

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member.

Case No. –OA 134 of 2021

Moin Mondal and Others. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicants	: Mr. A. Maiti, Advocate.
<u>05</u> 17.08.2023.	For the State Respondents	: Mr. M. N. Roy, Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt. II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

Mr. M. N. Roy, learned counsel begins his submission on behalf of the State respondents by stating that :-

(i) Although this State is required to comply with the direction of the Hon'ble Apex Court in Manish Kumar -Vs- Union of India and Others, but as the applicants are also aware, that particular year – 2020 no recruitment could take place due to the prevailing situation of Covid-19 pandemic. Therefore, the State respondents cannot be blamed for non-compliance of such direction for the year 2020. Further, as per the direction of the Hon'ble Apex Court, it is the Hon'ble Chief Justice of High Court, Calcutta who has been delegated the authority to oversee the progress of recruitment of Police Personnel in this State.

(ii) Mr. Roy refers to the para 15 and 16 of a judgement and submits that this was an order passed by the Hon'ble Supreme Court under Article 142 of the

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Constitution which only the Hon'ble Supreme Court has the power to pass such an order under this Article. Further, such an order was passed as a one-time measure. Such one-time measure cannot be relied upon in this case.

- (iii) Mr. Roy refers to (2021)5 SCC 638 : Rachna and Others –Vs – Union of India and Another, in which particular emphasis has been given to paras 31,32,45 and 46. Submission is, it is not within the domain of this Tribunal to legislate and pass direction on the State respondents in such matters, not only such interference has been disallowed by the Apex Court, but such applications in this Tribunal are also not admissible.

In response of the submissions made above by Mr. Roy, Mr. A. Maiti, learned counsel for the applicants submits that in the High Court of Delhi – Vs – Devina Sharma case, as pointed out by Mr. Roy, no such mention has been made about Article 142. Mr. Maiti also draws the Tribunal's attention to para 18 as not only important but having the relevant ratio of the case "*The age bar which they would now encounter is not of their own volition.*" The applicants in this application also encountered this age bar hurdle without their own choice and volition. As regards the reference made by Mr. Roy for UPSC in (2021)5 SCC 638 : Rachna and Others –Vs – Union of India and Another, Mr. Maiti submits that in the UPSC case, it is clear that the applicants had appeared in the recruitment process but since they could not qualify, they wanted another chance citing Covid-19 Pandemic as an excuse.

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However, in this case the applicants had not participated at all due to the prevalence of Pandemic.

Let the matter appear under the heading "For Orders" on 23.09.2023.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A)

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