

26.08.2022.
Court No.13
Item No. 29
ap

**I.A. No. CAN 1 of 2021
In
W.P.A. No. 21999 of 2017**

**Md. Sakir Hossain
Versus
The State of West Bengal & Ors.**

Mr. Asim Hati,
Ms. Nibedita Barui.

...For the petitioner.

Ms. Chaitali Bhattacharyya,
Mr. Benazir Ahmed.

...For the State.

In Re: CAN 1 of 2021 (Restoration)

Sufficient grounds are available to explain the absence of the petitioner and/or his Counsel on 6th January, 2021 before a Co-ordinate Bench of this Court.

The said order is recalled and the writ petition is restored to its file and number.

Accordingly, CAN 1 of 2021 is disposed of.

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

In Re: W.P.A No. 21999 of 2017

The writ petitioner is aggrieved by an order dated 3rd August, 2017 passed by the District Inspector of Schools (SE), Birbhum.

By the impugned order, the petitioner's prayer for regularization and permanent absorption as Clerk in Nutangram High School has been rejected.

It appears from the record that the petitioner is the son of Late Md. Yeasin, who was an ex-Clerk in the said School and the petitioner has been recruited after temporarily in place of his father. He was absorbed full time after his father's death. It appears from the record that the prior permission of the District Inspector of Schools (SE), Birbhum for filling up the post of Clerk in the said School was not taken.

The appointment has been made unilaterally by the School. The procedure for recruitment of Group-“C” post as stipulated by the State, like advertisement and notice to employment exchange, interview, fixation of qualification etc, have not been followed. It is equally baffling, as to how the petitioner could have at all been appointed by the School without the concurrence of the District Inspector of Schools (SE), Birbhum.

Post 2009, even Group-“C” posts are required to be filled up by the West Bengal School Service Commission under the 1997 Act.

Counsel for the petitioner submits that the State and the Central Government were to frame a scheme for absorption of persons like the petitioner in terms of paragraph 53 of the decision of the Supreme Court in the case of **Secretary, State of Karnataka & Ors. -Vs. - Uma Devi (III)** reported in **(2006) 4 SCC 1** has not been followed. He further submits that a Scheme

was required to be framed by the State and the Central Government in this regard.

It is also argued that the petitioner should be considered upto the age of 60 years for continuous engagement in terms of the Circular of the Finance Department of the State dated 25th February, 2016.

This Court is of the view that the petitioner cannot get the benefit of the said paragraph 53 of the Uma Devi judgment (supra) since he was recruited in the year 2004 on temporary basis by the School, and given the circumstances of his appointment, as discussed hereinabove.

In so far as Circular dated 25th February, 2016 is concerned, the same does not apply to the persons engaged by Schools in the State.

The arguments of the Counsel for the petitioner, therefore, cannot be accepted.

For the reasons stated hereinabove, the impugned order calls for no interference whatsoever.

Hence, the writ petition must fail and is hereby dismissed.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

