

1.12.2021
SL No. 20
Court No. 15
amr

WPA 11683 of 2014

Pappu Das
Vs
The State of West Bengal & Ors.
(Via Video Conference)

Mr. Indrajeet Dasgupta
Ms. Puspita Bhowmick

.....For the petitioner

Mr. Biswajit De
Ms. Shabana Hasin

....For the State

This writ petition has been preferred at the instance of a candidate who stood first in the panel prepared for appointment of Clerk in Barrackpore Cantonment Vidyapith (Higher Secondary & Co-Education), District- 24-Parganas (for short "said School"). The panel was prepared on the basis of the interview held on 24th July, 2011 and the same was prepared on the said date of interview as it appears from the page-30 of the writ petition. The area of dispute involved in this writ petition is constitution of a Selection Committee by the said school authority. The Selection Committee was admittedly constituted incorporating a nominee of the Barrackpore Cantonment Board in stead of the nominee of the concerned municipality as a result whereof, the panel prepared for selection of a

candidate for the post of Group-C was not finalised. Since the panel was submitted before the concerned District Inspector of Schools for approval by the said school authority and the same remained pending for an indefinite period which triggered the first writ petition being W.P. No. 10064(W) of 2013 (Pappu Das Vs. State of West Bengal & Ors.). The writ petition was disposed of by a coordinate Bench vide order dated 11th of April, 2013 thereby directing the concerned respondent authorities to take a decision on the fate of such panel and if the said panel was not accepted, the authority was required to assign reasons thereof. It also appears from the said order dated 11th April, 2013 that the previous decision of the respondent authority relating to rejection of approval of the panel in question was set aside by the coordinate Bench.

Pursuant to such direction of this Court as contained in order dated 11th April, 2013, first the Commissioner of School Education, West Bengal took up the issue and communicated his view to the concerned District Inspector of Schools (SE), Barrackpore vide memo dated 31st December, 2013 at page 39 of the writ petition. On perusal of the said memo dated 31st December, 2013, it

appears that on placing reliance on Section 10 of the Cantonments Act, 2006 and also upon previous memo dated 30th April, 2009 of the School Education Department communicated to the school authority the D.I. of Schools was requested to decide the issue against the writ petitioner. Ultimately the concerned District Inspector of School by issuing memo dated 10th February, 2014 spurned the request of the school authority and refused to accept the panel in question.

The present writ petition was admitted by a coordinate Bench vide order dated 2nd May, 2014 and it was observed that the issue needs to be decided on the basis of materials available on record, since issue hinges on point of law. Accordingly the present writ petition is taken up for hearing today.

Mr. Indrajeet Dasgupta, learned advocate represents the writ petitioner and submits that the area where the school is situated does not fall within the jurisdiction of Barrackpore Municipality rather it comes within the jurisdiction of Barrackpore Cantonment as a result whereof, there is no need to include a nominee of Barrackpore Municipality as one of the members of

the Selection Committee. On the contrary, the school authority has rightly decided to include nominee of the Barrackpore Cantonment and upon inclusion of nominee of the said cantonment, the selection process has not at all been vitiated. In support of such contention it is also submitted that in terms of amended Rules of the West Bengal Schools (Recruitment of Non-teaching Staff) Rules, 2005 (for short “Rules of 2005”), under Rule 3 for constitution of Selection Committee for appointment in the post of clerk, nominee of the concerned municipality should be one of the members of the Selection Committee, if the school falls within the jurisdiction of the said municipality.

While developing the case in favour of the writ petitioner, it has been argued that though as per Section 10 of the Cantonments Act, 2006 a Cantonment Board shall be deemed to be a municipality for a limited purpose as delineated under Sub-section (2) of Section 10 but it is a ground reality that since the area falls under the jurisdiction of Barrackpore Cantonment cannot be considered as a part of municipal area and therefore, there is no requirement to form a selection committee including a nominee of

Barrackpore Municipality. It has been submitted that since the said school in question is situated within the jurisdiction of Barrackpore Cantonment, therefore, there is no need to include any nominee of the municipality as member of the Selection Committee and there is no flaw in the constitution of the Selection Committee which prepared the panel on 24th July, 2011 and therefore, prayer is made for giving direction upon the respondent authorities to approve the panel in question.

