

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 15372 of 2019

Mr. Dipak Kumar Dinda & Ors.
Vs
The State of West Bengal & Ors.

With

WPA No. 780 of 2021

Dipak Kumar Dinda & Anr.
Vs
The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Partha Sarathi Deb Burman, Adv. Mr. Anindya Sundar Das, Adv. Mr. Shaunak Ghosh, Adv. Mr. Saurov Mallick, Adv.
For DPSC, Paschim Medinipur	:-	Mr. Ranjan Saha, Adv.
For DPSC, Purba Medinipur	:-	Mr. Kamal Mishra, Adv.
For the State	:-	Ms. Chaitali Bhattacharyya, Adv. Mr. Mrinal Kanti Ghosh, Adv. [in WPA 15372 of 2019] Mr. Susanta Pal, Adv. Mr. Biswajit Dutta, Adv. [in WPA 780 of 2021]
Heard on	:-	25-03-2022
Judgment on	:-	08-04-2022

Amrita Sinha, J.:-

The petitioners (Dipak Kumar Dinda, Kalipada Das and Muktipada Shaw) filed the writ application being WPA No. 15372 of 2019 challenging the order dated 10th August, 2017 passed by the Commissioner of School Education, West Bengal. By the aforesaid impugned order, the Commissioner directed the Chairman, District Primary School Council (DPSC), Purba Medinipur and Paschim Medinipur to terminate service of twelve primary school teachers under their jurisdiction after giving an opportunity to them and to recast the panel by excluding the names of unreserved candidates from the panel of Scheduled Caste category.

In compliance of the aforesaid direction passed by the Commissioner, School Education Department, the Chairman, DPSC Purba Medinipur terminated the service of Pradip Kr. Mudli Roy and the Chairman, DPSC Paschim Medinipur terminated the service of Dipak Kumar Dinda which is under challenge in the subsequent writ petition being WPA 780 of 2021. As the issue arises out of the impugned order dated 10th August, 2017 both the matters are taken up for consideration analogously and are being disposed of by this common judgment.

The entire issue arises out of the selection process initiated by the then DPSC, Medinipur (undivided) in the year 1993. The petitioners in both the writ petitions aver that they participated in the selection process and were successful in the same. Appointment letters were issued in their favour in the year 1996. The petitioners in WPA 780 of 2021 submit that since the date of their appointment they performed their work satisfactorily. The aforesaid Pradip Kumar Mudli Roy, petitioner no. 2 in WPA 780 of 2021 attained his normal age of superannuation on 31st March, 2022 and the petitioner no. 1, Dipak Kumar Dinda is due to attain his normal age of superannuation on 31st August, 2022.

Some of the candidates who were unsuccessful in the selection process filed writ petition before this Court being WP No. 24784 of 2016 (Tushar Kanti Dandapat & Ors. -vs- State of West Bengal & Ors.) on the allegation that appointments were given to general category candidates in the reserved posts. The writ petition was taken up for consideration by the Court on 17th November, 2016 and disposed of by directing the Commissioner of School Education to treat the writ petition as representation of the petitioners and dispose of the same by a reasoned order in accordance with the applicable law and rules within a specified time after giving an opportunity of hearing to the writ petitioners and all other necessary parties.

The petitioners herein were impleaded as respondents in the said writ application. All the petitioners aver that prior to their appointment they did not give any declaration that they belonged to any reserved category. None of the petitioners claim to possess or produced any certificate seeking reservation.

As the order passed by the Court directly affected the rights of the petitioners, they preferred an application for review of the order dated 17th November, 2016 being AST 124 of 2017. The application for review is sub-judice and pending disposal till date.

The Commissioner of School Education did not serve any notice upon the petitioners in compliance of the direction passed by the Court on 17th November, 2016. The petitioners for the first time got knowledge of the fact that the Commissioner of School Education considered the matter in compliance of the direction passed by the Court on 17th November, 2016 and passed order on 10th August, 2017. Copy of the impugned order was also not served upon the petitioners.

The petitioners got knowledge of the impugned order from a copy of the writ petition being WP No. 5623 of 2018 praying for implementation of the order dated 10th August, 2017 wherein a copy of the said impugned order dated 10th August, 2017 was annexed. The said writ petition was considered by the Court on 24th June, 2019 and at the time of hearing it was revealed that the order of the Commissioner dated 10th August, 2017 was not challenged by any of the parties. The Court was of the opinion that the order dated 10th August, 2017 be complied with and accordingly directed the concerned respondent(s) to terminate the appointment of the private respondents as also to recast the panel within a specified time.

