

31.07.2024
Sl. No.4
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16317 of 2024

West Bengal Courts' Employees' Association
Vs.
The State of West Bengal & Ors.

Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Ms. Samprii Saha,
Mr. Avijit Kar

....for the petitioners.

Mr. Sirsanya Bandopadhyay,
Mr. Deboprio Karan

....for the State.

Mr. Biswabrata Basu Mallick,
Ms. Parna Roy Chowdhury

.....for the respondent no.5.

Mr. Saikat Banerjee,
Ms. Juin Dutta Chakraborty

....for High Court Administration.

This writ petition has been filed on 24th June, 2024 wherein West Bengal Courts' Employees' Association and its General Secretary along with one of its authorized representative while representing the interest of the employees have challenged two recruitment notifications respectively dated 28th February, 2024 and 14th March, 2024. The recruitment notification dated 28th February, 2024 in respect of engagement of staff in Fast Track Courts and Family Court in the District Judgeship of North 24-Parganas while that dated 14th March, 2024 is for recruitment in the Fast Track Courts under the Judgeship of South 24-Parganas. The recruitment

process under both the notifications is for engagement of persons purely on contractual basis initially for a period of one year with the option to renew. The vacancies to be filled in on contractual basis as declared in the notification dated 28th February, 2024 are for English Steno-Typist, Bench Clerk (Peshkar), Bailiff, Peon and Karmabandhu. The vacancies to be filled in on contractual basis as declared in the notification dated 14th March, 2024 are for English Steno-Typist, Bench Clerk (Peshkar) and Peon.

On behalf of the petitioners, it is submitted that in view of the provisions of the West Bengal District Court (Constitution of Service, Recruitment, Appointment, Probation and Discipline of Employees) Rules, 2015 (hereinafter referred to as the 2015 Rules) there is no provision for engagement of persons on contractual basis for the declared vacancies. Referring to the provisions of Chapter-III & Schedule D of the said Rule, it is submitted by the petitioners that there is no post termed as "English Steno-Typist" sanctioned under the said Rules. The sanctioned posts are Stenographer Grade-I, Stenographer Grade-II and Stenographer Grade-III. The cadre of Stenographer Grade-I is to be filled up entirely by way of promotion from the feeder post that is

Stenographer Grade-II. In Stenographer Grade-II there is a provision for recruiting 25% by direct recruitment, the balance 75% is required to be filled up by promotion from the post of Stenographer Grade-III. In the cadre of Stenographer Grade-III, recruitment takes place from two sources, 60% through direct recruitment while 40% by promotion from the cadre of Lower Division Clerks/Typists (erstwhile)/Typist Copyist (erstwhile) having qualification equivalent to those of direct recruitment as Stenographer Grade-III. The petitioners say that there as such no provision for filling up any of the posts of Stenographers Grade-I, Stenographers Grade-II and Stenographers Grade-III by contractual engagement.

That apart and in any event there being no sanctioned post of English Steno-Typist, no recruitment to such post can be made by the two employment notifications.

The petitioners then refer to Part-I, Part-II and Part III of Schedule-B to the said Rules which provide for appointment of Bench Clerk Grade-I, Bench Clerk, Grade-II and Bench Clerk Grade-III. In case of Bench Clerk, Grade-I, Bench Clerk, Grade-II and Bench Clerk, Grade-III, the posts are to be filled up by promotion as per the said Rules. There is as such,

according to the petitioners, no scope of engaging any contractual person to fill up any vacancy arising in respect of such posts.

The two notifications provide for engagement of Bench Clerk (Peshkar). There is no post sanctioned in accordance with the said Rules as Bench Clerk (Peshkar). Thus, the petitioners contend that no contractual engagement can also be made as Bench Clerk (Peshkar).

The petitioners then refer to Schedule-E for appointment of Bailiff. 66 & 2/3 of the post in the said cadre is to be filled up by promotion whereas 33 & 1/3 by direct recruitment

The petitioners then refer to Rule 11 and Schedule - 'A' to submit that there is a cadre defined as 'Peon' which is a Group - 'C' post and the recruitment in respect thereof as per Rule 11 is provided in Schedule F. However, no Schedule - 'F' which as per Rule 11 specifies the qualifications for recruitment to the post of 'Peon' is contained in the said Rules. There is also no post sanctioned under the said Rule as 'Karmabandhu'.

The petitioners, therefore, submit that the two employment notifications respectively dated 28th February, 2024 and 14th March, 2024 are required to be set aside and/or quashed and as an interim

protection all steps and/or further steps that may be taken in terms of the said two employment notifications should remain stayed.

On behalf of the State it is submitted that there is acute shortfall of employees in the posts sought to be filled by contractual engagement. There has been no recruitment process for several years in the past, and as such, at the present to manage the functioning of the District Judiciary the contractual appointments have been sought to be made. If the two appointment notifications are interfered with then there will be an impasse in the functioning of the District Judiciary. It is further submitted by the State that the said Rules is for appointment of permanent employees. There is no bar to engage contractual employees even if the posts available for regular appointment remain vacant.