Mr. Biswajit De, learned advocate appears on behalf of the State respondents and submits that prior to initiation of the selection process upon constituting alleged Selection Committee there was an intimation given from the education department vide Memo No.559-SE(Estt.) dated 30th April, 2009 that the nominee of the cantonment will not be accepted while constituting the Selection Committee for appointment in the post of non-teaching staff in the said school. This memo dated 30th April, 2009 has been consistently referred to by the Commissioner of School Education, West Bengal as well as subsequently by the concerned District Inspector of Schools in his memo dated 10th of February, 2014. In

addition thereof, it has also been submitted that though the prayer has been made for cancellation of the memo dated 10th February, 2014 issued by the concerned District Inspector of Schools but the memo dated 31st December, 2013 issued by the Commissioner of School Education, West Bengal which is annexed to this writ petition as annexure- 'P-11' has not been challenged in the present writ petition.

Lastly it has been submitted on behalf of the State respondents that the nature of decision taken by the respondent authorities may be questioned by the said school authority, if aggrieved but in the present case, the writ petition has been presented not by the said school authority but by one of the selected candidates, therefore, the writ petition ought not to be entertained.

This Court has considered the rival submissions of the parties to this writ petition and also examined the relevant materials on record as well as the provisions of law which has been referred to by the learned advocates while advancing the respective arguments.

Though it has been argued on behalf of the writ petitioner that if the school is situated within

the jurisdiction of a cantonment, there is no need to include nominee of the concerned municipality in terms of the relevant provisions of Rules of 2005 as amended but on consideration of Section 10 of the Cantonments Act, 2006, it appears that every cantonment needs to be considered as Cantonment Board and every Board shall be deemed to be a municipality under clause (e) of Article 243P of the Constitution only for the limited purposes as described under Sections 10(2)(a) and 10(2)(b). For better understanding this Court finds it proper to quote Section 10 of the Cantonments Act, 2006 below:-

“10. Cantonment Board.-(1) For every cantonment there shall be a Cantonment Board,
 (2) Every Board shall be deemed to be a municipality under clause (e) of Article 243P of the Constitution for the purposes of –
 (a) receiving grants and allocations; or
 (b) implementing the Central Government schemes of social welfare, public health, hygiene, safety, water supply, sanitation, urban renewal and education.”

Having considered Section 10 of the Cantonments Act, 2006 vis-a-vis the relevant provisions of Rules of 2005 as amended it can be deciphered that a cantonment can be considered as a municipality only for the purposes of receiving grants and allocations or implementing the Central Government schemes of social welfare, public

health, hygiene, safety, water supply, sanitation, urban renewal and education. Therefore, the role of municipality in nominating a person to be a part of Selection Committee for appointment in the post of non-teaching staff in the said school cannot be ignored.

In addition thereto, it appears that the writ petition has been presented by one of the selected candidates whose name featured in the panel prepared for appointment in the post of clerk in the said school. The authority of the said school has not come with any writ petition before this Court questioning the decision of the Commissioner of School Education, West Bengal as well as the concerned District Inspector of Schools. It is a settled position of law that empanelment of candidate for the purpose of appointment does not confer right upon the empanelled candidate to get an appointment at best, the case of appointment of empanelled candidate can be considered in accordance with law. Here in the present case since it has been found by the respondent authorities that the Selection Committee has not been formed in accordance with the Rules of 2005 as amended and the committee was formed without any

participation of the nominee of the municipal body, therefore, in terms of the relevant provisions of the amended Rules of 2005 the constitution of the Selection Committee appears to be bad as a result whereof, the selection made by the said Selection Committee stood vitiated.

Accordingly, this Court does not find any flaw in the decision of the concerned respondent authorities especially impugned decision of the District Inspector of Schools (SE), Barrackpore dated 10th of February, 2014 as well as the view expressed in the memo dated 31st December, 2013 issued by the Commissioner of School Education, West Bengal. As such, the writ petition stands dismissed.

However, dismissal of the writ petition does not preclude the said school authority to fill up the post in accordance with law.

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.)