Appeal preferred against the order dated 24th June, 2019 being MAT 1083 of 2019 is still pending adjudication before this Court.

The Commissioner of School Education, in compliance of the direction of the Court on 17th November, 2016, passed the order dated 10th August, 2017 impugned in WPA 15372 of 2019 directing DPSC to terminate service and recast the panel. DPSC has accordingly terminated the service of the petitioners in WPA 780 of 2021.

Primary contention of the petitioners is that though there was a specific direction by the Court for consideration of the matter by the Commissioner of School Education upon giving proper opportunity of hearing to all the necessary parties, the petitioners herein were not afforded an opportunity of hearing before the

Commissioner. It has been submitted that the Commissioner passed order behind their back and beyond their knowledge.

It is the specific case of the petitioners that the impugned order of the Commissioner dated 10th August, 2017, was passed mechanically, upon total non-application of mind. There has been gross suppression of material facts. The Commissioner of School Education was not made aware of the judgment dated 21st February, 2014 passed by the Hon'ble Division Bench of this Court in MAT 278 of 2013 (CAN 7638 of 2013) in the matter of Prabhat Kr. Bhattacharya -vs- Susmita Bhowmick & Ors. in connection with the same recruitment process.

The Hon'ble Appeal Court found that fifty-six candidates were sponsored by the concerned Employment Exchange as unreserved category sponsored candidates but were given appointment to the post earmarked for Scheduled Caste category. Since no testimonials of the sponsored candidates were made available to the enquiring authority, definite conclusion could not be arrived at with regard to the legality of their appointment. The Court was of the opinion that the problem may be solved if their appointments are confirmed after verification of their records and subject to satisfaction of the caste to which they really belong.

The Court was pleased to set aside the order passed by the learned Trial Judge who was pleased to set aside the entire recruitment process and directed to conduct the recruitment process de novo. The Court took note of the fact that the recruitment process for filling up the vacancies of the posts of Assistant Teachers of primary schools was initiated some time in 1986-87. The selection process got entangled in several litigations and ultimately a panel was prepared in the year 1996 for recruitment of primary teachers under Purba Medinipur and Paschim Medinipur Districts. Initially the recruitment rules of 1940 were followed but thereafter the recruitment rules of 1991 was made applicable for giving recruitment.

Issues cropped up with regard to appointment of non-trained candidates. The Hon'ble Appeal Court recorded that it is nobody's case that the candidates whose papers cannot be traced out were ultimately selected by showing any favour to

them. It is nobody's case that the candidates who were affected by their exclusion due to any wrong committed to them have come forward with such a grievance. The Court held that the entire selection process cannot be set aside for such a speculative illegality. The Court did not find any illegality, of such magnitude, for which interference with the selection process was necessary and that too when sixteen years have already passed after the panel was prepared and appointments were given from the panel.

The judgment passed by the Hon'ble Division Bench was challenged before the Hon'ble Supreme Court by filing Special Leave to Appeal being 11881-11883 of 2014 (Ashok Kumar Giri -vs- Probhat Kumar Bhattacharya & Ors.). The Supreme Court, by an order dated 8th May, 2014, was pleased not to interfere with the impugned judgment and dismissed the Special Leave Petitions.

According to the petitioners, had the Commissioner been made aware of the judgment passed by the Hon'ble Division Bench in MAT 278 of 2013 and the subsequent order of the Hon'ble Supreme Court, then the fate of the hearing would have been otherwise.

It has been contended that the aforesaid orders of the Hon'ble Division Bench and the Hon'ble Supreme Court were intentionally and deliberately suppressed and not placed before the Commissioner for obvious reasons.

The petitioners harp on the point that as they never had any role to play at the time of preparation of the panel or issuing letters of appointment, they ought not to be penalised for any mistake on the part of the respondent Council. Stress has been laid that the petitioners belong to the general category and they never placed any claim for appointment in the reserved category. It has been candidly submitted that it is not possible for the petitioners to produce any caste certificate seeking reservation, as all of them belong to the general or the unreserved category.

Prayer has been made for setting aside the impugned order dated 10th August, 2017 passed by the Commissioner of School Education and the subsequent order of termination passed by the Chairman of the two DPSCs.

In support of their case the petitioners have relied upon the Rules regulating the Recruitment and Leave of Teachers in Primary Schools in West Bengal, 1991 wherein it has been laid down that the Chairman of the respective Council shall be the appointing authority. There shall be a staff Selection Committee for the purpose of selection of eligible candidates and for preparation of panel of such candidates for appointment to the post of teachers of primary schools.

Selection procedure laid down in the aforesaid Rules has also been placed before this Court.

