

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Abhijit Gangopadhyay

W.P.A. 17656 of 2021

Dr. Subhajit Nandy

-vs-

The State of West Bengal & Ors.

For the Petitioner	: Mr. Samim Ahmed,
For the Respondent Nos.9 to 12	: Mr. Subhabrata Datta, Mr. Manoj Kumar Ghosh, Mr. Ananya Saha
For the Respondent No.13	: Mr. Anjan Bhattacharya, Mr. Bratin Kumar Dey
For the State	: Mr. T. M. Siddiqui, Mr. Nilotpall Chatterjee

Heard on: 10.11.2021

Judgment on: 10.11.2021

Abhijit Gangopadhyay, J.:

1. This matter has been taken up on the ground of urgency bringing it in the supplementary list today.

2. The petitioner has challenged an order passed by West Bengal Central School Service Commission (Commission, in short) dated 01.10.2021 (Annexure P-23) of the writ application (at page-145).
3. The petitioner has submitted that he took part in the counseling for the 1st SLST, 2017 for the post of Headmasters and he refused to select any school by giving a declaration on 2nd July, 2019 (at page 41).
4. Subsequently, he wrote a letter to the Commission dated 19.12.2019 (at page 42) stating inter alia that “I have come to know of a number of Schools in and around my residential area where the post of Headmaster is still vacant”.
5. On the basis of this letter, according to the petitioner, he was issued a recommendation letter dated 18.02.2021 by the Commission (at page- 43). The recommendation was for the post of Headmaster in Andrew’s High School in Kolkata which is a higher secondary school. Consequently a letter of appointment was issued by the West Bengal Board of Secondary Education (Board in short) on 19th July, 2021 and the petitioner went to join the school on 22nd July, 2021 but he was not allowed to join.
6. In the meantime much water has flown through different rivers of this country and now a writ application has been filed against the impugned order dated 01.10.2021 cancelling the recommendation made in favour of the petitioner by the Commission.

7. The present controversy also is, after canceling the said recommendation used in favour of the petitioner another recommendation has been made to the said post of Headmaster in the said school by the Commission in favour of some other candidate who will join the school within a day or two which makes this matter an urgent one.
8. The petitioner submits that the Commission has cancelled the recommendation in his favour on twofold grounds. One is on the basis of Rule 16(5) of the West Bengal School Service Commission (Selection for Appointment to the Posts of Headmaster/ Headmistress in Secondary or Higher Secondary and Junior High Schools) Rules, 2016 which says that the Central Commission may do away with his/her name (i.e. the name of the person who has refused to select any vacancy) from the panel and he will be deemed to have been depanelled and recommend the name of the candidate from the waiting list to the Regional Commission for counseling and final recommendation, strictly within the validity period of the panel and waiting list. The Commission has now exercised its discretion and cancelled the recommendation on 01.10.2021 as the petitioner, as a candidate, refused to accept the appointment though it recommended his name for the post of Headmaster of Andrew's school, on 18.02.2021.
9. The petitioner's case is that the above rule being Rule 16(5) is not applicable to him as this particular vacancy in Andrew's School

was not shown to him at the time of counseling. Had it been shown to him he would have selected that vacancy.

- 10.** But I find no such specific allegation in the letter of the petitioner dated 19.12.2019 (at page 42 of the application).

From the petitioner's letter at page 42 of the writ application, I find that the petitioner has said that he came to know a number of schools in and around his residential area where the posts of Headmaster were still vacant. It was never his allegation that despite having the vacancy in the Andrew's School it was not shown to him which was illegal. It is to be kept in mind that the petitioner himself is a teacher of this Andrew's School. In this respect the petitioner has submitted that though he has not specifically made such allegation, but it is to be read in his letter as he is not a legally trained person.

(Emphasis mined)

- 11.** I am not ready to accept such submission. If a person has an allegation against any other person or authority and if he wants to state it in writing the allegation must have been recorded in his/her letter or application etc. If it is not recorded specifically, it shall be presumed that he/she did not have any such allegation and any subsequent allegation would be held as afterthought or a result of ill design. Therefore, I find that School Service Commission is not incorrect in holding in the impugned order that the name of the petitioner was recommended

inadvertently. The Commission under the law could not have recommended his name again after his refusal in writing.

12. The Commission has shown another reason which is concerned with Rule 5 of the above mentioned Rules known as “Additional Essential Qualification of Candidate” which relates to the medium of instruction of the school. When the vacancy list was published, the petitioner has demonstrated (at page 45) that the school was shown as a Bengali Medium school. Subsequently, when the Managing Committee took a resolution dated 4th August, 2021 (which is at page 143 of the writ application) it stated that - it is an English medium school and not a Bengali medium school. I wonder why the school was sleeping over the matter as to the medium of instruction for nearly two years. However, this question as to medium of instruction could not stand in the way of recommendation of the petitioner as Rule 5 of the said Rules i.e. “Additional Essential Qualification of the Candidate” shows that if a person has English (or other language mentioned in the said Rule) as his first, second or third language, he can be eligible for the post of Head Master in an English Medium (or other schools having such language as medium of instruction of a school). Here the petitioner, who is a doctorate, has submitted that he had English althroughout as second language and therefore, the second reason by the Commission as to language

as a bar for the petitioner from recommending his name in an English medium school, is not correct.

- 13.** The new candidate, I am told, who has been recommended after the withdrawal of the petitioner's recommendation by the impugned order dated 01.10.2021 has not joined the school.

Here, I find a surprising fact; the panel was published in the year 2019. Under Rule 16(5)(d) of the abovementioned Rules, 2016, the Commission can recommend the name of a candidate from the panel/waiting list strictly within the validity period of the panel/waiting list.

Is the waiting list published along with the panel valid in the last part of 2021?

The Commission should revisit the recommendation of the new candidate in the said vacancy in Andrew's School to see as to whether the new recommendation (in the refused vacancy by the petitioner) has been recommended from a live panel/waiting list and not from an expired panel/waiting list.

- 14.** The petitioner is directed to intimate this order, to the commission and the Board to see as to the recommendation from a live panel/waitlist.

(Emphasis mine)

- 15.** In the circumstances the writ application is dismissed without any cost.

(Abhijit Gangopadhyay, J.)

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