

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 8494 of 2021

Debdas Dey

....Petitioner

-Vs-

The State of West Bengal & Ors.

..... Respondents

Mr. Ayan Banerjee, Adv.
Ms. Debasree Dhamali, Adv.
Ms. Riya Ghosh, Adv.

..... for the Petitioner

Mr. Biswabrata Basu Mallick, Adv.
Mr. Sanjib Das, Adv.

..... for the State
Respondent Nos. 1 to 4

Mr. Sandip Kumar De, Adv.
Mr. Abhijit Sarkar, Adv.

.....for the School
Authority, respondent No.5

Heard On : 20.09.2022

Judgment on : 29.09.2022

Rabindranath Samanta, J:

1. This writ petition portrays the sad plight of the petitioner who since his appointment as a librarian on 13.08.2019 in a school is deprived of getting any pay.
2. Background facts which led the filing of the instant writ petition may be summed up as under:

The petitioner is a graduate and he has qualification in library science. Pursuant to an advertisement published in newspaper he offered his candidature as a candidate to the post of librarian in the respondent No.5 school namely Rajibpur St. Joseph High School (HS). He participated in the selection process and after completion of the selection process the school authority issued appointment letter dated 9th august 2019 to him as a successful candidate. He joined his duties on 13th August, 2019 and since then he has been discharging his duties as a librarian. Since his appointment the petitioner has been requesting the school authority for approval of his appointment from the offices of the respondent Nos. 3 and 4 namely the District Inspector of schools (SE), Dakshin Dinjapur and the Additional District Inspector of Schools (SE), Gangarampur Sub- Division at Buniadpur. The school authority assured him that they were taking appropriate steps for approval of his appointment. Recently, the petitioner came to learn from the school authority that the Principal Secretary, School Education Department, after hearing the matter with regard to approval of his appointment in the school as a librarian, refused to approve his appointment.

3. After collecting the relevant documents from the school authority the petitioner came to know that the respondent No. 5 school is a Christian Minority Educational institution and it has the power to recruit its own teachers and non teaching staff as a part of its management and control of the institution. Presently, the school is guided by the Recruitment Rules of 2016 published vide notification No. 79-ES/S/10R-14/2013 dated 3rd February, 2016 to recruit teachers and non teaching staff for the school. By memo No. 333-SE(Apptt)/10M-32/01 Pt dated 8th June, 2007 a post of a librarian for the school was sanctioned. However, by another Memo No. 2356(20) GA dated 3rd October, 2007 the aforesaid Memo dated 8.06.2007 was modified incorporating therein certain

restrictions/guidelines. Following the parent Government Order dated 8th June 2007, the then Additional District Inspector of Schools (Secondary Education) granted prior permission to the school authority to recruit a librarian for the school vide its Memo dated 30th September, 2009 following the Recruitment Rules of 2002 which was in force at that time.

4. In terms of the permission as accorded to the school authority the school authority conducted selection process, prepared a panel and submitted the panel with relevant documents to the then Additional District Inspector of Schools (SE), the respondent No. 4 herein. Meanwhile, the guidelines as made vide Memo dated 3rd October 2007 were withdrawn by issuing an another Memo No. 376 GA dated 31st March, 2015 along with certain modifications and/or relaxations. It was specifically mentioned in the memo dated 31st March 2015 that the steps taken or prior permission already issued by the District Inspector of Schools following the previous Government Orders would be regularised by the School Education Department.
5. In 2018 the managing committee of the school decided to initiate a fresh recruitment process for the post of librarian by adopting a resolution. By letter dated 6th February, 2019 the school authorities started selection process in terms of the Recruitment Rules of 2016 which are now in vogue. The petitioner who was empanelled as a first candidate was given the appointment and he was appointed as a librarian in the school on 13th August, 2019. By letter dated 16th August, 2019 the school authority submitted all the relevant documents with a prayer for approval of the appointment of the petitioner as librarian to the respondent No. 4. The respondent No. 4 i.e. the Additional District Inspector of Schools (Secondary Education) by letter dated 15th November, 2019 refused to approve the appointment. In reply thereto the school authority made a detailed representation to the respondent Nos.1

and 2 on 5th December, 2019 and thereafter moved a writ petition being No. WPA 24075 of 2019 before this Court seeking appropriate relief in the form of approval of appointment of the petitioner in the post of librarian. By Order dated 15th October, 2020 a Single Bench of this Court disposed of the writ petition directing the respondent Nos. 1 and 2 to consider the representation dated 5th December, 2019 of the school authority. In compliance of this order the school authority, respondent Nos. 3 and 4 and their subordinate officers were heard on 3rd December 2020 by the Principal Secretary, School Education Department. By an order dated 10th December, 2020 the respondent No.1 passed an order directing the respondent No.2 i.e. the Commissioner of School Education to issue show cause notice to the respondent No.4 seeking explanation about his action with regard to non-raising of objection in time as per the Recruitment Rules. The respondent No. 1 further observed that the school authority violated the provisions of the Recruitment Rules and as such the State Government would not take any financial responsibility for any appointment made in violation of the Recruitment Rules. In consonance with the order dated 10th December, 2020 the respondent No. 4 by passing an order dated 11th January, 2021 refused to approve the appointment of the petitioner as a librarian of the school.

