

**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 Mrs. Urmita Datta (Sen)  
MEMBER (J)**

**-AND-**

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

**J U D G E M E N T**

**-of-**

**Case No. OA-689 of 2018**

**Samit Bhattacharya & 85 Ors.....Applicants .**

**-Versus-**

**State of West Bengal & Others.....Respondents**

**For the Applicant :- Mr. Arka Maiti,  
Learned Advocate.**

**For the State Respondents :- Mr. G.P. Banerjee,  
Learned Advocate.**

**Judgement delivered on: 29.11.2019.**

**The Judgement of the Tribunal was delivered by :-**

**Hon'ble Urmita Datta (Sen), Member (J).**

**OA-689 OF 2018**

**J U D G E M E N T**

The instant application has been filed praying for following relief:-

- a) Grant Leave to move this application jointly.
- b) An order by cancelling and/or quashing and/or setting aside the advertisement 15 of 2018 and in annexure J above by which the respondents are illegally trying to recruit fire operators in respect of the post of the applicants.
- c) An order by cancelling and/or quashing and/or setting aside the order dated March 15, 2018 by which the respondent authorities introduced artificial break in the service of the applicants.
- d) An order by directing the respondents to regularize the service of the applicants and extend all service benefits of a regular employee. In alternative declare that the applicants are entitled to serve as an employee of the state until 60 years of their age and further entitled to get equal benefits of a regular employee since they discharge functions of regular employee.
- e) And/or to pass any such other order(s) and/or direction(s) as this Hon'ble Tribunal may deem fit and proper.

As per the applicants, they were enlisted as Volunteers under the Civil Defence Force, who were specially trained for fire fighting, in the year 2012 vide different notifications. In 2013 some volunteers were enrolled as casual fire personnel in the name of Auxiliary Fire Brigade as per Section 3 A of the Act on contractual basis for one year and the applicants were engaged on different dates as casual fire fighter and till date are working. In the meantime, vide Advertisement No. 15 of 2018, the respondents had asked for applications in the prescribed format for the post of Fire Operator. Being aggrieved with, the applicants have filed this instant application.

As per the applicants, although the services of the applicants were termed as contractual, however, they are working for long time. Their duties are perennial in nature as regular employees and the respondents had

intentionally introduced artificial break and fix up upper age limit as 27 years to exclude the applicants completely from the zone of consideration.

The respondents have preliminary raised objection of maintainability of this application as the ground of jurisdiction as the applicants are not holding any civil post or were engaged against any civil post and were never engaged against any sanctioned post.

According to the respondents, Section 3 (A) of West Bengal Fire Service Act, 1950 has categorically granted power to the State Govt. to grant approval for raising of Auxiliary Fire Brigade for fire fighter and allow enrolment of volunteers as members of such Fire Brigade by the local authority on such terms and conditions with the prior approval of Government.

Further, the counsel for the respondent has also referred the judgement passed by the three Judges Bench of Hon'ble High Court dated 11.02.2015 in WP No. 12246 (W) of 2013 wherein it has been held that Auxiliary Fire Operators are not Civil post holder.

As per the respondents, applicants were initially trained as Civil Defence Volunteers and subsequently engaged as member of Auxiliary Fire Brigade as volunteers, therefore, they were never engaged against any sanctioned civil post. Being volunteers in nature, any grievance of these applicants do not fall under the ambit of this Tribunal.

The counsel for the applicants has denied the claim of the counsel for the respondents and has submitted that Auxiliary Fire Operator is a civil post by virtue of law in terms of Section 2 (i)(a) read with Section 3 of West Bengal Fire Service Act, 1950 and they were engaged against the sanctioned post. The counsel for the applicant further submitted inter alia :

- 1) Judgement of Hon'ble High Court is per incuriam as the said order was passed by the consent of parties.
- 2) Hon'ble High Court has not considered paragraph 2,9, 10 & 11 in the case of State of Assam Vs. Kanak Chandra Dutta reported in 1967 AIR 884.
- 3) Relying upon the case of State of Karnataka Vs. Amiir Di & Ors. reported in (2007) 11 SCC 681 was misplaced as Amiir Di, in the case of the appointment was made under a scheme and in the instant case, appointments were made against sanctioned post.

We have heard both the parties and perused the records. As the respondents have raised the preliminary objection with regard to jurisdiction of this Tribunal, we have to decide first about the same and then would proceed on merit. It is noted that the applicants were admittedly appointed as Auxiliary Fire Operator on purely temporary and contract basis for a limited period of one year under West Bengal Fire & Emergency Services. Therefore, obviously, they are the part of Auxiliary Fire Brigade under West Bengal Fire Service Act, 1950, Section 3 (A) of West Bengal Fire Services Act, 1950 while dealing with Auxiliary Fire Brigade, stipulates inter alia :-

**Section 3A – Auxiliary fire brigade.**

***The State Government may allow raising of an auxiliary fire brigade for the purposes of extinguishing fire and protecting life and property in the case of fire and for such other services as may be determined by the State Government in any local area or any other area in which this Act is not in force, by the local authority for that area, or any organization or institution, on such terms and conditions as may be determined by the State Government, and may provide such assistance as may be necessary for raising of such fire brigade and allow enrolment of volunteers and other persons as members of such fire brigade on such terms and conditions as the local authority, with the prior approval of the State Government, may determine.***

Section 2 of said Act deals with the definition Clause and Section 2 (i) (a) stipulates :-

***‘members of firebrigade’ includes persons employed in the West Bengal Fire Service and also volunteers or other persons enrolled in an auxiliary fire brigade.***

From the above, it is noted that the State Government has been empowered to allow raising Auxiliary fire brigade for the purpose of extinguishing the fire and enrolment of volunteers and other persons as members of such fire brigade as per the prayer of any local authority. Section 3 deals with maintains, substitute etc of fire brigade, which stipulates that the fire brigade shall consist of such numbers of members and shall be otherwise constituted in such number and such as the State Govt. may think fit. Therefore, as there is a specific existence of fire brigade as well as Auxiliary fire

brigade, under Section 3 & 3 (A), therefore, both cannot be treated as same. From the perusal of Memo dated 19.01.2012 (Annexure-4) and dated 22.01.2013 (Annexure-7), it is noted that in consonance with said Act, the State Govt. has allowed district wise vacancies for the Auxiliary Fire Operators to be enrolled from the Civil Defence volunteers on contractual basis for one year. Therefore, it is an admitted fact that the applicants were appointed as volunteer for the Auxiliary Fire Brigade that too on contractual basis for one year only at a consolidated pay. Therefore, they cannot be considered as a civil post holder.

In view of the above, we do not have any jurisdiction to entertain the application and the OA is dismissed for lack of jurisdiction with liberty to the applicants to approach before the appropriate forum, if so advised.

**P. RAMESH KUMAR**  
**MEMBER (A)**

**URMITA DATTA (SEN)**  
**MEMBER (J)**