

28 06.12.2021
rkd Ct.15

W.P.A. 10876 of 2018
Through Video Conference)

Pradip Das
-vs-
State of West Bengal & Ors.

Mr. Chittapriya Ghosh.
Mr. Samir Kumar Adhikari

....for the petitioner.

Mr. Tapan Kumar Mukherjee,
Mr. Somnath Naskar

....for the State.

The issue is relating to the selection process initiated by the authority of Maheshpur High School, District- Purba Medinipur (for short 'said school') for appointment in the post of Clerk which was reserved for scheduled caste candidate. An interview was conducted by the school authority on 2nd October, 2008 pursuant to the prior permission granted by the concerned District Inspector of Schools to fill up the said post. The panel was prepared based on such interview which was submitted before the concerned District Inspector of Schools (S.E.), Purba Medinipur, respondent no.3 for approval. But the respondent no.3 refused to accept the said panel which triggered filing of the writ petition by the present writ petitioner being W.P. 1626 (W) of 2011. The said writ petition was disposed of by a coordinate Bench by passing order

dated 21st December, 2016 directing the respondent no.3 to pass an order thereby to assign reasons in support of refusal to accept the panel prepared by the said school authority. Pursuant to the said order dated 21st December, 2016 of a coordinate Bench the respondent no.3 issued impugned Memo dated 7th February, 2017 being Memo No.45-Law whereby certain reasons were assigned in support of the previous order passed by the respondent no.3 by which the prayer of the concerned school authority to get approval of the panel was rejected.

The present writ petition is filed questioning Memo dated 7th February, 2017 issued by the respondent no.3.

Mr. Ghosh, learned advocate appears on behalf of the writ petitioner and in course of his submission has brought to the notice of the Court the order of the Division Bench dated 26th November, 2010 passed on an intra court Appeal being FMA 773 of 2010. This appeal was preferred by one of the candidates who participated in the selection process conducted by the said school authority for the second time to fill up the said post of Clerk (S.C.). It appears that since the first panel prepared by the said school authority was not

accepted by the respondent no.3 the school authority initiated the second selection process by holding an interview on 26th July, 2009 and a panel was prepared. One Sankar Das being the appellant in FMA 773 of 2010 was one of the candidates who participated in the interview held on 26th July, 2009.

On careful reading of the decision of the Appellate Court dated 26th November, 2010 it appears that the Hon'ble Division Bench while considering the applicability of West Bengal School Service Commission (Amendment) Act, 2008 in the matter of filling up the post of non-teaching staff in Government aided Secondary Schools, which came into force with effect from 14th January, 2009, relied upon a coordinate Bench Judgment delivered on W.P. 16383(W) of 2010 (Asoke Sawoo v. State of West Bengal & Ors.) and came to a finding on coming into effect of Rules of 2009 thereby the earlier Recruitment Rules of 2005 stood completely superceded. In view of such enunciation of law by the Hon'ble Division Bench which is binding upon this Court the fate of the selection process which was initiated by holding interview on 2nd October, 2008 which was admittedly held in terms of the previous Recruitment Rules of 2005 cannot be

given effect. Therefore, examination of legality and validity of the impugned decision of the respondent no.3 as contained in Memo dated 7th February, 2017 is completely academic and need not be assessed while deciding the present writ petition.

In view of above conspectus, the writ petition is dismissed.

There shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)