It has been submitted that the Selection Committee was responsible for preparation of the panel and being satisfied with the testimonials and documents produced by the petitioners at the time of interview, their names were empanelled. Appointment letters were duly issued in their favour and thereafter confirmation letters were also issued. The petitioners remained in service on and from 1996 till date.

The petitioners rely upon an unreported judgment delivered by a coordinate Bench of this Court on 11th January, 2018 in **WP No. 16313 (W) of 2016 (Mano Ranjan Das –vs- State of West Bengal & Ors.)** wherein the same selection process and an issue, similar to the present case, fell for consideration.

The Court was of the opinion that the observation of the Division Bench in MAT 278 of 2013 in respect of the list of teachers containing names of fifty-six teachers who were alleged to have been appointed in reserved posts have already been set at rest. The Court observed that the Division Bench refrained from interfering with the selection process when appointment was given in the year 1996 and the successful candidate already rendered service for more than sixteen years. The Court was pleased to set aside the order of termination which was issued in favour of the petitioners and directed release all consequential benefits in their favour.

The petitioners also rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of **Committee of Management, Bishambhar Sharan Vaidic**

Inter College, Jaspur, Nainital & Ors. -vs- UP Secondary Education Service Commission & Ors. reported in **1995 (Supp) 3 SCC 244** wherein the Hon'ble Supreme Court was of the opinion that the enquiry committee while deciding whether or not to grant approval for removal of a teacher, has necessarily to go into the merits of the case and apply its mind independently to the question whether the evidence on record justified the removal. The Court mentions that it must be remembered that the Commission appointed under the Act is a high-powered body entrusted to discharge its responsibility circumspectively. It cannot exercise its function effectively unless it scrutinises the material and applies its mind carefully to the facts on record. According to the petitioners, the Commissioner passed the impugned order without scrutinising all the relevant materials and without application of mind and accordingly the impugned order passed by the Commissioner on 10th August, 2017 and the subsequent order of termination of service passed by the Council in February, 2020 are liable to set aside and quashed by the Court.

The State respondents on the other hand oppose the prayer of the petitioners.

It has been submitted that the Commissioner upon examination of all documents came to the finding that the petitioners, being unreserved category candidates, were given appointment in the reserved category thereby depriving candidates of the reserved category to be appointed in the said posts.

The Assistant Director of School Education, West Bengal duly authorised by the Commissioner of School Education affirmed an affidavit in WPA- 780 of 2021 wherein it has been mentioned that in compliance of the solemn order of the Hon'ble Court passed on 17th November, 2016 in WP No. 24784 of 2016 in the matter Tushar Kanti Dandapat (supra), rigorous hearing was taken on different dates with all concerned and reasoned order was passed on 10th August, 2017 and communicated to all concerned.

The affidavit also mentions that service of Dipak Kumar Dinda and Pradip Kumar Mudli Roy was terminated after giving opportunity of hearing and on their failure to produce Scheduled Caste certificate in their favour.

It has been contended that the service of Dipak Kumar Dinda and Pradip Kumar Mudli Roy was rightly terminated as they were not supposed to be appointed in the Scheduled Caste category.

The State respondents in support of their argument relied upon a judgment delivered by the Hon'ble Supreme Court in the matter of ***Karnataka State Seeds Development Corporation Limited & Anr. -vs- H. L. Kaveri & Ors.*** reported in ***(2020) 3 SCC 108*** where the Court was of the opinion that the application of the candidate was rightly rejected for non-fulfilment of the necessary experience certificate which was to be enclosed along with the application in terms of the advertisement. It has been argued that as the petitioners do not have the reservation certificate in their favour, accordingly their appointment in the reserved category cannot be permitted to continue and their services are liable to terminated.

I have heard and considered the rival submissions made on behalf of both the parties.

The petitioners are primarily aggrieved by the order dated 10th August, 2017 passed by the Commissioner, School Education. The said order was passed allegedly in compliance of the order passed by this Court on 17th November, 2016 in WP No. 24784 (W) of 2016 (Tushar Kanti Dandapat (supra)). By the said order the Court was pleased to direct the Commissioner to consider and dispose of the representation of the petitioners after giving an opportunity of hearing to the writ petitioners and all other concerned parties including the private respondents.

The first paragraph of the impugned order mentions that the case was taken up for hearing in presence of the petitioners and the Chairmen, DPSC, Purba and Paschim Medinipur. The order does not reflect that all the concerned parties were provided an opportunity of hearing. The petitioners have averred in the writ petitions that no notice or opportunity of hearing was given to the petitioners prior

to passing the order impugned. On the face of record, it is clear that the petitioners did not get a chance to defend themselves prior to a decision being taken in the matter. The petitioners are the most vitally and adversely affected parties whose livelihood is at stake and order was passed upon the Chairman of the Councils to terminate their service. The same amounts to violation of the principle of natural justice.

