

07.01.2021  
SL No.10  
Court No.12  
(gc)

**MAT 158 of 2020  
With  
CAN 1 of 2020  
(Old No: CAN 1174 of 2020)**

**Sri Kinkar Mahato  
Vs.  
The State of West Bengal & Ors.**

**(Via Video Conference)**

Ms. Kaberi Ghosh (Dey)  
...for the Appellant.

Mr. Jaharlal De  
...for the State.

With the consent of the parties, the appeal and the application are treated as on the day's list and disposed of by this common order.

The present appeal is directed against the order of the learned Single Judge dated 12<sup>th</sup> December, 2019 whereby the writ petition filed by one Sri Kinkar Mahato, *inter alia*, seeking cancellation of panel prepared for the post of Group "D" staff in Kutidih High School (H.S.) (*hereinafter referred to as the "said School"*) was turned down by the learned Single Judge. The learned Single Judge in the order under appeal ultimately directed the said School authority to initiate fresh selection process for filling up the said post of Group "D" without indicating the procedure which would be adopted by the Appointing Authority in the matter of selection and appointment.

The fact remains the writ petitioner and respondent Nos.7 & 8 participated in the selection process for

appointment in the post of Group “D” of the said School pursuant to the prior permission issued by the District Inspector of Schools (S.E.) Purulia vide Memo dated 23<sup>rd</sup> June, 2008. Names were sponsored by the concerned Employment Exchange, in addition thereto, the said post was advertised in the Newspaper seeking application from the eligible candidates to participate in the selection process. Subsequently, the interview was held on 17<sup>th</sup> November, 2008 whereupon the Selection Committee constituted by the Managing Committee of the said School prepared a panel where it is alleged that the appellant, Sri Kinkar Mahato, stood first in the said panel. One of the empanelled candidates, namely, Sri Gour Chandra Mahato, during the pendency of the said panel, preferred a writ petition being A.S.T No.297 of 2009 claiming appointment upon approval of the said panel which was forwarded by the said School authority to the Office of the District Inspector of Schools (S.E.) Purulia. The said writ petition was finally disposed of by the learned Single Judge by order dated 11<sup>th</sup> May, 2009 thereby directing the concerned District Inspector of Schools to take decision on approval of the said panel prepared by the School authority.

Pursuant to such order of the learned Single Judge dated 11<sup>th</sup> May, 2009, the District Inspector of Schools (S.E.) Purulia vide issuing Memo dated 18<sup>th</sup> August, 2009 refused to approve the said panel on pointing out certain irregularities occurred during preparation of the said panel.

The relevant part of the order of the District Inspector of Schools (S.E.) Purulia is reproduced below:-

*“The Secretary of the school denied having taken any gratification from Sri Mahato. The President of the Managing Committee stated that he had signed in the resolution taken on 08.11.2008 in which Sri Gour Chandra Mahato is stood first against the post of Group “D”. The Headmaster told that he had emphasized on fair selection.*

*The observation with regard to the matter are as follows:-*

- 1) The school was permitted to fill up two post of Gr. “D” staff by the office of the District Inspector of Schools (SE), Purulia vide No.822, dated 23.06.2008.*
- 2) The Employment Exchange sponsored the name of 23(twenty-three) candidate the petitioner is one of them.*
- 3) Interview was arranged on 17.11.08 for the post of Gr. “D” for U.R. category.*
- 4) The post of Gr. “D” was also advertised in the newspaper.*
- 5) Total 45 (Forty-five) candidates attended the interview.*
- 6) The resolution of M.C. of the school was taken accepting the panel where one Sri Kinkar Mahato was placed as first empanelled candidate.*
- 7) The Xerox copy of resolution submitted by the petitioner where Sri Gour Chandra Mahato stood first.*
- 8) The panel has been prepared in paradox.*

*The panel of Gr. “D” of the school submitted by the school authority cannot be taken for consideration of approval on ground cited below:-*

- 1) *The Rule 9(7)(a) of the West Bengal Schools' (Recruitment of Non-teaching staff) Rules 2005 postulates that the selection Committee shall submit the panel before the Managing Committee within the 15<sup>th</sup> days from the date of interview and the Managing Committee after getting the same and after scrutinizing the same the said panel will be submitted to the Office of the District Inspector of Schools (SE), Purulia thereafter. In this instances case the panel was submitted to the Office of the District Inspector of Schools (SE), Purulia after a laps of 04 months violating the norms of the prescribed Govt. Order.*
- 2) *The resolution taken on self same date in relation to acceptance of panel suffers from contradiction one resolution taken showing Kinkar Mahato topped the panel other contains the name of Gour Ch. Mahato as the 1<sup>st</sup> empanelled candidate, pertaining to this matter, an affidavit appears to have been submitted by two members of managing committee namely Amanat Ansary and Kanthi Ram Mahato, supporting the matter that Sri Gour Ch. Mahato stood 1<sup>st</sup> in the panel and resolution to this respect was taken on 8.11.08 where the panel was also approved. The points mentioned herewith bear the testimony that the school authority while preparing such panel failed to maintain transparency on such selection and incongruous was prevailing upon."*

In view of the decision of the District Inspector of Schools (S.E.), Purulia communicated by Memo dated 18<sup>th</sup> August, 2009, the panel prepared for the post of Group "D" could not be given effect to. It is also a fact that the School

authority being the Appointing Authority did not challenge the said decision of the District Inspector of Schools (S.E.) Purulia for initiation of fresh selection process in terms of the previous Recruitment Rules, namely, West Bengal Schools' (Recruitment of Non-teaching staff) Rules, 2005.

However, considering the observation as contained in the order of the learned Single Judge which is under appeal, we are not interfering with the said order and the rights of the appellant as well as other candidates who participated in the selection process may be considered by the appropriate authority when the Appointing Authority shall take steps to fill up the said post of Group "D" in the School in question in accordance with law. In view of the fact that the said post is lying vacant for 10 years, it is desirable that it should be filled up as expeditiously as possible and not later than 6 months from date.

With the above observation, the appeal being MAT 158 of 2020 and the stay application being CAN 1 of 2020 (Old No: CAN 1174 of 2020) stand disposed of.

The department is directed to communicate this order to the respondent Nos.5 & 6 within a week from date.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Saugata Bhattacharyya, J.)**

**(Soumen Sen, J.)**