

15.09.2022
Court No.25
Item No.04
Aloke Dutta

W.P.A 23670 of 2019
With
CAN 1 of 2021

Sukhendu Mandal
vs.
State of West Bengal & Ors.

Mr. Biswarup Bhattacharyya,
Mr. K.M Hossain,
Ms. Sujata Mukhherjee,
Ms. Keya Sutradhar

.... For the petitioner

Mr. Supriyo Chattopadhyay, Sr. Govt. Adv.,
Ms. Iti Dutta

.... For the State

Mr. B.P Vaisya,
Mr. Sarwar Jahan,
Mr. Gourav Das

.... For the D.P.S.C 24-Pgs.(S)/Council,

The petitioner has challenged the order of the Commissioner of School Education, West Bengal, the respondent no.2 herein, dated July 04, 2019 whereby the said respondent did not approve the panel submitted by the District Primary School Council, 24-Parganas (South), being the respondent no.6 herein, (in short, DPSC) and has prayed for approval of the panel for the post of Group 'D' (SC).

The petitioner claims to have participated in the selection process which was initiated by the D.P.S.C by publishing a notification in the Bengali Daily "Bartaman" dated 21.02.2013 for the post of Group 'D' Staff (SC). The petitioner claims to have

succeeded in the selection test and the interview and also claims to be the first empanelled candidate in the category of Group 'D' Staff (SC).

The grievance of the petitioner is that the respondent no.2 did not approve the panel on the alleged ground that the D.P.S.C did not furnish the requisite papers and documents to the competent authority for the approval of the panel.

Mr. Bhattacharyya, learned advocate, appearing for the petitioner submits that the petitioner participated in the selection process and being the first empanelled candidate under the respective category is entitled to be appointed to the post in question and the action of the respondent no.2 is arbitrary inasmuch as the panel forwarded by the Council for Group 'D' (SC) category was not approved. He further submits that the petitioner was not aware whether the recruitment rules or norms have been complied with or not and in the event it is detected that there was any violation on the part of the respondent Council in conducting the selection process of the recruitment rules and norms, the petitioner could not have been penalised for the illegal action on the part of the respondent Council and the panel may be approved after curing the defect, if any.

This Court by an order dated September 06, 2022, after hearing the learned advocates for the respective parties and on the prayer made by the learned advocate appearing for the D.P.S.C granted liberty to the Council to file an affidavit within the time stipulated in the said order.

Today at the time of hearing, Mr. Jahan, learned advocate, led by Mr. Vaisya, representing the D.P.S.C filed the report in the form of an affidavit which was affirmed on September 13, 2022. By drawing the attention of the Court to page 14 of the said report in the form of affidavit, Mr. Jahan contends that the approval sought for vide letter 2700/DPSC/S-24-PGS/21 dated December 10, 2021 has been accorded.

Mr. Jahan contends that the authorities may be permitted to undertake a fresh selection process since the roster of appointment has now been approved by the competent authority.

Mr. Chattopadhyay, learned senior counsel, appearing for the State submits that the respondent no.2 could not approve the panel as the necessary papers for approval of the panel were not supplied by the D.P.S.C in spite of several reminders being sent by the Directorate to the D.P.S.C. Mr. Chattopadhyay further drew the attention of the Court to para 10 of the order dated July 04, 2019

wherein the respondent no.2 specifically observed that there were some discrepancies in the panels submitted by the D.P.S.C and the said Council was requested to rectify the panels and to furnish the authenticated 100 point roster of vacancies as per the notification issued by the competent authority as well as the score sheet of the written test of all the candidates who appeared in the written test conducted by the Council for such recruitment process.

In reply Mr. Bhattacharyya contended that since the roster of appointment has now been approved, the respondent no.2 may be directed to approve the panel which was forwarded by the D.P.S.C as it would be evident from the letter dated February 02, 2022 (supra) that the competent authority certified the position of vacancies occurring between 27.03.1990 and 01.07.2021.

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

The Assistant Commissioner for Reservation & Ex-Officio Assistant Secretary, Backward Classes Welfare Department, Government of West Bengal issued a letter, being number is 665-BCW/Authen(R.C.)/MRD-52/2021 dated February 02, 2022 wherefrom it appears that the roster of appointment has been duly approved.

It appears from the letter dated February 02, 2022 which has been annexed to the report in the form of an affidavit filed by the respondent nos.5 and 6 herein today that the competent authority has certified the position of vacancy/vacancies occurring between 27.03.1990 and 01.07.2021 as shown against Roster Point No.01 (One) to Roster Point No.10 (Ten) of 1st (First) Cycle in the Register of Appointment in respect of Group-D post attached to Chairman, South 24-Parganas District Primary School Council which was submitted by the Chairman vide letter no. 2700/DPSC/S-24-PGS/21 dated 10.12.2021.

Office Order dated August 27, 2010 reveals that sanction was accorded for filling up of six posts of Lower Division Clerk and two posts of Peon, Group 'D', i.e. total 8 posts in the District of 24-parganas (South). Therefore, the vacancies sought to be filled up by issuance of the Office Order dated August 27, 2010 is covered within the roster of appointment approved by the competent authority as would be evident from the letter dated February 02, 2022 that such roster relates to vacancy/vacancies occurring between 27.03.1990 and 01.07.2021.

Upon going through the order dated July 04, 2019 of the respondent no.2 it appears to this Court that the reasons for non-approval of the panel was

due to lack of information and documents from the end of the D.P.S.C.

Upon a query of this Court, Mr. Jahan, learned advocate appearing for the D.P.S.C submits that all documents and information as sought for by Deputy Director's memo 356-SC/P/4A-23P-2007 dated 18th March, 2014 are now available with the D.P.S.C and they are in a position to comply with the said memo dated March, 18, 2014 within the time that may be stipulated by this Court.

The panel forwarded by the DPSC could not be approved due to discrepancies being detected as indicated in the order dated 04.07.2019. This writ petition was filed immediately thereafter and since the DPSC now submits that they are in a position to comply with the requisition of the Deputy Director dated March 18, 2014 and also taking into consideration the fact that the petitioner cannot be penalised for non-compliance of the requisition dated 18.03.2014 by the DPSC, this Court is of the considered view that the interest of justice would be sub-served if the respondent no.2 is directed to take a fresh decision on the basis of documents supplied by the DPSC in accordance with the said requisition dated 18.03.2014.

For the reasons as aforesaid, the order of the respondent no.2 dated July 04, 2019 is set aside and quashed.

Accordingly, this Court directs the D.P.S.C to comply with the requisition of the Directorate vide memo dated March 18, 2014 as expeditiously as possible but positively on or before September 22, 2022. Upon receipt of the documents, the respondent no.2 shall take a fresh decision on the panel forwarded by the DPSC by passing a reasoned order after taking into consideration all the documents including approved roster of appointment supplied by the D.P.S.C and upon giving an opportunity of hearing to the petitioner or his authorised representative and/or any other interested person whom the said respondent may consider necessary to be heard for arriving at a reasoned decision. The reasoned order shall be communicated to the parties immediately thereafter.

The entire exercise shall be completed by the respondent no.2 within a period of 30 (thirty) working days from the date of receipt of the papers from the D.P.S.C.

The writ petition, accordingly, stands disposed of with the aforesaid directions.

In view of the disposal of the writ petition itself, the connected application being CAN 1 of 2021 for appropriate order is also disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for.

(Hiranmay Bhattacharyya, J.)