In accordance with the direction passed by the Commissioner, the Chairman of the Councils afforded opportunity of hearing to the petitioners and in terms of the direction passed by the Commissioner terminated their service. Providing an opportunity of hearing by the Chairman of the Councils hardly makes a difference in the matter as the decision to terminate was already taken by the Commissioner and the same was merely executed by the Chairman. There was no other alternative on the part of the Chairmen but to terminate the service of the petitioners, as the decision to terminate was taken by a superior authority. The Chairman of the Council, being a subordinate authority, could not have travelled beyond the mandate to terminate which was given by the higher authority. The opportunity of hearing at the end of the Chairman was a farce and an empty formality.

The Court while passing the order on 17th November, 2016, being conscious of the consequences, directed the Commissioner to grant opportunity of hearing to the necessary parties. It was for the Commissioner to take a decision relying upon all documents in connection with the issue in question and it was not for the Chairman to take a decision. The Chairman simply acted as the implementing authority of the mandate of the Commissioner.

The order dated 10th August, 2017 does not reflect that the judgment passed by the Hon'ble Division Bench on 21st February, 2014 in MAT 278 of 2013 and the order passed by the Hon'ble Supreme Court on 8th May, 2014 in connection with the same recruitment process was at all taken into consideration at the time of passing the said order. The judgment passed by another coordinate Bench of this Court on 11th January, 2018 in WP 16313 (W) of 2016 was also not taken into consideration by the Commissioner.

The order impugned accordingly suffers from gross violation of the principle of natural justice and was passed without taking into consideration all the relevant facts and materials required for arriving at a proper conclusion in the matter.

The petitioners have all along averred in their petition that they belong to the general category and they never sought reservation at the time of appointment. As the petitioners do not belong to the reserved category, obviously they do not possess any caste certificate in their favour. The impugned order does not mention as to whether the petitioners were in any manner responsible for obtaining appointment upon mis-representation or fraud. Appointment letters issued in favour of the petitioners do not mention that they were appointed in any reserved category post.

The recruitment process in question was initiated some time in the year 1986-87, as observed by the Hon'ble Division Bench in MAT 278 of 2013. In accordance with the relevant recruitment rules a Selection Committee was formed. Names of successful candidates were empanelled in a provisional list which was placed in the meeting of the Council for passing and thereafter forwarded to the Director for approval. It is only after the Director was satisfied that the rules and procedure have been followed at the time of preparation of the panel, the same was approved. It was for the Director to check whether there are defects or mistakes in the panel in observing the rules and procedures. If any defect or mistake is detected by the Director, it was for him to ask the Council to rectify the defects and mistakes and ask the Council to submit the same to him for approval, after correction. The approved panel is thereafter sent to the Board. Appointment letters are then issued in favour of the empanelled candidates under signature of the Chairman of the Council. At the time of preparation of the panel the statutory provisions for reservation of the Scheduled Caste and Scheduled Tribe candidates are to be strictly observed.

Assuming that the petitioners being general category candidates were given appointment in the reserved category, it was the bounden duty of the Selection Committee, the Director, the Board as well as the Chairman to ensure that the panel was prepared in the manner as laid down in law. It is quite strange and

surprising that none of the aforesaid authorities detected the alleged error or illegality at the time of preparation of the panel. No case has been made out by the respondents that the petitioners were responsible in securing appointment by practicing mis-representation or by claiming that they belong to the reserved category. Till such a case is made out by the respondents, the authorities cannot shrug off their responsibility in issuing appointment letters in favour of the petitioners. There was enough scope to detect the mistake or defect in the panel. There are not one but several stages for preparation of the panel prior to issuance of the letter of appointment. The mistake or the error remained undetected in respect of not one, but as many as seventy-two candidates. The petitioners herein were issued letters of appointment in the year 1996 and one of the petitioners viz, Pradip Kumar Mudli Roy attained his normal age of superannuation on 31st March, 2022. The impugned order mentions that some of the aforesaid seventy-two candidates died and a few retired from service in the meantime. The petitioners have completed nearly twenty-six years of service and it will not only be unfair but absolutely unjust to terminate their service at the fag end of their service tenure without giving a fair opportunity to defend themselves.

