

W.P.A. 19147 of 2018

**Pinaki Nath Bhattacharjee
Vs.
The State of West Bengal & Ors.**

Mr. Narayan Chandra Bhandari

...for the petitioner

**Ms. Chantali Bhattacharya
Ms. Ujani Pal (Samanta)**

....for the State

The writ petition pertains to regularisation of service of the petitioner in the post of clerk in non-Government aided secondary school. The challenge in this writ petition has been thrown to a memo dated 8th June, 2017, pages 247-248 of the writ petition, whereby the District Inspector of Schools (SE), South 24 Parganas being the respondent no. 4 has refused to grant prayer of the writ petitioner seeking regularisation.

Mr. Narayan Chandra Bhandari, learned advocate representing the petitioner has drawn attention of this Court to the order dated 19th January, 2018 passed on review petition being RVW 242 of 2017 by a coordinate Bench whereby the said review petition was disposed of upon granting liberty to the petitioner to assail the order of the respondent no. 4 dated 8th June, 2017 in a fresh proceeding and it was also observed therein that in the

contempt proceeding, legality and validity of the said decision of the respondent no. 4 cannot be gone into.

It has been submitted on behalf of the petitioner that while taking decision the respondent no. 4 fails to take into consideration the appointment letter dated 3rd January, 1991 issued by the then President of the Managing Committee of the school and the certificate dated 10th March, 1994 issued by the same person in the capacity of the Secretary, namely, Sri Habul Chandra Mondal, certifying in favour of the petitioner. It has been contended that had these two documents one dated 3rd January, 1991 and another dated 10th March, 1994, would have been considered in proper perspective, the claim of the petitioner for regularisation in the post of clerk ought to have been allowed.

Ms. Chaitali Bhattacharya, learned senior Government advocate appears on behalf of the State-respondents and has submitted placing reliance on the order passed by the respondent no. 4 dated 8th June, 2017 that the petitioner was not appointed following the Recruitment Rules prevalent at the material point of time. Therefore, he has got no right to claim regularisation or approval thereof. Accordingly, it has been submitted that there is no anomaly in the decision taken by the respondent no. 4.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record including the original

appointment letter dated 3rd January, 1991 allegedly issued by one Sri Habul Chandra Mondal, since the said appointment letter dated 3rd January, 1991 is not appended to this writ petition.

On consideration of the facts of the present case and also from perusal of the order passed by the respondent no. 4, it appears that petitioner has failed to demonstrate before this Court that how he was appointed and whether such appointment was in accordance with the relevant Recruitment Rules prevalent at that point of time. As per the relevant Recruitment Rules based on prior permission issued by the concerned District Inspector of Schools, the school authority is required to initiate the process of selection, but, in the present case, nothing is found wherefrom it can be ascertained that prior permission was issued by the concerned District Inspector of Schools. Furthermore, nothing is on record from where it can be ascertained that valid selection process was initiated by the school authority prior to selecting the petitioner for the post of clerk.

It has been rightly pointed out by the respondent no. 4 as emanates from his decision contained in Memo dated 8th June, 2017 that a panel of three candidates is required to be prepared and the same is also required to be approved by the concerned District Inspector of Schools being the respondent no. 4 herein. If such panel is

approved the first empanelled candidate, can be appointed in the said post of clerk.

From the writ petition nothing is found which can establish before this Court that petitioner was appointed following the extant Recruitment Rules. In view of such departure made by the school authority while appointing the petitioner, no relief can be granted in favour of the petitioner since no enforceable right has been created which can be protected on issuance of writ of mandamus.

In this regard reliance has been placed **State of Karnataka Vs. Uma Devi (3)** reported in **2006 (4) SCC 1**.

In view of above conspectus, this writ petition does not merit consideration and the same stands dismissed.

The original appointment letter dated 3rd January, 1991 and original memo dated 8th June, 2017 are returned to Mr. Bhandari, learned advocate of the petitioner.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)