

Court No. 22

11.7.2022

(Item No. 2)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 1673 of 2019

Jagajyoti Biswas

VS

The State of West Bengal & Ors.

Mr. Subir Sanyal

Mr. Debajyoti Deb

..... for the petitioner

Mr. Malay Bhattacharyya

..... for the respondent Nos. 5 & 7

Mr. Pabitra Biswas

... for respondent No. 12

Mr. Syed Mansur Ali

Ms. Tanuja Basak

..... for respondent No. 14

Affidavit-in-opposition filed in Court today on behalf of the respondent Nos. 5 and 7 is taken on record.

This writ petition was filed assailing a decision of the 4th respondent dated December 12, 2018. The said impugned decision was taken pursuant to the direction made by a co-ordinate Bench on September 28, 2018.

The writ petitioner contended that pursuant to a vacancy notice dated July 16, 2018 published by the 7th respondent, the petitioner applied for selection and recruitment to the post of Assistant Headmaster from the category of Assistant Teachers of **Chandernagore Kanailal Vidyamandir (English Section)** (for short, the school). In the said selection process the petitioner became successfully selected and his recruitment for the above post was proposed for. Challenging the said decision of the

selection committee the 14th respondent herein filed the previous writ petition being **WP No. 18921 (W) of 2018**. The said previous writ petition was disposed of on September 28, 2018 with the following direction:

“I have heard the learned counsel for the parties. I directed the respondent No. 4 to give a hearing to the petitioner and all other concerned parties including respondent No. 13 and pass a reasoned order in accordance with law on the representation dated 1st September, 2018 made by the petitioner (Annexure P/3 to the writ petition). Such hearing should be given within a fortnight from the date of communication of this order. The order so passed by the respondent No. 4 shall be communicated to the parties within a week from the date of the order.”

Pursuant to the said direction of the co-ordinate Bench, a hearing was conducted and the impugned decision dated December 12, 2018 was taken by the 4th respondent, the same is impugned in this writ petition.

The observation impugned in this writ petition, inter alia is, extracted from the said decision dated December 12, 2018, **Annexure P-7 to the writ petition**, and the same is set out herein below:

“It has been observed that Chandannagar Kanailal Vidyamandir (Eng Section) is a school managed by Education Committee of the

Chandannagar Municipal Corporation centrally. The school has no individual Managing Committee. So the Selection Committee formed by the School Authority of Chandannagar Kanailal Vidyamandir (Eng Section) is not in compliance with the provision as laid down in the above stated Guideline in Para 3A.”

Mr. Debajyoti De, learned counsel led by Mr. Subir Sanyal, learned counsel appearing for the writ petitioner submits that, the ground for rejection in respect of the petitioner for being selected in the said post of Assistant Headmaster is not tenable in law in view of the **order dated June 23, 2014** issued by the Government of West Bengal, School Education Department, Secondary Branch, **Annexure P-8 to the writ petition**. Learned counsel for the petitioner submitted that the said order provides for as follows:

“1. The Education Committee of Chandernagore Municipal Corporation i.e. the Managing Committee of the Schools shall be constituted as per the provisions of the Chandernagore Municipal Corporation (Education Committee) rules, 2001 with necessary amendment to incorporate provisions of the RTE Act and other as amended from time to time and shall be under government control, and the President and Secretary of the Education Committee i.e. Managing Committee shall be as per Chandernagore Municipal

Corporation (Education Committee) rules, 2001 and as amended from time to time;”

He submits that the Education Committee of the Chandernagore Municipal Corporation i.e. Managing Committee of the scheduled school shall be constituted as per the provisions of the Chandernagore Municipal Corporation (Education committee) rules, 2001 with necessary amendment to incorporate provisions of the Right to Education Act and other as amended from time to time and shall be under the government control. It further provided that, the President and Secretary of the Education Committee i.e. Managing Committee shall be as per Chandernagore Municipal Corporation (Education Committee) rules, 2001 and as amended from time to time.

On the strength of the said provisions in the Government order dated June 23, 2014 it was submitted that, it was erroneously decided in the impugned decision that the school had no new Managing Committee. Thus the Education Committee of the concerned Municipal Corporation is the Managing Committee of the school which accordingly constituted of the Selection Committee. The same is absolutely perfect and there was no error or wrong in it. Thus, the selection of the petitioner was valid and lawful. Learned counsel for the petitioner submitted that, there was no procedural infirmity or irregularity in conducting the selection process through which the

petitioner was selected. The schedule appended to the said government order dated June 23, 2014 contains the name of the said school under serial No. 4.

Thus, the writ petitioner contended that the said impugned decision dated December 12, 2018 should be set aside and the same has no force to stand in law.

Mr. Malay Bhattacharyya, learned counsel appearing for the Chandernagore Municipal Corporation submitted and admitted the existence and validity of the said Government order dated June 23, 2014, **Annexure P-8 to the writ petition**. He submitted that, the said order is still in force. The Education Committee of the Chandernagore Municipal Corporation duly constituted the Selection Committee in strict compliance of the prevailing provisions of law and the administrative instruction of the concerned State authority. The relevant administrative instruction is dated July 11, 2018, **Annexure R-1 to the affidavit-in-opposition** filed by the respondent Nos. 5 and 7.

In view of the above, the learned counsel for the respondent Nos. 5 and 7, in his usual fairness on instruction from his client submits that, the impugned decision dated December 12, 2018 has no limb to stand in law and is liable to be quashed. The panel prepared by the Selection Committee was lawful and in strict compliance of the relevant Rules and Regulation.

The 14th respondent filed the previous writ petition in which the said direction was made on September 28, 2018 by a co-ordinate bench. Mr. Syed Mansur Ali, learned counsel appearing for the 14th respondent submits that the grievance of his client which was canvassed in the previous writ petition was not redressed by the 4th respondent while passing his impugned decision dated December 12, 2018.

The parties have filed their respective affidavits and exchanged the same. The 14th respondent chose not to file any affidavit-in-opposition in this writ petition, despite instruction.

After hearing the learned counsel appearing for the parties and on perusal of materials on record, it appears to this Court that, justice will be sub served to the parties if the said impugned decision dated December 12, 2018 which had not taken into account of the said Government order dated June 23, 2014, **Annexure P-8 to the writ petition** is set aside with a direction upon the fourth respondent to consider the case in terms of the earlier order dated September 28, 2018 passed in the previous writ petition **taking into account of the said Government order dated June 23, 2014, Annexure P-8 to the writ petition.**

In view of the above, **the said impugned decision dated December 12, 2018 Annexure P-7 to the writ petition, stands set aside and quashed.** The fourth

respondent is directed to consider the issue afresh in terms of the said direction of the co-ordinate Bench dated September 28, 2018 passed in W.P. No. 18921(W) of 2018 **taking into consideration of the said Government order dated June 23, 2014, Annexure P-8 to the writ petition,** after giving hearing to the parties concerned and to pass a reasoned order thereupon.

The entire exercise as directed above must be carried out for the fourth respondent within a period of six weeks from the date of communication of this order and upon at least seven days notice of hearing on the parties. The fourth respondent shall forthwith communicate its reasoned order/decision to the parties within a further period of two weeks from the date of the said order/decision to be passed.

On the above terms, the writ petition being **W.P.A. 1673 of 2019** stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)