The reservation policy ought to have been strictly followed at the time of preparation of the panel. By not doing so, the authorities have certainly acted de hors the provisions of law. But without taking appropriate action against the persons responsible for preparation of the panel, the petitioners have been made the scapegoat. The petitioners have been permitted to perform duty for more than twenty-six years and immediately prior to retirement they have been informed that their appointment was illegal. Proper steps ought to have been taken in the matter at the earliest and certainly not after so many years.

The Hon'ble Division Bench in the matter of Prabhat Kumar Bhattacharya (supra) refused to interfere with the selection process way back in 2014 clearly mentioning that sixteen years have already passed after the panel was prepared and appointments were given from the panel.

A coordinate Bench in the matter of Mano Ranjan Das (*supra*), in connection with the same selection process, held that illegality has been committed at the root by the Chairman of the Council in issuing order of cancellation of appointment and was accordingly pleased to quash and cancel the same. The Court was pleased to direct the respondent to allow the petitioner to join immediately by paying salary and in the event the petitioner has retired from service then to pay all pensionary benefit and all notional benefit.

By the order impugned herein the Commissioner directed recasting of the panel in terms of the prevalent recruitment rules. According to the recruitment rules of 1991 which was holding the field and in accordance with which the entire selection process was conducted, clearly mentions that an approved panel shall remain valid normally for one year from the date of approval by the Director, provided the Board may extend the life of the panel by six months at a time, but the total period of such extension shall not exceed one year.

In the present case, the panel in question must have been prepared some time in the year 1995-96 or prior thereto, as the letters of appointment were issued in favour of the petitioners in the year 1996. According to the provisions of law, the said panel cannot remain alive till August 2017 when the impugned order was passed by the Commissioner. The Court fails to understand as to how a panel, which lost its validity nearly twenty years ago, can be recasted. The Court also fails to fathom as to how persons from the recasted panel can be accommodated in service, from a panel which does not have any legal existence. The authority, at this stage, will fall back upon the order passed by the Court in the Contempt proceeding. The respondents ought to appreciate that the initial order passed by the Court specifically mentioned about providing opportunity of hearing to all the concerned parties, which appears not to have been followed.

The selection process was made to rest by the order passed by the Hon'ble Supreme Court on 8th May, 2014. The issue ought not to be permitted to be reagitated all over again on some plea or the other, otherwise there will be no end to litigations at the instance of unsuccessful candidates, who may be reeling under

false impression and expectation that they will be favoured with the job at some point of time. Gross injustice would be caused to the persons who have been issued letter of appointment and have served their entire tenure, if their service is terminated at this stage. It will cause more harm to these candidates than good to the complainants, i.e, the unsuccessful candidates. The same will lead to miscarriage of justice.

In Karnataka Seed (supra) the Court laid down that the candidature of the candidate has been rightly rejected as the candidate did not possess the relevant certificate at the time of making the application. The same is settled law. This Court is also of the view that the candidature of the candidates ought to have been cancelled at the very first instance if they failed to satisfy the requisite criteria for appointment. The respondents did not do so for the reasons best known to them. They permitted the candidates to perform their duties for more than two decades and a half. Immediately prior to their retirement they ought not to be thrown out from service. Had the petitioners not been selected, they could have looked for job elsewhere. At this stage that avenue is no longer open to them.

It is certain that many things have settled down due to passage of more than quarter of a century. There is every possibility that the persons who were responsible for conducting the selection process way back in the year 1983/ 1993 /1996 have been superannuated or transferred. Re-examining the entire process at this stage, in my opinion, will be like opening up a can of worms. Let sleeping dogs lie.

In view of the discussions made hereinabove, I am constrained to hold that the impugned order of the Commissioner dated 10th August, 2017 cannot be made applicable in case of the petitioners in WPA 15372 of 2019. Consequently, the subsequent orders of the Chairman, DPSC terminating the service of the petitioners in WPA 780 of 2021 cannot stand in the eye of law and are accordingly set aside and quashed. It is held that Dipak Kumar Dinda and Pradip Kumar Mudli Roy are liable to be reinstated in service with all service benefits including arrear salary and other dues. There should not be any break in their service. As Pradip Kumar Mudli Roy

has attained his age of superannuation, he will be entitled to receive all his superannuation benefits, strictly in accordance with law.

Chairman, DPSC Purba and Paschim Midnapore and the concerned District Inspector of Schools are directed to take all necessary consequential steps in the matter. Dues of the petitioners must be cleared latest within a period of six months from the date of communication of this order.

It is made clear that judicial review qua the aforesaid impugned order dated 10th August, 2017 is restricted to the petitioners in the aforesaid two writ petitions only.

Writ petition stands disposed of. No costs.

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

(Amrita Sinha, J.)