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**(2006) 05 CAL CK 0006**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 9154 (W) of 2001**

Tapasi Ghosh

APPELLANT

Vs

West Bengal College Service Commission and Others

RESPONDENT

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**Date of Decision :** 13-05-2006

**Acts Referred:**

**Citation :** (2007) 4 CHN 228

**Hon'ble Judges :** K.J. Sengupta, J

**Bench :** Single Bench

**Advocate :** Ashoke Kumar Chakraborty and Pinaki Ranjan Chakraborty, for the Appellant; Pulak Ranjan Mondal and Bandana Das, for the Respondent

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## Judgement

K.J. Sengupta, J.—On the following facts this writ petition has been filed.

2. There was an advertisement in the newspaper inviting applications from the candidates to take examination for preparing a panel for appointment of the teachers amongst others in music in various colleges in West Bengal.

3. In view of the commencement of the West Bengal College Service Commission Act, 1978 (hereinafter referred to as the said Act) the method of recruitment of the teacher in the colleges throughout the colleges in West Bengal has to be made on the recommendation of the Commission and none else. Upon bare reading of the Act it appears to me that once a candidate is empanelled his appointment is as a matter of course, subject of course the panel in question shall remain valid for one year.

4. The panel was formed and in the panel the petitioner's position was fifth. It further appears that there was no classification in the formation of panel meaning thereby all the candidates took examination test both on vocal and instrumental music and even in case of vocal the test was taken by the respective candidates in vocal classical and vocal light music, namely, Rabindra Sangeet. I do not know whether any kirtan or folk song was also the subject. But the record does not depict any such classification.

5. The admitted position is that the private respondent whose position in the panel was sixth below the petitioner's position has superseded as he has been recommended for appointment purported to have received requisition from a college for filling up in an approved post. Apparently and so also it is admitted that there is a discrimination in the matter of recommendation for appointment to the post in question.

6. The justification for supersession was based on alleged classification as it is said that the petitioner is specialised in vocal classical music whereas the respondent No. 6 is said to be an exponent in Rabindra Sangeet which is classified as a light song. The other candidates who belong to the group of vocal classical music and whose rank is above the rank of the petitioner were appointed. As such there cannot be any cause or question of any supersession.

7. On this above background the learned Single Judge of this Court once decided, this writ petition finally directing that the petitioners shall be recommended as and when the requisition of filling up in the post of Assistant Lecturer in vocal classical music is received. The petitioner preferred an appeal against aforesaid order. The Appeal Court set aside the said order as no affidavit-in-opposition was filed and remanded the matter for hearing. On remand the matter was heard by Justice Maharaj Sinha on 8th October, 2002. On prayer for granting interim relief His Lordship was pleased to pass an order to the effect that the West Bengal College Service Commission must keep one post of Lecturer in music vacant until further orders. This interim order was extended from time to time and such extension was granted by me on 20th March, 2003 for a period of eight weeks on the above date.

8. Mr. Chakraborty submits in support of this petition, that in the advertisement there was no classification in the music itself and his contention is that music includes all kinds of music both instrumental and vocal. So when the panel has been formed generalising all kinds of music, such panel has to be followed by making recommendation in order of position in the panel. The admitted position is that the private respondent has superseded and the petitioner should be granted relief regardless of the change of policy. He submits that change in policy while recommending for appointment by the Commission is not permissible as this was not published in the advertisement nor it was informed even after formation of the panel. Therefore subsequent classification based on directive of the Government cannot be allowed to be operative. In support of his submission he has relied on a decision reported in N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, .

9. His further contention is that the plea of expiry of the validity period of the panel is also not tenable as before expiry of validity period the writ petitioner approached this Court. So the period during which the writ petition was pending should be excluded while considering the validity period of the panel. His further contention is that if the litigation is kept pending and one approaches before expiry of the panel then such lapsed panel can be received in the event the

petition succeeds. In support of this portion of the contention he has relied on a decision reported in *State of U.P. Vs. Ram Sawrup Saroj*, He has drawn the attention of this Court further that even after expiry of the validity of the panel a candidate has been recommended for appointment on the requisition of the Government. Under such circumstances the Commission cannot be allowed to take double stand.

10. Mr. Pulak Ranjan Mondal, learned Counsel appearing for the Commission submits that from the practical and logical point of view after formation of the panel the classification has been made on receipt of the respective requisition from the respective institutions. He submits that the Commission cannot recommend for appointment to the post other than an approved one. The writ petitioner is admittedly is an exponent of the vocal classical music and does not have expertise in light music like Rabindra Sangeet and for that matter instrumental music. There are other persons who are exponent in the instrumental music and they were not recommended even though they are in a better position than that of the petitioner in the panel. The number six candidate has been recommended as he was an exponent in Rabindra Sangeet and for this purpose requisition for filling up in the approved post of Rabindra Sangeet was sent by the college concerned. Mr. Mondal admits that there is a case where recommendation was sent for appointment even after expiry of one year validity period as the litigation was pending in this Court.

