

W. P. 12246 (W) OF 2013
(Tanmay Ghosh & 30 Ors. -vs- State of W. B. & Ors.)
WITH
W. P. 7593 (W) OF 2013
(Kajal Kundu & Ors. -vs- State of West Bengal & Ors.)
WITH
W. P. 21994 (W) OF 2013
(Kajal Roy & Ors. -vs- State of West Bengal & Ors.)
WITH
W. P. 16739 (W) OF 2013
(Mrityunjoy Biswas & Ors. -vs- State of W. B. & Ors.)
WITH
W. P. 9964 (W) OF 2013
(Avijit Dey & Ors. -vs- State of West Bengal & Ors.)
WITH
W. P. 9454 (W) OF 2013
(Sandip Chandra & Ors. -vs- State of West Bengal & Ors.)
WITH
W. P. 26650 (W) OF 2013
(Jillur Rahaman & Ors. -vs- State of West Bengal & Ors.)

Mr. Swapna Kr. Nandi

Mr. Sib Narayan Chattopadhyay

Mr. Krishna Deo Das

Mr. Amalendu Bikash Mahapatra

Mr. Uttam Rajak

- for Petitioners
 (in W.P. 12246(W)/2013)

Mr. Chittapriya Ghosh

Ms. Aiswarjya Gupta

- for Petitioners
 (in W.P. 16739(W)/2013)

Ms. Baishali Ghosal

Mr. Baidurya Ghosal

- for Petitioners
 (in W.P. 9964 (W)/ 2013 &
 W. P. 9454 (W)/2013)

Mr. Shamait Sanyal

Mrs. Sahana Naznin

Mr. Anirban Das

Mr. Shamit Bhanja

- for Petitioners
 (in W.P. 26650(W)/2013)

Mr. Shadhan Roy Chowdhury

Mr. Moloy Roy

- for the State
 (in W.P. 12246 (W)/2013)

Mr. Md. Yasin Ali

Ms. Tapati Samanta

- for the State
 (in W.P.9964 (W)/2013)

The above writ petitions came to be filed questioning the process of selection to the post of Civil Defence Volunteers on contractual basis as illegal and arbitrary. When the matters came up

for consideration, probably as the issue pertaining to services of personnel in Home Guards involved whether they hold a civil post or not, these matters pertaining to selection process on contractual basis in the Auxiliary Fire Personnel for West Bengal Fire and Emergency Services were also clubbed with Home Guard petitions where the reference to be answered by the Larger Bench.

In all the writ petitions from different districts questioning the process of selection of third respondent or the Additional Director General of Police and also West Bengal Fire and Emergency Services, Government of West Bengal, was challenged contending that none of the procedure contemplated in the Notification was adopted, undue favours were shown to certain candidates by inserting candidates, who were really not qualified as per the Notification calling for applications. Then, the question came up for consideration is whether writ petitions could be entertained to decide or adjudicate the lis raised before us with reference to the reliefs sought in the writ petitions.

According to the petitioners, they do not hold posts to be treated as civil posts. Therefore, the writ petitioners cannot be asked to approach the Administrative Tribunal as such application shall be not maintainable under Section 15 of the Administrative Tribunal Act. According to them, the posts in question cannot be treated as posts amenable for the process contemplated under Article 311 of the Constitution of India in the absence of specific recruitment rules to be followed for the contractual services in question. Several decisions were also referred to by the learned Counsel, Mr. Nandi, appearing for writ petitioners in W. P. 12246 (W) of 2013 and his arguments are adopted by other learned counsel representing the writ petitioners in other matters.

So far as the nature of the post and the applicability of provisions of Article 311 of the Constitution of India, learned State Counsel, on instructions submits, it was never the stand of the State that the posts in question could be equated with the status of Civil Posts, rather all along the stand of State was that they were contractual appointees in accordance with the procedure mentioned in the Notification inviting the applications. Therefore, according to the learned State Counsel, the petitioners cannot be relegated to the Administrative Tribunal.

In the light of above stand and especially the contents of the Notification inviting applications for various volunteers on contractual basis at annexure 'P2' dated 7.2.2012, the so-called controversy no longer survives and we opine that the petitioners cannot be relegated to Administrative Tribunal.

Then coming to the question of whether the petitioners could maintain the writ petitions against the State, both learned counsel for petitioners and the State Government have placed reliance on **State of Karnataka & Ors. -vs- Ameerbi & Ors.** reported in **(2008) 1 SCC (L&S) 975.** The question that came up for consideration before the Hon'ble Supreme Court was whether Anganwadi workers held a civil post. Their Lordships answered the same in negative and dismissed the appeal. In this judgement, the Apex Court opined that the posts of Anganwadi workers were not statutorily created posts but was a creation in terms of a scheme. Though the employer and employee relationship exists in such posts, but they cannot be equated to the status of a civil servant, was the opinion expressed. During the course of judgement, consideration with regard to Article 12 of the Constitution of India also came up. Their Lordships opined that there

cannot be straitjacket formula that all the employees who fall under the purview of Article 12 of the Constitution would be government employees. Their Lordships further held that as the State controls the ICDS programme under which Anganwadi Workers Scheme was introduced, the employees cannot take shelter under Article 311 of the Constitution of India though their wage or salary or consolidated amount paid to them, is paid from the coffers of the Government.

Therefore, in the present case, apparently when the parties to the litigation admit that it is not a civil post though the fund requiring maintenance of such personnel on contractual basis is drawn from the State Treasury, the litigation fought against the State, has to be a writ petition where they can seek redressal of their grievance.

In that view of the matter, the writ petitions are maintainable.

So far as the reliefs sought, this Bench need not consider the same and all the writ petitions be placed before the Bench having determination to decide the writ petitions on merits. It is open to the writ petitioners to seek early disposal of the matter before the concerned Bench.

Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.

(Manjula Chellur, Chief Justice)

(Soumen Sen, J.)

(Arijit Banerjee, J.)

