

Item No. 8
15-09-2022
Sanchita
(Ct. no.25)

WPA 14663 of 2011

**Bishnupada Das
Vs.
State of West Bengal & Ors.
With**

W.P.A. 2355 of 2012

Pulin Bera

Vs.

The State of West Bengal & ors.

with

W.P.A. 3811 of 2011

Akhilesh Panda

Vs.

State of West Bengal & Ors.

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das

...For the Petitioner.

Mr. S.P. Pahari

... For the petitioner
in WPA 2355 of
2012 & WPA 3811 of
2011.

Mr. Supriyo Chattopadhyay,
Mr. Sabyasachi Mondal

... For the State

Three writ petitions being WPA 14663 of 2011, WPA 2355 of 2012 and WPA 3811 of 2011 were taken up for analogous hearing as all pertains to the issue as to the approval or for setting aside the panel for appointment to the post of Group-D Staff (UR) of Bahitrakunda High School being the respondent no. 4 herein.

The petitioner in WPA 14663 of 2011 claims to be the first empanelled candidate for the said post and has prayed for a direction to appoint him in the said post and the other writ

petitioners have challenged the selection process for appointment to the post in question.

The petitioner in WPA 14663 of 2011 claims that pursuant to the sanction accorded for filling up Group-D (UR) post in Bahitrakunda High School (for short “the school”), prior permission was granted by the District Inspector of School (SE), Purba Medinipur (for short “DI”) and the selection process was initiated thereafter. Petitioner claims to have secured first position in the panel and the panel which was forwarded by the school authority was approved by the concerned DI on February 15, 2011. The grievance of the petitioner is that though the panel was duly approved, yet the school authorities have not issued appointment letter to the petitioner.

The case of the petitioners in WPA 2355 of 2012 and WPA 3811 of 2011 is that the selection process for appointment to the post in question lacks transparency and the petitioner was not qualified for being appointed to the post in question. It is the further case of the said writ petitioners that they came to know that Bishnupada Das was already selected by the Managing Committee of the School for being appointed to the post in question prior to the holding of the test for selecting the best candidates.

The undisputed fact is that the writ petitioners in WPA 2355 of 2012 and WPA 3811 of 2011 did not participate in the selection process.

Mr. Jana, learned advocate appearing for the writ petitioner in WPA 14663 of 2011 contends that since the selection process was initiated prior to the coming into force of the

West Bengal School Service Commission (Selection for Appointment to the Posts of Non-teaching Staff) Rules 2009 (for short “the 2009 Rules”) and also in view of the order passed by a co-ordinate bench of this Court in WP 23264 (W) of 2010 the DI was justified in approving the panel which was submitted before such authority in terms of the selection process held pursuant to the 2005 Rules.

Mr. Pahari, learned advocate appearing for the other petitioners contends that since during the pendency of the selection process the 2009 Rules have come into force, the panel submitted for approval in terms of the selection process conducted by the 2005 Rules could not have been approved as the 2009 Rules came into force with effect from 9th July 2009. According to Mr. Pahari no approval to panels in respect of the selection process undertaken as per the 2005 Rules can be approved after the 2009 Rules came into force. In support of such submission Mr. Pahari relies upon a decision of Hon’ble Division Bench of this Court in the case of *The State of West Bengal and ors. vs. Kailashpati Jha & ors.* reported at (2020) 1 CLJ (Cal) 328. He also places reliance upon an order dated December 5, 2017 passed by the Hon’ble Supreme Court of India in Civil Appeal no. 20883 of 2017 in the case of *State of West Bengal and ors. vs. The Managing Committee, Nirjharini S.B. Vidyalaya (H.S.) etc.*

Mr. Pahari further submits that the panel was prepared by the school authority without taking into consideration the marks awarded by the Panchayat Nominee and the said panel which was submitted for approval also do not bear the signature of such Panchayat Nominee. By

placing reliance upon the 2005 Rules, Mr. Pahari submits that a Panchayat Nominee has to be included as a member of the Selection Committee of a clerk or a Grout-D staff in a school and therefore, the panel prepared without participation of the Panchayat Nominee is invalid in the eye of law and the same could not have been approved by the DI.

Mr. Mondal, learned advocate led by Mr. Chattopadhyay, learned Senior Counsel for the State submits that the DI after taking into consideration the materials on record and after taking into consideration the order of the co-ordinate bench dated December 1, 2010 in WP 23264(W) of 2010 approved the panel. He therefore, submits that there is no inaction on the part of the concerned DI in approving the panel.

