis of their merit in the said written examination. Commission did not fix the qualifying cut off marks, rather it had fixed cut off marks after the results were published calling three persons for interview against one vacancy. Cut off marks is the marks obtained by the last candidate who have been called for interview. Submission is the cut off marks cannot be fixed till written examination is held.

Heard learned advocates for the parties. The question is whether the interim order can be passed at this stage. Since prima facie I find that the applicants had appeared in the written examination without protest in January, 2019 and thereafter in December, 2020 had participated in the interview also without protest, no interim order is passed. However, appointments, if any, made shall be provisional and/or temporary and shall abide by the result of the application. This order is passed without prejudice to the rights and contentions of the parties and subject to further orders that may be passed.

(SOUMITRA PAL)  
CHAIRMAN

Skd.

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