

IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A - 7 0 0 0 9 1

Present :-

The Hon'ble Justice Soumitra Pal
CHAIRMAN

-AND-

The Hon'ble Mr.P.Ramesh Kumar
MEMBER(A)

J U D G E M E N T

-of-

Case No. OA- 362 of 2015

SANJEEB RAM GANGULY & Others.Applicants.

-Vs-

The State of West Bengal & others....Respondents

For the Applicants : Mr.B.N.Roy
Mr.S.N.Ray
Mr.G.Dey
Mr.A.Das
Advocates

For the State Respondents : Mr.A.L.Basu
Mr.S.Bhattacharjee
Advocates

For the Private Respondents : Mrs.S.Mitra
Advocate

Judgement delivered on 4th March, 2020.

In this application, being OA-362 of 2015, Sanjeeb Ram Ganguly, Arun Kumar Ghosh, Biswanath Ghosh, the applicant nos. 1, 2 and 3, being General candidates, and Santanu Mondal, the applicant no. 4,

a Scheduled Caste candidate, have challenged the selection process for the year 2006 for the post of Lower Division Clerk, Group-'C' in the District Registrar Office, Burdwan.

It appears that the applicants appeared in the written test. After being qualified they were directed to appear in the interview. The applicants appeared in the interview/ viva voce test.

Challenging the selection process Santanu Sinha, a candidate, had filed an application, being OA-8572 of 2008, which was disposed of by a judgement and order dated 24th August, 2010, by holding as follows:

".....We hold that when from the file itself, we find that the selection process was vitiated by act of arbitrariness, so far allotment of marks for oral test/ viva voce was concerned, we direct the appointing authorities to recast the panel by making proportional reduction regarding allotment of marks to each and every candidate so far oral/viva voce is concerned, keeping only 15 marks for viva voce/oral test and after recasting the panel, the appointing authority will decide the eligible candidates according to their merit position, taking into account their total score both in written test and oral/viva voce test and the entire exercise must be done within a period of 3 months from communication of this order.."

Alleging non-compliance of the order dated 24th August, 2010 Santanu Sinha, had filed a contempt application, being CCP-89 of 2011, (arising out of OA-8572 of 2008). The contempt application came up for hearing on 9th February, 2012 when the alleged contemnor respondent filed a compliance report stating that the panel had been recast.

On 9th February, 2012, after perusal of the compliance report, the contempt proceedings were dropped by holding *".....On hearing both the sides, I accept the compliance report and the contempt application is dropped with an observation that appointing authority must expedite the*

process of giving appointment as early as practicable in accordance with law...."

It appears from the recast panel that the names of the applicant nos. 1, 2 and 3, appear against serial nos. 22, 33 and 45 in the General category and the name of the applicant no. 4 is appearing at serial no. 17 in the Scheduled Caste category, as evident from pages 23, 24 and 25 of the application.

As their names figured in the recast panel, the applicants filed an application, being OA-269 of 2012, inter alia, praying for appointment and the said application was disposed of in the light of the order as already passed in OA-8572 of 2008. As the applicants were not given appointment, representations were filed. Since without exhausting the recast panel for giving appointment the authorities in 2013 had advertised for filling up the posts of LDC and LDA in the same department, the applicants filed an application under the Right To Information Act, 2005. In response to the same by memo. dated 19th March, 2015, the authorities furnished a list of 13 candidates who had been selected for appointment to the said posts under the District Registrar, Burdwan, the respondent no. 4. The applicants have stated that as per the advertisement 185 candidates were selected for the post of LDC/LDA throughout the West Bengal and 13 candidates amongst them had already been selected for appointment under the respondent no. 4. Since the applicants have not been given appointments though their names appear in the panel, this application, being OA-362 of 2015, has been filed praying for certain reliefs, the relevant portion of which is as under:

"(a) An order do issue directing the concerned respondent authorities to issue appointment letter immediately to the applicants herein to the post of Lower Division Clerk, under District Registrar, Burdwan after condoning the age if any, without any further delay and within a stipulated time period as their names are featuring in the recast panel.

(b) An order do issue directing the respondent authorities not to give appointment to those who are being selected through the West Bengal Staff Selection Commission without considering the candidatures of the applicants first as they are selected in the recast panel which has been prepared by the respondent authorities much earlier”.