6. Because of the order of refusal to approve the appointment of the petitioner by the authorities concerned, the interest of the petitioner has been prejudiced and as such he has preferred the instant writ petition.
7. The petitioner asserts that the school authority appointed him as a librarian adhering to the relevant Government Order by which the post of librarian was sanctioned and the Recruitment Rules of 2016. Under such circumstances, petitioner seeks direction upon the respondent Nos. 1 to 4 to approve the appointment of the

petitioner to the post of librarian in the aforesaid school and start payment of salary and allowances to him as librarian with effect from 13th August, 2019.

8. In their affidavit-in-opposition the respondent Nos. 1 to 4 state that though G.O No. 333-SE(Apptt) dated 08.06.2007 read with Memo No. 2356(20) GA dated 03.10.2007 on the strength of which the Additional District Inspector of Schools (SE), Gangarampur vide his Memo dated 30.09.2009 accorded permission to fill up one post of librarian, those government order and memo were not post sanctioning Order and those were issued to utilise bare minimum number of teaching and non-teaching staff as may be necessary for a school. They state that since G.O No. 333-SE (Apptt) dated 08.06.2007 read with Memo No. 2356 (20) GA dated 03.10.2007 has already been cancelled and the school authority did not appoint the petitioner as librarian in terms of the Recruitment Rules of 2016, these respondents refused to approve the appointment of the petitioner. On such grounds and denying and disputing the allegations/averments as made in the writ petition these answering respondents seek dismissal of the writ petition.
9. Learned counsel appearing for the petitioner submits that by Government Order dated 08.06.2007 which was issued with the concurrence of the Finance Department one post for a librarian is sanctioned for a Government Sponsored/ Government Aided Higher Secondary School like the respondent No. 5 school. In terms of this Government Order and in terms of Memo dated 30.09.2009 the Additional District Inspector of Schools (S.E), Gangarampur Sub-Division permitted the managing committee of the school to fill up the post of librarian for the school. Learned counsel points out that in terms of the Memo dated 30.09.2009 the school authority after conducting selection process prepared a panel for appointment of a librarian of the school in 2012 and submitted the same to the Additional District Inspector of Schools, but he without

taking any action on such panel kept it pending for years. According to learned counsel due to passage of years together the life of the panel has impliedly come to an end and none of the empanelled candidates ever ventilated their grievance as to non-implementation of the panel. Learned Counsel argues that the Order dated 10th December, 2021 passed by the respondent No.1 by which it refused to approve the appointment of the petitioner is not legally tenable since it has wrongly recorded in the Order that the Government Order dated 08.06.2007 stood cancelled and consequently, the Order of the respondent No. 4 which has been passed in consonance with the Order of the respondent No.1 is also not legally tenable.

10. Learned Counsel appearing for the respondent school authority adopts the submission as advanced by learned counsel appearing for the petitioner.
11. Per Contra, learned counsel appearing for the respondent Nos. 1 to 4 submits that by virtue of Memo dated 31.03.2015 issued by the School Education Directorate the Memo dated 03.10.2007 as well as the G.O dated 08.06.2007 have been cancelled. Learned Counsel submits that since the school authority did not obtain prior sanction from the authorities concerned for recruitment of librarian, the appointment of the petitioner as librarian is illegal ab initio. Learned counsel argues that pending a panel which was prepared by the school authority in 2012 pursuant to an Order issued by the respondent No.4, another panel which was prepared in the year 2019 does not carry legal force.
12. From the documents as annexed to the writ petition the following facts come out.
13. The respondent No. 5 i.e. Rajibpur St. Joseph High School (HS) is a Non-Government aided recognised higher secondary school established and run by the minority community as per Article 30 of

the Constitution of India. By the Recruitment Rules of 2016 published in Official Gazette vide Notification No. 79-ES/S/10R-14/2013 dated 03.02.2016 the managing committee of the respondent No.5 school is authorised to appoint teaching and non-teaching staff of its school.

14. By Government Order No. 333-SE (Apptt)/10M-32/01 Pt dated 08.06.2007 which was issued with the concurrence of the Finance Department vide their U.O. No. 1884-Group-P (Service) dated 15.05.2007 permission was accorded to fill up a post of Librarian for a Higher Secondary School. By Memo dated 03.10.2007 the scope of the Government Order dated 08.06.2007 was enlarged giving authority to the D.I of School to accord permission for filling up post according to the bare need of the respective schools. However, by Memo dated 31.03.2015 the Memo dated 03.10.2007 was cancelled. Such being the position, the Government Order dated 08.06.2007 still remains in force.
15. Admittedly, in terms of G.O No. 08.06.2007 and the previous Memo dated 03.10.2007 Additional District Inspector of Schools (SE), the respondent No.4 herein, sanctioned a post of librarian for the aforesaid school and allowed the managing committee of the school to undertake recruitment process for appointment of a librarian for the school vide his Memo dated 30.09.2009.
16. As the unchallenged documents filed by the petitioner show, the school authority undertook a selection process and prepared a panel for the purpose of recruitment of a librarian in the year 2012 in compliance with the aforesaid Memo dated 30.09.2009 of the Additional District Inspector of schools (SE). Though the school authority submitted the panel to Additional Inspector of Schools (SE) vide letter dated 17.07.2012 in time, the respondent No.4 kept the panel pending before it for years together without taking any action thereon.

