

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 5970 of 2021

**Rentu Biswas
Vs.
The State of West Bengal & Ors.**

With

WPA 9231 of 2021

**Md. Azfar Mondal
Vs.
The State of West Bengal & Ors.**

For the writ petitioners	:-	Mr. Biswarup Biswas, Adv.
For WBCSC	:-	Mr. Pulak Ranjan Mondal, Adv. Ms. Bandana Mondal, Adv. Mr. Subhrangsu Panda, Adv.
For UGC	:-	Mr. Anil Kumar Gupta, Adv.
For respondent nos. 11 & 12	:-	Mr. Monish Sen, Adv. Ms. Oisani Mukherjee, Adv.
For respondent nos. 13 & 14	:-	Mr. Intiaz Ahmed, Adv. Ms. Ghazala Firdaus, Adv. Mr. Shibasish Banerjee, Adv. Mr. Sk. Saidullah, Adv. Ms. Arunima Mukhopadhyay, Adv. Mr. Debopam Roy, Adv. [in WPA 9231 of 2021]
For the State	:-	Mr. Debabrata Chatterjee, Adv. Mr. Simanta Kabir, Adv. [in WPA 5970 of 2021] Mr. Ramaprasad Sarkar, Adv. Md. Mansoor Alam, Adv. [in WPA 9231 of 2021]
Heard on	:-	26.08.2021
Judgment on	:-	15.09.2021

Amrita Sinha, J.:-

Facts of both the case being similar, the writ petitions are being disposed of by this common judgment.

A notification was published by the West Bengal College Service Commission, 'the Commission' for short, inviting applications from eligible candidates for appointment in accordance with the WB College Service Commission (Manner of Selection of Persons for Appointment to the post of Assistant Professor, Principals and Librarians and Re-recommendation of Assistant Professor) Regulations, 2012.

The petitioners belong to the OBC- A category. Both of them participated in the recruitment process initiated by the Commission for being appointed as Assistant Professor in the subject Geography. Initially only eight vacancies were published in OBC-A category but thereafter fresh vacancies were added and 11 vacancies in the OBC-A category have been filled up by way of recommendation.

The petitioners were selected to participate in the interview. In the provisional merit panel Rentu Biswas was placed in rank 12 and Md. Azfar Mondal was placed in rank 13 in the OBC-A category. As the name of the petitioners appeared in serial nos. 12 and 13 respectively in the provisional merit panel published on 6th March, 2020, recommendation letter was not issued in their favour.

According to the petitioners, the candidate whose name appeared in rank 2 under OBC-A category namely Md. Akhtar Hasinur Rahman was recommended for being appointed in the Maharajadhiraj Udaychand Women's College, Burdwan and he joined the post in July, 2020 but suddenly expired in the first week of February, 2021. As the said post fell vacant during the pendency of the panel, the Commission ought to have directed re-counselling for filling up the said post.

It is the further case of the petitioners that Surendranath College for Women has also sent requisition for filling up the vacant post under OBC-A category but the same was not filled up initially. Thereafter the said vacancy was filled up by way of transfer of a candidate from Rabindra Mahavidyalaya. Consequent to the said transfer a vacancy cropped up in Rabindra Mahavidyalaya.

The petitioners pray that their names may be recommended in either of the two vacancies which arose during the validity period of the panel.

The Commission has filed a report wherein it has been mentioned that out of the 20 empanelled candidates in the OBC-A category, 11 candidates were recommended who were above the writ petitioners in rank.

As per the available records there is no vacancy in the post of Assistant Professor in Geography (OBC-A category) in the Maharajadhiraj Udaychand Women's College, Burdwan and the College has not reported about the death of the recommended candidate.

As regards vacancy in Surendranath College for Women, the same could not be filled up by recommendation due to the transfer order issued by the Higher Education Department on 5th February, 2021. The transfer order has been made from the Rabindra Mahavidyalaya to Surendranath College for Women in favour of one S. Pramanik, Assistant Professor in Geography.

The college authority of Rabindra Mahavidyalaya has sent a letter to the Commission on 26th March, 2021 seeking recommendation against the vacancy without submitting the filled in requisition form without the resolution of the Governing body and without the Backward Classes Welfare Department authentication, as required for sending valid requisition of vacancy by a College.

The report further mentions that the requisition submitted by Rabindra Mahavidyalaya on 26th March, 2021 shall be guided by Advertisement No. 1 of 2020

which was published long before the vacancy in Rabindra Mahavidyalaya was reported, but as the petitioners are empanelled under Advertisement No. 1 of 2018 accordingly their names cannot be recommended in respect of the vacancy which arose in Rabindra Mahavidyalaya.

The learned advocate representing Maharajadhiraj Udaychand College, Burdwan submits that admittedly there is a vacancy in the college, but the vacancy can neither be declared nor requisition be sent to the Commission as the person who had joined the post is yet to be reported dead either by the police or by his family members. According to the College, no valid information about the death of the professor has been received either from the family members of the professor or from the police. In the absence of valid documents of death, vacancy of the said post cannot be declared.

It is the further contention that the petitioners are merely empanelled candidates and they do not have any vested right of appointment. As and when their names will be recommended by the Commission their right to get the job will accrue. Prior thereto, the petitioners are not entitled to a writ of Mandamus commanding the authorities for issuance of the letter of recommendation in their favour.