After the matter was admitted, reply was filed. Pursuant to the directions of the Tribunal a report was filed by the Inspector General of Registration and Commissioner of Stamp Revenue, Government of West Bengal and an exception to the report was also filed by the applicants. It is to be noted that the private respondent no. 8, 9, 10, 14, 15 and 16 have filed reply to the Original application and a combined rejoinder to reply filed by the State and private respondents was filed.

Mr.G.Dey, learned advocate for the applicant relying on the original application, the rejoinder and the exception to the report, had submitted that since the panel was recast pursuant to the order of the Tribunal and names of the applicants figure in the panel, the applicants should have been appointed after setting aside appointment of Iti Banerjee who had illegally superseded, other candidates.

Mr.A.L.Basu, learned advocate appearing on behalf of the State respondents relying on the reply and the report dated 10th December, 2019 submitted that there were 40 vacancies in 2006 selection process. Of the 40 posts 12 were old sanctioned posts and 28 vacant posts were for the year 2006. Out of 28 posts, 4 posts were filled up on compassionate ground. The selection of candidates for 24 posts were distributed as - General -9, General PH-1, SC-5, ST-2 and OBC-2. In the General category as the 3 candidates appearing against serial no. 3, 6 and 9 did not accept appointment, the next 3 candidates were given appointment. Among them the candidate against serial no. 12 refused. As a result, the next candidate against serial no. 13 was offered

appointment. The candidate whose name was appearing at serial no. 16 by filing an application, being OA-572 of 2012, had challenged the allotment of marks. She succeeded. Thereafter her answer scripts were re-examined. After re-examination her marks got enhanced from 71.5923 to 74.5923. As a result she was placed in the list above serial no. 13. Since 9 General candidates were to be appointed and as the applicant nos. 1, 2 and 3 were placed against serial nos. 22, 33 and 45 respectively and after giving appointment to the 9 General category candidates as there was no vacancy in the said category, the applicants including others could not be appointed. So far as the appointment of Santanu Mondal in the SC category is concerned since first 5 candidates in the said category were to be appointed as per reservation policy and as he was placed against serial no. 17, he could not be appointed.

Mrs.S.Mitra, learned advocate for the private respondent no. 8, 9, 10, 14, 15 and 16 to the Original application submitted that her clients were appointed pursuant to the selection process of 2013 conducted by the West Bengal Staff Selection Commission for appointment to the posts of LDC/ LDA, Group-II and were not candidates of the 2006 selection process.

We find out of 40 posts 12 posts were from the old sanctioned posts of 2000, which were earlier not filled up. 28 posts were of the 2006 selection process. Out of 28 posts undisputedly 4 posts were filled up on compassionate ground. So far as the 24 posts are concerned 9 were to be filled up by the General Category candidates and 5 by the candidates belonging to the Scheduled Caste category. The applicant nos. 1, 2 and 3 were placed at serial no. 22, 33 and 45. Since 9 candidates were to be appointed in the General category and as the candidates against serial nos. 3, 6 and 9 did not join, the next 3 candidates were offered appointment, that is up to serial number 12. Two of them joined. As the candidate against serial no. 12 did not join, the candidate against serial no. 13 was offered appointment. However, Iti Banerjee (Chatterjee) whose name

had appeared against serial no. 16, had filed an application, being OA-572 of 2012 praying for re-examination of answer scripts. Pursuant to the order of the Tribunal the answer scripts were re-examined. After re-examination she secured 74.5923, an enhancement of 3 marks, and was placed above the serial no. 13 and appointed. As a result all 9 General candidate posts were filled up and the applicant nos. 1, 2 and 3 could not be appointed.

So far as the applicant no. 4 is concerned since we find that 5 posts were reserved in the Scheduled Caste category and in recast panel the applicant no.4 was placed 17, the said applicant could not be appointed as candidates were appointed in accordance with the panel.

Moreover the application is misconceived as the applicants had questioned the recruitment of the private respondents who were recruited pursuant to a separate recruitment process held in 2013 which the applicants could not controvert while giving reply to the submission on behalf of the State and private respondents. Further 86 vacancies which were referred to by the applicants were the 'existing' vacancies as on 2012. Therefore, the application fails and is dismissed.

(P. RAMESH KUMAR)
MEMBER (A)

(SOUMITRA PAL)
CHAIRMAN