In reply Mr. Jana, learned advocate appearing for the petitioner places reliance upon an unreported decision of a co-ordinate bench of this Court in the case of *Paban Kumar Dutta vs. The State of West Bengal & Ors.* delivered on June 21, 2021 in WP No. 19279 (W) of 2009 in support of his contention that the panel prepared by the Selection Committee in a case where the Panchayat Nominee did not participate in the selection process cannot be held to be invalid in the eye of law.

Heard the learned advocates for the parties and perused the materials on record.

The legal issue that has been raised by the learned advocate for the petitioners in WPA 2355 of 2012 and WPA 3811 of 2011 that after coming into force of the 2009 Rules, the pending selection process automatically comes to an end and a fresh selection process is to be initiated

has already been settled by a co-ordinate bench in WP 23264 (W) of 2010 and the same cannot be reopened in this writ petition. His Lordship was pleased to make the following observation while passing the order dated 01.12.2010 in the said writ petition which is extracted herein below.

“It is made clear that since interview of the candidates was taken on 22.2.2009 i.e. well before the introduction of the West Bengal School Service Commission (Selection for Appointment to the Posts of Non-teaching Staff) Rules, 2009, G.O. dated 22.7.2008 and G.O. dated 13.5.2010, issued by the Assistant Secretary to the Government of West Bengal, School Education Department and Officer on Special Duty and Deputy Secretary to the Government of West Bengal, School Education Department respectively shall not in any manner influence the decision of the District Inspector to be taken in terms of this order.”

The said decision already attained finality and the DI was directed to take steps in accordance with such order. It is evident from the memo no. 78-L dated 17.02.2011 that the panel forwarded by the school authority was approved by the DI. In terms of the order dated February 01.12.10 in WP No. 24263(W) of 2010 passed in WP 23264 (W) of 2010.

This Court therefore, refrains from dealing with the decisions cited by Mr. Pahari on such issue.

The next issue that arises for consideration is whether for non participation of the Panchayat Nominee by not awarding marks to the candidates who appeared at the interview and also by not putting the signature in the panel the entire panel is invalid in the eye of law. Such issue is no longer *res integra*.

A co-ordinate bench in *Paban Kumar Dutta* (supra) by relying upon a Division Bench

decision in the case of *District Inspector of School, Murshidabad and ors. vs. Samsul Huda* reported at 1987 (2) CLJ 144 held that if the selection was made on the basis of the marks given by 50% of the members of the Selection Committee the object of the Rule cannot be held to be frustrated simply because of the fact that the remaining 50% of the members of the Selection Committee did not participate in the process of selection of the candidates. The co-ordinate bench held that the non-participation of the Panchayat Nominee in the preparation of the panel do not vitiate the selection process.

The decision in the case of *Paban Kumar Dutta* (supra) is squarely applicable to the facts of this case as more than 50% members of the Selection Committee participated in the process of selecting the candidate for the post in question and the panel was prepared on the basis of the marks given by the other members of the Selection Committee excepting the panchayat nominees.

This Court accordingly holds that the panel forwarded by the school authority without the participation of the Panchayat Nominee cannot be said to be illegal or invalid in the eye of law as sought to be argued by Mr. Pahari, learned advocate appearing for the petitioners praying for setting aside the panel.

The petitioners in WPA 2355 of 2012 and WPA 3811 of 2011 have made only bald allegations as to the fact that the petitioners in WPA 14663 of 2011 lacks the requisite qualification for being appointed to the post in question. No document has been produced by the said writ petitioners either in the affidavit-in-opposition filed to WPA 14663 of 2011 or in the

independent writ petitions filed by them in support of such statements. On the basis of vague allegations made by candidates, who did not participate in the selection process, this Court cannot hold that the selection process for the post in question lacks transparency.

For all the reasons as aforesaid, this Court is of the considered view that a direction is to be passed upon the school to issue the letter of appointment in terms of the approval of the panel accorded by the DI vide memo dated 17.02.2011. The school authority and the person authorized to issue appointment letter are directed to issue appointment letter to the petitioner as expeditiously as possible but positively within seven working days from the date of communication of this order to the school authority. With the aforesaid directions, WPA 14663 of 2011, WPA 2355 of 2012 and WPA 3811 of 2011 are disposed of.

There shall be however no order as to costs.

Urgent photostat certified copy of this judgment be given to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)