

**MAT 396 of 2020
with
IA No. CAN 1 of 2020 (Old CAN 2739 of 2020)**

Vijaya Nand Singh

- Versus -

The State of West Bengal & Ors.

(Through Video Conference)

**Mr. Ekramul Bari
Mr. Siddhartha Sankar Mandal
.....For the appellant**

**Mr. Jahar Lal De
Mr. Suman Dey
.....For the State**

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

The appeal is directed against the judgment dated 13th September, 2019 passed by the learned single Judge whereby and whereupon prayer for approval of the writ petitioner for appointment in the post of Assistant Teacher with effect from 1st August, 1983 was spurned. On perusal of the relevant records as well as the impugned judgment of the learned single Judge dated 13th September, 2019, it appears that the writ petitioner went on filing one after another writ petition and the impugned judgment of the learned single Judge was passed on the fourth writ petition and the same was dismissed vide the judgment dated 13th September, 2019.

The writ petitioner filed first writ petition being WP No. 9063 (W) of 2009 which was disposed of by the

learned single Judge on 1st September, 2009 directing the concerned District Inspector of Schools to dispose of the claim of the writ petition by passing a reasoned order and pursuant thereto, on 3rd March, 2010, the concerned respondent authority rejected the prayer of the writ petitioner on the ground that the Headmaster and Secretary of Naya Basti Shree Shiva High School (Hindi Medium) could not produce any document showing compliance of the relevant recruitment rules at the time of appointment of the writ petitioner in the said post of Assistant Teacher in the concerned school. The order dated 3rd March, 2010 was assailed in the second writ petition being WP 7781 of 2010 which was disposed of by a learned single Judge by passing the order dated 13th September, 2012 thereby liberty was granted to the writ petitioner to file an application for review of the order dated 3rd March, 2010 and directed the District Inspector of Schools to dispose of the said review petition after hearing the parties. Pursuant to such direction dated 13th September, 2012, the District Inspector of Schools vide order dated 12th April, 2013 made observation relating to creation of two additional posts in the said school before coming into force of the School Service Commission Act, 1997 and it was also found by the District Inspector of Schools that the writ petitioner could not be appointed in those two posts as he was not eligible for the said posts and the said school authority also could not satisfy the

queries of the concerned District Inspector of Schools relating to observance of the recruitment rules while appointing the writ petitioner in the post against which he is claiming approval.

The writ petitioner being aggrieved by the order dated 12th April, 2013 passed by the concerned District Inspector of Schools on the review application filed the third writ application being WP 29432 (W) of 2013 which was disposed of by a learned single Judge thereby directing the concerned District Inspector of Schools to pass a reasoned order in the light of the observation made by the Court after giving an opportunity of hearing to the writ petitioner. Ultimately, the concerned District Inspector of Schools took a decision by issuing memo dated 18th July, 2014 pursuant to the order dated 29th July, 2013 passed by a learned single Judge. The relevant part of the said decision of the District Inspector of Schools contained in the memo dated 18th July, 2014 is reproduced below :-

“Clauses (i) & (ii) of sub-rule (1) and by clauses (i) of sub-rule (4) of Rule 28 of the Rules of Management of Recognized Non-Govt. Institution (Aided & Unaided), 1969 (Education Department Notification No. 1598-Edn (s) dated 15th July, 1969) as amended under the Education Department notification no. 855-Edn (s)/8B 4/78 dated 23rd December, 1980 and No. 690 Edn (s) dated 24/06/1981. “All appointments of teachers and Non-teaching employees in the Non-Govt. Secondary schools will be made with prior permission of the District Inspector of Schools (SE) against sanctioned post only, permanent or temporary.”

So, it is clear that the so called appointment of the petitioner was made without following any

recruitment rules existing at that material point of time. Thus the said appointment by the then secretary of the schools is considered to be null and void from abinitio.

In view of the above facts and circumstances the question approval of appointment to the post of Asst. Teacher does not arise at all. The matter is disposed of. All concerned are informed accordingly.”

The order of the District Inspector of Schools dated 18th July, 2014 is the subject matter of challenge in the last writ petition being WP 34066 (W) of 2014 which was disposed of by the learned single Judge by passing the order which is under appeal.

We have heard learned advocates representing the appellant/writ petitioner and the State respondents and we find from the records as well as the order of the District Inspector of Schools that the said school was recognized as 2-class Junior High School with effect from 1st January, 1982 and as IV-class Junior High School with effect from 1st January, 1983 by the West Bengal Board of Secondary Education vide Memo No. S/408 dated 3rd May, 1983. On recognition of the said school as first 2-class Junior High School and subsequently as IV-class Junior High School six posts were sanctioned by virtue of the recognition accorded by the Board and those six posts were filled up by organizing staff as per DLIT Inspection Report; the names of those organizing staff who were included in the said report.

The writ petitioner has claimed to have been appointed with effect from 1st August, 1983, but the

question remains whether there was any sanctioned post in the said school at the material point of time in view of appointment of six organizing staff on recognition of the said school.

It is obvious that considering the recognition of the said school granted by the West Bengal Board of Secondary Education, six posts were sanctioned and all the posts were filled up by the teachers whose names featured in the DLIT Inspection Report. Therefore, it is presumed that at the material point of time there was no sanctioned post lying vacant against which the writ petition could have been fitted. In the absence of the sanctioned post, writ petitioner cannot have any claim for approval against his appointment in the year 1983.

Apart from this aspect, there is nothing on record to show that the concerned respondent authorities including the said school authority initiated due selection process in terms of the relevant recruitment rules prevailing at the material point of time for giving appointment of the writ petitioner on the post of Assistant Teacher.

In consideration of these facts as well as absence of sanctioned posts in the said school at the material point of time which could have been manned by the writ petitioner, we do not find any anomaly in the order passed by the concerned District Inspector of Schools as contained in the memo dated 18th July, 2014 as well as the impugned order

of the learned single Judge dated 13th September, 2019 which is under appeal.

On the above conspectus, we do not find any merit to interfere with the order passed by the learned single Judge.

Accordingly, the appeal and the stay application stand dismissed.

There shall, however, be no order as to costs.

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

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)