Regulation 3.4 of the aforesaid Regulations has been placed. The said Regulation lays down that only on receipt of a valid and complete requisition from the Principal or Teacher in Charge of a College for recommending a candidate for appointment in a vacancy against an approved post, the Commission shall consider the vacancy as a valid vacancy and shall record it as such in its books.

According to the College, requisition cannot be forwarded to the Commission as there is no valid evidence of death of the Professor and according to the Commission until and unless a valid and complete requisition is received from the

Principal or the Teacher in Charge of a college, the vacancy against an approved post cannot be treated as a valid one.

The respondents pray for dismissal of the writ petitions.

In response to the submission made by the respondents the petitioners have relied upon the First Information Report registered in the Purba Bardhaman Sadar P.S on 3rd February, 2021 in response to a complaint lodged by the father of Md. Akhtar Hasinur Rahman alleging that he suspected his daughter in law as the prime culprit for the death of his son, and the offence has been registered under Section 302 of the Indian Penal Code. Post-mortem was completed at Burdwan Medical College and Hospital and thereafter the body was handed over to the father. It has been submitted that the FIR is a Government document and is enough proof of death of the professor.

I have heard and considered the submissions made on behalf of both the parties.

The panel in question expired on 9th March, 2021. During the pendency of the panel the petitioners approached this Court praying for relief. Admittedly, the petitioners are empanelled at serial nos. 12 and 13 respectively and candidates up to the serial no. 11 have been recommended for appointment. Out of 11 recommended candidates one has expired. The submission of the College that they do not have the report of death of the said professor is not at all convincing. The professor met an unnatural death. Post-mortem of his body was conducted. Case has been registered under Section 302 of the Indian Penal Code. The College admits that vacancy is there and the said vacancy arose within the validity period of the panel, but the College, for strange reasons, did not report the same before the Commission.

It is not expected that the Commission will have knowledge of all vacancies arising in the Colleges. It is for the Colleges to draw attention of the Commission in respect of any vacancy that arises so that the same may be recorded by the Commission as a valid vacancy. In the absence of reported vacancies, it is naturally not possible for the Commission to recommend candidates for filling up the same.

As regards the vacancy in Rabindra Mahavidyalaya, admittedly the transfer order of the professor from Rabindra Mahavidyalaya to Surendranath College for Women was issued during the validity period of the panel. Accordingly, there is a vacancy to be filled up in Rabindra Mahavidyalaya.

In ***Nirvik Banerjee -vs- University of Burdwan*** reported in ***2014 3 CLJ (Cal) 411*** the Court considered the issue as to whether the vacancies arising subsequent to the issue of advertisement or preparation of the panel can be filled up from the same panel. The Court was of the opinion that vacancies arising during the life time of the panel would be capable of being filled up from the same panel. The claim of the candidates cannot be rejected only on the ground that merely on the basis of being empanelled they have acquired no vested legal right to seek appointment from the panel.

In the said judgment the Court also took into consideration the submission of the respondents that there may be other empanelled candidates whose position may be higher than the petitioner and giving appointment to the petitioner without considering their claim would not be proper. The Court in answer to the above has laid down that if any empanelled candidate did not feel aggrieved enough by the act of the respondent in not considering their candidature for appointment, the Court ought not to embark on a search process and identify them and elicit from them whether they are still interested in the subject post. The candidates who have brought the cause to the Court should not be denied justice.

In the matter of ***Mousumi Pal -vs- The West Bengal College Service Commission & Ors. (WP 10417 (W) of 2007)*** in order dated 16th July, 2013 passed by this Court, reference was made to a decision of the Hon'ble Supreme Court in the matter of ***State of UP -vs- Ram Swarup Swaroj*** reported in ***(2003) 3 SCC 699*** and the Court observed that even if life time of the panel expired during pendency of the writ petition, the petitioner cannot be denied relief specially when the writ petition was moved before expiry of the life time of the panel. The Court was of the view that when merit list was published by the Commission it was noted that the panel was prepared with due consideration of the number of anticipated vacancies, then any vacancy which arose for which advertisement was published, the Commission should recommend the name of the petitioners. The Commission was directed to recommend the name of the petitioners in any vacancy of which panel was prepared or from the vacancy that occurred subsequently for which next advertisement was published during life time of the panel.

An appeal and application for stay was filed against the order dated 16th July, 2013 and the Hon'ble Appeal Court by order dated 7th October, 2013 in MAT 1442 of 2013 with CAN 10219 of 2013 was pleased to reject the prayer for stay. The order of the learned Trial Judge was thereafter complied by the Commission and the same has been recorded in the order dated 28th January, 2014 passed in WPCRC 396 (W) of 2013.

Admittedly, in the instant case, two vacancies are still available, one on account of death of a professor during the pendency of the panel and the other on account of transfer of a professor from Rabindra Mahavidyalaya to Surendranath College for Women.

Accordingly, the Commission is directed to verify about the existence of the two vacancies and if the vacancies are indeed available, conduct re-counselling from the empanelled candidates for filling up the said posts, notwithstanding the fact

that the validity of the panel expired in the meantime, as the writ petition was filed when the panel was valid.

Steps shall be taken in the matter at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

WPA 5970 of 2021 and WPA 9231 of 2021 are disposed of.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)