

16th December, 2021
(D/L No.11)
(SKB)

WPA 22920 of 2018
(Via Video Conference)

Nirmal Mahato
Vs.
The State of West Bengal and others

Mr. Chitta Ranjan Chakraborty,
Md. abdur Rahaman,
Mr. M. Rahaman
... for the petitioner.

Mr. Sougata Mitra,
Ms. Ankita Dey
... for the College Authority.

Mr. Lal Ratan Mondal,
Mr. Avik Kumar Das,
Mr. Dilip Kumar Sadhu
... for respondent no.5.

The petitioner has prayed for a direction on the respondents to absorb the petitioner in the permanent post of Clerk at the concerned College. The claim for absorption as would be evident from the ground contained in the writ petition is that the petitioner has been serving the College for more than eight years as on the date of filing of the writ petition and should hence be absorbed in the permanent post. The other ground taken is that the father of the private respondent, who was empanelled, is a member of the Governing Body of the concerned College.

Learned counsel appearing for the petitioner relied on *Amarkant Rai Vs. State of Bihar and other* :

(2015)8 SCC 265 and on District Collector/Chairman and others Vs. T. Devenderpal Singh and others : AIR 1999 SC 1601 to urge that the petitioner should be given benefit of the long years of service in the concerned College.

Learned counsel appearing for the College Authorities submits that the petitioner could not successfully clear the examination which was held in 2018 and was hence not considered for absorption to the permanent post of Clerk. It is also submitted that the petitioner has taken no steps to proceed with the writ petition for the last three years.

Learned counsel appearing for College Authorities has handed up a document dated 30th December, 2020 which shows that despite being empanelled, the private respondent has not been allowed to join the College as Clerk by reason of filing of the writ petition.

Upon hearing learned counsel for the parties, this court is unable to find any merit in the writ petition since the writ petitioner admittedly did not successfully qualify the examination which consisted of written as well as oral components. There is no dispute to this fact. The ground of the private respondent's father being a member of the Governing Body is simply an averment without any other corroborating facts and in any event, cannot assist the petitioner since even if the private respondent was not selected to the post that

would not have entitled the petitioner for being empanelled.

In *Amarkant Rai* (supra), the Supreme Court relied on the exception carved out in *Uma Devi*(3): (2006) 4 SCC 1 and placed emphasis on the appellant before the court not lacking any qualification and the fact that similarly situated persons were regularized. In *T. Devenderpal Singh* (supra), the Supreme Court relied on Government Order/Memorandum of 1994 which mandated payment of wages at par with the wages paid to the permanent employees of the said category.

In the present case, the petitioner was admittedly unable to clear the examination for empanelment. Hence, the exceptions in *Umadevi* with regard to regularization of appointments for those who have worked in excess of ten years or payment of wages at par with regularized employees is not relevant to the subject matter in the present case.

The records show that the matter was taken up only twice from the filing of the writ petition on 15th November, 2018. The petitioner has not taken any steps to have the matter listed or heard. The matter has been listed before this court only upon mentioning by counsel appearing for the private respondent. The private respondent's appointment has been made subject to the final outcome of the writ petition as

would be evident from the document dated 30th December, 2020 filed by the College authority in court today which is kept on record. The pendency of the writ petition has hence had an unfortunate bearing on the said respondent.

In view of the above reasons, W.P.A.22920 of 2018 is dismissed.

There will be no order as to costs.

(Moushumi Bhattacharya, J.)