

CONSTITUTIONAL WRIT
Present : Hon'ble Justice Nadira Patherya
W. P. No.22475 (W) of 2009
SUBIR SAHA
Versus
STATE OF WEST BENGAL AND OTHERS
Judgment on : 27th January, 2010.

Point:

PANEL: When panel was prepared the posts did not exist- Recruitment of candidates from the panels whether justified –Service Law

Fact: The petitioner by filing the instant writ application seeks cancellation of the memo dated 7th August, 2009 in so far as the candidates from the existing panels are to be appointed and memo dated 9th October, 2009. The case of the petitioner is that a panel was prepared on 13th February, 2007. The life of the panel was initially for a period of two years subject to revalidation on yearly basis. The panel expired on 13th February, 2009 and the revalidation sought to be effected is by memo dated 9th October, 2009, i.e., after the expiry of the said panel. Such revalidation of the panel by memo dated 9th October, 2009 is bad and liable to be set aside.

Held: The recruitment of the candidates from the existing panels is not justified, as at the time the panel was created, the newly created posts did not exist and the panel was in respect of posts then existing. Therefore, the said memo dated 7th August, 2009 in so far as it directs the appointment of candidates from the existing panels cannot be justified. The selection from the existing panels of the candidates in respect of new posts created will deprive the eligible candidates from competing for the vacancies which has subsequently arisen and such improper exercise of power should not be permitted.

Paragraph – 8

Cases: 1997 (8) SCC 488 = AIR 1998 SC 18
2006 (3) CHN 655
AIR 2004 SCW 731

For the Petitioners : Mr. Kalyan Bandyopadhyay,

Mr. Chaitali Bhattacharyya.

For the State : Mr. M. M. Das,
Mr. Chhabi Chakraborty.

The Court:

1. This is an application whereby the petitioner seeks cancellation of the memo dated 7th August, 2009 in so far as the candidates from the existing panels are to be appointed and memo dated 9th October, 2009.

2. The case of the petitioner is that a panel was prepared on 13th February, 2007. The life of the panel as per memo dated 25th January, 2006 was initially for a period of two years subject to revalidation on yearly basis. The panel expired on 13th February, 2009 and the revalidation sought to be effected is by memo dated 9th October, 2009, i.e., after the expiry of the said panel. Such revalidation of the panel by memo dated 9th October, 2009 is bad and liable to be set aside.

3. By order dated 7th August, 2009 additional centres and posts have been created. The petitioner is not against creation of such centres and posts, but to fill the said posts from candidates in the existing panels is not justified as at the time the panel was created the posts did not exist and creation of posts after approval of panel will require initiation of a fresh selection process to fill the posts created. Candidates cannot be appointed from the existing panels as the said candidates have not applied for the posts created subsequently. For the said proposition reliance is placed on *1997 (8) SCC 488 = AIR 1998 SC 18*. As the panel has expired on 13th February, 2009 its validity cannot be extended thereafter. Therefore, the memos dated 9th October, 2009 and 7th August, 2009 in so far as it directs filling up of newly created posts from the existing panel be cancelled.

4. Counsel for the respondent-authorities questions the *locus standi* of the petitioner to challenge the memos dated 9th October, 2009 and 7th August, 2009, in so far as it directs filling up of newly created posts from the existing panel on the ground that no right of the Sabhapati has been affected, therefore, he has no legal right to file the instant application. The panel was prepared on 13th February, 2007 and the life of such panel was to expire on 12th February, 2009. On 9th

February, 2009, at a meeting of the Selection Committee it was resolved to revalidate the panel by a year. Out of the seven members of the Selection Committee three were present. Therefore, the quorum as per the 2006 memorandum was satisfied and the meeting cannot be faulted. The said proposal was forwarded to the concerned department and after due consideration thereof certain particulars were called for. The said particulars were forwarded without delay and on the basis of the said information the panel was revalidated. Therefore, the memo dated 9th October, 2009 is justified and cannot be set aside.