On behalf of respondent no. 5 it is submitted that at the present out of 94 sanctioned strength of Group 'D' (Peon) in the District Judgeship of 24-Parganas (North) only 29 are engaged. As a consequence whereof, several Courts under the District Judgeship of North 24-Paranas are limping for dearth of employees. A requisition for at least 64 unskilled employees (Peons) was, therefor, made for the smooth functioning of the Courts under the said

Judgeship. It is also submitted that towards payment of unskilled employees (Peons) on contractual basis a sum of Rs.64,12,032/- has been spent in the financial year 2022-2023. The engagement of contractual employees and staff is not a new procedure. It is further submitted that the office of the District Judge, North 24-Parganas, Barasat, English Department by a notification bearing no. 94 – M dated 20th July, 2024 has shortlisted 64 candidates by publishing a merit list for being engaged as contractual unskilled employees. It is further submitted that the notification dated 28th February, 2024 clearly states that 16th March, 2024 shall be the last date for accepting the applications and the interview will be held on 28th March, 2024. The petitioners had waited so long and only when the appointment is scheduled to be given the petitioners have filed the instant writ petition with an ulterior motive and mala fide intent. No interim order should, therefor, be passed in favour of the petitioners.

On behalf of respondent nos. 3 and 4, it is submitted that none of them have any role to play in the subject recruitment process. It is further submitted that on 14th February, 2024 a meeting of a Committee to suggest measures for implementation of the recommendations of Justice Shetty Commission

in the District Judiciary of West Bengal comprising of three Hon'ble Judges of this Court on the Administrative Side was held on 5th February, 2024 to decide the formulation of Schedule - 'F' as mentioned in Rule 11 of the said Rules. In the said meeting, it was decided that a draft Schedule - 'F' should be prepared and placed before the committee by the Judicial Department, Government of West Bengal. The draft has been submitted on 19th April, 2024 and is awaited approval. Thus, at the present there is no schedule - 'F' to the said Rules though Rule 11 specifies for the same.

Responding to the submissions made by the respondents the petitioners say that apart from the illegality sought to be perpetrated by engaging contractual employees against the regular sanctioned post without holding regular recruitment process the respondents by way of contractual engagement are trying to scuttle the promotional avenues of the regular employees. Even if the regular recruitment process could not be held there was no embargo in promoting the persons from the feeder post to the next promotional post in order to meet the immediate crisis instead of engaging contractual employees. It is also not clear whether the vacancies to be filled are against vacant regular post or such recruitment are

outside the regular vacant post. If the vacancies are outside the regular vacant post, then supernumerary posts are to be created. There is no circular or process initiated to create such supernumerary posts. In absence of such stipulation, it is to be presumed that the vacancies sought to be filled up by the contractual engagement are against regular post. This will amount to depriving the regular employees from being considered for promotion despite having the requisite qualification, experience for being considered for the promotion in accordance with the said rules.

After hearing the parties and considering the materials-on-record I find substance in the submissions made by the petitioners. The State of West Bengal in view of the recommendations made by the Justice Shetty Commission which has been duly accepted and in view of the directions given by the Hon'ble Supreme Court of India is duty bound to provide infrastructural support to the District Judiciary for its smooth functioning. Infrastructural support includes providing employees and staff to assist in the functioning of the District Judiciary.

It is a matter of anguish that the recruitment process for recruiting regular employees against the sanctioned post lying vacant has not been conducted

for years together despite assurances given by the State. The engagement of contractual employees, that too few in numbers, will not change the situation to any great extent. The smooth functioning of the District Judiciary in absence of regular staff and employees is likely to suffer and cannot be either cured or supplemented by contractual engagements. The State Government cannot remain a spectator and make contractual appointments with the plea to improve the situation in a continuous manner without conducting the regular recruitment process. Moreover, it appears that against contractual appointment, a huge sum has been spent in the judgeship of 24-Parganas (North). The two employment notifications, in the instant case, are clearly *de hors* the 2015 Rules, the background for framing of which is also explicit from the said rules. That apart and in any event the post of 'Stenographer', 'Bench Clerk (Peshkar)' are very sensitive post for the smooth functioning of the District Judiciary. Any person engaged on contractual basis cannot be fastened with any responsibility or liability like a regular employee for any misconduct. Engagement on contractual basis in such sensitive post are likely to create more difficulties than aiding in smooth functioning of the

District Judiciary. The two employment notifications cannot be allowed to be proceeded with any further. If any step or further steps are taken in terms of the said two notifications the same are likely to create multiplicity to judicial procedures.

In the aforesaid facts and circumstances no further steps can be taken in terms of the two employment notifications respectively dated 28th February, 2024 and 14th March, 2024. Any steps taken in terms of the said two notifications till date shall abide by the result of this writ petition. It is made clear that any engagement made in terms of the said two notifications shall not create any equity in favour of the persons so engaged.

The matter requires further scrutiny which is possible only after affording the respondents an opportunity to disclose their stand on affidavit.

Let Affidavit-in-opposition be filed by 23rd August, 2024, reply thereto, if any, be filed by 6th September, 2024.

Parties will be at liberty to mention for inclusion in the list under the heading 'Hearing' on completion of affidavits or on expiry of the time provided for filing of affidavits, if no such affidavits are filed.

(Arindam Mukherjee, J.)