17. As submitted by learned counsel appearing for the petitioner, I am of the same view that after lapse of more than six years since the panel of 2012 was prepared, the life of the panel has impliedly come to an end. In such context, it will be apposite to say that ordinarily the life of a panel is for one year provided it is not extended by the authority concerned. Such being the factual and legal aspects, this Court has no hesitation in mind to hold that the panel prepared in the year 2012 has already expired.
18. But, the fact remains that the sanction as accorded by the competent authority i.e. the Additional District Inspector of Schools (SE), Gangarampur for appointment of a librarian for the school in terms of Government Order dated 08.06.2007 and the Memo of sanction dated 30.09.2009 still remains in force.
19. Rule 10 of the 2016 Rules enjoins that no prior permission shall require for issuance of an advertisement and starting the process to fill up any vacant post duly sanctioned by the State Government in the School Education department or Director of School Education, West Bengal provided the terms and conditions as stated in para .2 are fulfilled. Therefore, the exercise undertaken by the school authority to publish advertisement in newspaper for filling up the sanctioned post of Librarian without prior permission of the authority concerned is warranted by law. However, as a letter dated 06.02.2019 of the school authority evince, the school authority intimated the Additional District Inspector of School that it was going to recruit a librarian vide a resolution dated 01.10.2018 adopted by the school authority.
20. As it is evident from the appointment letter dated 09.08.2019 and the letter of joining dated 13.08.2019, the petitioner joined the post of librarian of respondent No.5 school on 13.08.2019. The petitioner has been working as a librarian of the school since his appointment, but, without getting any pay.

21. It is not in dispute that the Principal Secretary, School Education Department, in compliance with the Order dated 15.10.2020 passed by a learned Single Bench in W.P.A 24075 of 2019, disposed of the representation dated (05.12.2019) of the school authority directing the Additional District Inspector of School to take appropriate decision over the appointment of the petitioner within four weeks from the date of receipt of the Order. As quoted above, the Principal Secretary in its Order dated 10.12.2020 has observed that the G.O dated 08.06.2007 and the Memo dated 03.10.2007 have been cancelled. But, in reality, the Memo dated 03.10.2007 has been cancelled and not the G.O dated 08.06.2007.
22. As stated above, the sanction for the post of librarian of respondent No.5 school accorded by the competent authority i.e. the Additional District Inspector of Schools still remains in force. In such context a Memo dated 31.03.2015 issued by the School Education Directorate, Government of West Bengal may be referred. It is spelt in the Memo that if any District Inspector of Schools (SE) exercising his/her authority to grant prior permission issued any prior permission for recruitment of a non-teaching staff he or she should send details of prior permission to the school education department for regularisation of such post. Therefore, while the Principal Secretary was disposing of the representation of the school authority taking into account all the relevant documents relating to the appointment of the petitioner as librarian he ought to have considered the matter of regularising the appointment of the petitioner in terms of the Memo dated 31.03.2015. By not doing this he committed grave error causing injustice to the petitioner. That being so, the Order dated 10.12.2020 passed by the Principal Secretary, School Education Department, Government of West Bengal and the Memo dated 11.01.2021 made by respondent No.4

in terms of the Order dated 10.12.2020 of the Principal Secretary are vitiated with illegalities and those are liable to be set aside.

23. Since the petitioner who was lawfully appointed as a librarian of respondent No.5 school has been denied the pay which is admissible to him since 13.08.2019, this Writ Court in exercise of its extraordinary power of judicial review or plenary power may direct the authorities concerned to approve the appointment of the petitioner and start paying his salary and allowances as admissible to him to render a complete justice.
24. In the result, the writ petition merits success and accordingly the writ petition is allowed on contest.
25. The Order dated 10th December, 2020 passed by the Principal Secretary, School Education Department, Government of West Bengal and the Order/Memo dated 11.01.2021 issued by the Additional Inspector of Schools (SE), Gangarampur Sub-Division are hereby set aside. The respondent Nos. 1 to 4 are directed to approve the appointment of the petitioner to the post of Librarian in respondent No.5 school with effect from 13.08.2019 within one month from date. The respondent Nos. 1 to 4 are further directed to release the admissible pay and arrear pay to the petitioner with effect from 13.08.2019 by 2nd December, 2022.
26. With the aforesaid direction the writ petition and connected application, if any, stand disposed of. No order as to costs.
27. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)