5. As regards the direction contained in the memo dated 7th August, 2009 regarding filling up posts from the existing panel such direction was incorporated in view of the order passed by the Supreme Court of India on 22nd April, 2009 in W.P (C) No.196 of 2001. Therefore, it is as per the Supreme Court's directives that such a clause has been inserted. In fact, some appointments have been made after revalidation of panel and prior to order dated 24th December, 2009.

6. Counsel for the petitioner-in-reply submits that the decision to appoint on revalidation of panel though taken and appointment letters issued the candidates appointed have not joined. As the petitioner is deeply concerned with the issues in this writ petition and as held in *2006 (3) CHN 655 and AIR 2004 SCW 731*, this application is maintainable. Therefore, orders be passed.

7. Having considered the submission of the parties as the panel was prepared on 10th February, 2007 in respect of Anganwadi Helpers and the panel in respect of the Anganwadi Workers was prepared on 13th February, 2007, the same would expire on 9th February, 2009 and 12th February, 2009 respectively. Prior to expiry of the panel of 10th February, 2007 a meeting was called on 9th February, 2009. As the quorum of three members inclusive of the Chairman and the Convenor was present the Resolution taken at the said meeting cannot be faulted. In fact, the Resolution of 9th February, 2009 has not been challenged. Therefore, the proposal to revalidate the panel has also been accepted. Such proposal was forwarded to the department concerned and to a query from the department on 7th April, 2009, reply was given on 17th April, 2009. Therefore, the proposal to revalidate the existing panel was adopted on 9th February, 2009, i.e., prior to expiry of the existing panel. It is the revalidation process which was completed thereafter and panel revalidated with retrospective effect in view of Clause 18(I) of the memo dated 25th January, 2006

which postulates “revalidation thereafter”. Therefore, the memo dated 9th October, 2009 cannot be faulted and is upheld.

8. As regards the memo dated 7th August, 2009 the creation of new centres and posts have not been challenged and in view of the decision reported in *1997 (8) SCC 488* the recruitment of the candidates from the existing panels is not justified, as at the time the panel was created, the newly created posts did not exist and the panel was in respect of posts then existing. Therefore, the said memo dated 7th August, 2009 in so far as it directs the appointment of candidates from the existing panels cannot be justified. Although the reason given for the said insertion is the directive from the Supreme Court of India, but such directive is only in respect of creation of Additional Anganwadi Centres and does not lay down the procedure nor any way directs the appointment of candidates from existing panels. Therefore, the said clause set out hereinbelow :

“Accordingly, after careful consideration of the matter, the Governor has been pleased to direct that candidates in the existing panels of the Anganwadi Workers and the Anganwadi Helpers, if any, should be appointed immediately after observing all necessary formalities for early operationalisation of the Anganwadi Centres.”

cannot be sustained and is accordingly set aside. The petitioner will be at liberty to take steps in accordance with law. The selection from the existing panels of the candidates in respect of new posts created will deprive the eligible candidates from competing for the vacancies which has subsequently arisen and such improper exercise of power should not be permitted.

9. As regards the *locus standi* of the petitioner the respondent-authorities are to act as per the prescribed norms and to follow the same. Converse will be contrary to law and any aggrieved citizen can challenge a clause of the memorandum which is contrary to law as in the instant case including non-performance of statutory obligation. In the instant case, the aforementioned clause of appointing candidates for the new posts created can be challenged by the petitioner *as* the concern of the petitioner is deeper than that of busybody as held in *2006 (3) CHN 655* and therefore, this writ petition is maintainable. The petitioner is the Sabhapati of the Panchayat Samity and is also a member of the Selection Committee, and had raised an objection. As the

relevant clause of the memo dated 7th August, 2009 is contrary to law the same cannot be upheld and the appointments if made on the basis thereof will be contrary to law.

10. In view of the aforesaid, the memo dated 9th October, 2009 is upheld and the above-mentioned clause of the memo dated 7th August, 2009 is quashed.

11. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on completion of all requisite formalities.

(Patherya J.)