11. He has drawn my attention to a Division Bench judgment of this Court rendered in MAT No. 3940 of 1999 whereby it has been held by this Court that a lapsed panel cannot be allowed to revive beyond the validity period.

12. Having heard the respective contentions of the learned Counsels and considering the materials it appears to me that the Commission has no doubt deviated from their published norms as in the advertisement it has not been mentioned even by implication that the post of Lecturer in music should be filled in on the basis of classification. "Music" term is a very wide one and this includes both vocal and instrumental. From the advertisement there is no whisper that test shall be taken on the basis of the classification or for that matter panel should be formed on the basis of the classification as well. From the records I find upto the stage of formation of the panel the Commission has followed the aforesaid published norms and did not make any classification whatsoever.

13. Logically agreeing with Mr. Mondal while filling in the post of Assistant Lecturer in Music the recommendation has to be sent in a classified manner as an exponent in instrumental music cannot deliver the goods in respect of the post for a vocal classical music. Similarly an exponent in light music cannot be expected to teach or deliver goods in the field of classical music. It is true that the Commission can recommend for appointment to the post of approved Lecturer in a particular field on receipt of the requisition. But such classification, in my view, howsoever practical and logical, should have been informed since beginning so that the candidate concerned would have placed themselves in their

respective position accordingly. When published norms in one way has reasonably created an impression and/or expectation in the mind of the respective candidate, I should say, which is a reasonable one, that such norms throughout is to be followed without any departure. It is settled position of the law that once a norm is published the same cannot be allowed to be deviated without any change in policy decision with the sufficient notice and information to the public at large.

14. This element of transparency in the action of the State or statutory body does, in my view, eliminate chance of arbitrariness. This has not been followed by the Commission.

15. Therefore, I accept the argument of Mr. Chakraborty that the Commission has acted arbitrarily while not following the norms and not forwarding the name of the petitioner. The best course would have been in this case that the Commission was to wait till requisition was received for filling up in the approved post of Assistant Lecturer in the vocal classical music and further the petitioner is recommended or this should have been informed beforehand before sending any recommendation to any candidate. This fairness should have been followed but this was not done so. The Commission has acted whimsically and I should say with greater degree of irresponsibility.

16. However, this course of course of action should not, of course, overlook the question of practicability and workability while filling in the post of a particular stream of music. In terms of the interim order of this Court one post of a Lecturer in Music has been directed to be kept vacant. When I find there is discrimination and/or supersession without any tangible classification, I am of the view that the petitioner is entitled to get relief by way of appointment. The unreported decision cited by Mr. Mondal is of no help in this case as in that case factually the writ petition was filed after expiry of the life-time of the panel, but in this case the writ petition was filed when the validity of the panel was still in existence. Moreover, if by arbitrary action and act and conduct of the Commission the panel is not exhausted or for that matter the power is abused by way of unlawful and illegal supersession, the plea of expiry of the validity period cannot be taken by the Commission particularly when I find there is another instance of breaching the rules of validity period with impugnt in case of another candidate.

17. I am not examining the legality and validity of the turn of another candidate, recommended from a State panel, however, this is one of the instances which was done.

18. Therefore, I uphold the contention of Mr. Chakraborty although the validity of the panel expired during the pendency of the writ petition, the period during which the petition is pending should be excluded while computing the validity period as the petitioner filed the writ petition before expiry of the panel.

19. This Court can grant relief even on a subsequent event and can direct in

appropriate case to give appointment when it is found that there is an arbitrary and illegal action by way of supersession having been made. In support of this observation I find two Supreme Court decisions cited by Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, .

20. I, accordingly, allow the writ petition and direct the Commission to send the recommendation for appointment in favour of the petitioner to the post of Lecturer in music at the first available opportunity in the field of vocal music preferably in vocal classical music, if available, and if not, then in the stream of the vocal music. Mr. Mondal informs this Court that the new panel has been formed. I am of the view since this Court passed an interim order asking the Commission to keep one post vacant, so there will not be any difficulty to fill in that reserved post regardless of the position in the new panel. The Commission has to suffer for its own fault, because of arbitrary and whimsical action. Such appointment shall be made as early as possible. Therefore, the Commission shall intimate to the petitioner as to the number of requisition having received and the number of recommendations having been sent or the number of requisitions which are on hands and the recommendation of which is yet to be sent. This intimation shall be given to the petitioner within a period of a fortnight from the date of communication of this order, in the event immediate recommendation is not possible.

21. The writ petition is, thus, disposed of without any order as to costs.

Mr. Mondal prays for stay of operation of this judgment and order. Having considered this matter the prayer for stay is refused.

22. Let xerox certified copy of this order be given to the learned Lawyers for the parties as early as possible, if applied for.