

01.03.
2022
Ct. No.17
gb

WPA 565 of 2022

Sanjib Maity & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Sudipta Dasgupta
Mr. Bikram Banerjee
Ms. Dipa Acharyya
Mr. Arka Nandi
Mr. Sutirtha Nayek
.....For the Petitioners
Ms. Koyeli Bhattacharyya
.....For the WBBSE
Mr. Bhaskar Prasad Vaisya
Mr. Arindam Chattopadhyay
.....For the State
Dr. S. K. Patra
Ms. Supriya Dubey
.....For the SSC

1. In this matter I passed certain directions including filing of reports in the form of affidavits by the School Service Commission (Commission, in short) and by the West Bengal Board of Secondary Education (Board, in short). From the report filed by the Commission I find that the Commission has clearly stated that the recommendations to the private respondents being Respondent Nos. 12, 13, 14, 15, 16 and 17 of this writ application were not issued by the Commission.
2. The allegation of the petitioners here is the said private respondents on the basis of recommendations of the School Service Commission got the appointment letters from the Board.

- 3.** The Board in its report in the form of affidavit has stated that “It is well within the knowledge of the Commission regarding all the recommendations made by them and the appointment letters issued by the Board on basis of those recommendations. But when the said matter came up for hearing before the Hon’ble Court on 02.09.2021, learned advocate for the Commission did not raise any objection either in respect of the recommendations or in respect of the appointment letters issued by the Board.”
- 4.** Therefore, I find two diametrically opposite statements. One from the Commission that the recommendations were not issued by it and the other from the Board which has stated that the Commission issued the recommendation letters with full knowledge after expiry of the panel.
- 5.** Further, I find from page 128 of the writ application (Annexure ‘P-8’) that the appointment letters issued by the Board to the Respondent No.12 was on 20.03.2020, appointment letter issued to Respondent No.13 by the Board on 20.03.2020, appointment letter issued by the Board to Respondent No.14 on 20.03.2020, appointment letter issued to Respondent no.15 on 20.03.2020, appointment letter issued by the

Board to Respondent No.16 on 20.03.2020 and appointment letter issued by the Board to Respondent No.17 on 19.03.2020.

- 6.** Now we should take a look at the Section 9 of the West Bengal School Service Commission Act, 1997 as amended from time to time, as follows:

“9. Effect of recommendation of Commission.- (1) *Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, appointments to the posts of the Teachers and non-teaching staff in school shall be made by the Board or the Ad-hoc Committee or the administrator of the Board on the recommendation of the Regional Commission having jurisdiction.”*

“(2) Any appointment of a Teacher or a non-teaching staff made on or after the commencement of this Act in contravention of the provisions of this Act shall be invalid and shall have no effect and the Teacher or the non-teaching staff so appointed shall not be a Teacher or a non-teaching staff within the meaning of clause (p) or clause (ia) of section 2, as the case may be.”

- 7.** From a reading of the said Section it is found that appointment to the posts of teachers and non-

teaching staff can only be made on the recommendation of the Regional Commission having jurisdiction and any appointment in contravention of the provisions of the Act (i.e. West Bengal School Service Commission Act, 1997) shall be invalid and shall have no effect and the teachers and non-teaching staff so appointed shall not be a teacher or a non-teaching staff within the meaning of Clause (p) or Clause (ia) of Section 2, as the case may be. Clause (p) of Section 2 defines the teacher and Clause (ia) of Section 2 defines the non-teaching staff.

Here in this case we are concerned with non-teaching staff and not with the teachers.

Therefore, it is clear from the report filed before this court by the Commission that though there was no recommendation letter issued by the Commission in favour of the private respondents, appointment letters were issued to them by the Board.

The petitioners' case is such recommendation letters were issued after the expiry of the panel for 'Group-D' staff.

It appears from the appointment letters issued by Board wherein the reference Numbers of the purported recommendation letters have been

mentioned that all such purported recommendation letters were issued after the expiry of the panel for the 'Group-D' staff.

No recommendation for appointment can be given by any authority after the expiry of the panel prepared for appointing persons to different posts and this principle of law is well-settled.

- 8.** In this view of the matter, the appointment letters are of no effect and the private respondents being the non-teaching staff who were appointed illegally after the expiry of the panel without any recommendation (as has been stated by the Commission) shall not be a non-teaching staff within the meaning of Clause (ia) of Section 2.
- 9.** Therefore, the private respondents are not non-teaching staff of the schools where they have been appointed.
- 10.** The respective District Inspectors of Schools are directed not to pay any amount towards salary etc from the Exchequer of the State. The private respondents are not to be allowed as 'Group-D' staff of the schools where they have been appointed. From today the salary and other amount, if any, received by the said respondents till date from the date of their appointment are to be refunded by them in installments equal to

number of months for which they have worked in the schools i.e. if such a candidate has worked in the school for ten months, he will refund the money, in ten installments and the amount would be equal to their salary, to the Government. No further payment from Government Exchequer will be made to them as non-teaching staff and the schools shall not treat them as 'Group-D' staff of the schools appointed by the Board on the basis of purported recommendation letters of the Commission.

11. Affidavit of service shows that the said private respondents were served copies (for respondent Nos. 12,15,16 and 17 item delivery confirmed and for respondent Nos. 13 and 14 item was dispatched to Branch office (of postal department) on 15.01.2022 and thus service on them shall be deemed to be effected) but they have not appeared in this matter on any of the dates of hearing including today and, therefore, I hold that they have not opposed this writ application or they have nothing to defend in respect of the allegations made in the writ application against them.

12. The Commission in its report has stated that a Committee has been constituted by the Division Bench of this Hon'ble Court for looking into the

similar irregularities in appointment of 'Group-D' staff and the Committee is headed by one retired Judge of this High Court. This court was in favour of enquiry by Central Bureau of Investigation but when the said Division Bench has constituted the Committee, I cannot direct enquiry by Central Bureau of Investigation in this matter as similar illegalities in appointment of 'Group-D' staff is being looked into by the said Committee. Therefore, for the sake of maintaining judicial discipline, I am sending this matter to the Committee constituted by the Division Bench though in my view such illegalities violating the statues in a number of cases heard by the court are required to be enquired by an expert agency which is not under the control of the State Government.

- 13.** I direct the learned advocate for the School Service Commission to send a copy of the writ application and the reports filed by the Commission and the Board in the form of affidavits to the Hon'ble Judge (retired) who is heading the said Committee by 4th March, 2022 so that the Committee can also look into the allegations and the affirmed statements on oath of the two statutory authorities i.e. the School Service Commission and the West Bengal Board of

Secondary Education.

With the above observations this writ application is disposed of.

No costs.

(Abhijit Gangopadhyay, J.)

