

Court No. 22
22.12.2022
(Item No. 36)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 28407 of 2022

Tapan Kumar Mondal
VS
The State of West Bengal & Ors.

Mr. Shamim Ul Bari
Ms. Keya Sutradhar for the petitioner
Mr. Bhaskar Prasad Vaisya
Mr. Suman DeyFor the State

Affidavit of service filed in Court today, is taken on record.

The impugned order dated December 5, 2022, **Annexure P-2** to the writ petition was passed by the Assistant Secretary to the Government of West Bengal. Such authority is not impleaded. Leave is granted to the writ petitioner to implead the Assistant Secretary to the Government of West Bengal, author of the notice dated December 5, 2022, **Annexure P-2** to the writ petition today here and now. Such impleadment should be done in the cause title of the writ petition by putting the signature of the advocate on record of the petitioner which shall be countersigned by the Assistant Court Officer of this Court.

Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader is appearing for respondent Nos. 1 to 3 accepts the service at the request of this Court on behalf of the said added respondent.

The petitioner claimed to be the President of the Managing Committee of one Radhanagar Jatindranath Siksha Niketan, District - South 24-Parganas. The petitioner claimed that, he had acted

as the President of the Managing Committee of the said school for a considerable time. The petitioner was enumerated as the President of the Managing Committee by the State authority and ultimately such nomination was withdrawn by the impugned Government order dated December 5, 2022, **Annexure P-2** to the writ petition. The petitioner contended that, such recalling of nomination had happened behind the back of the petitioner without granting an opportunity of hearing.

Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader appearing for respondent Nos. 1 to 3 being ably assisted by Mr. Suman Dey, learned State counsel submitted that, this recalling of nomination was done in strict compliance of the Rules after recording the satisfaction of the State authority as would be evident from the said order dated December 5, 2022. Therefore, he submitted that, this Court should not interfere with the same.

After considering the rival contentions of the parties and on perusal of materials on record, this Court is of the view that, the petitioner was nominated by the State authority as the President of the Managing Committee of the relevant school after the State authority was satisfied with the requisite requirement possessed by the petitioner. The petitioner was acting as such. Suddenly the nomination of the petitioner was recalled by the State authority through the said impugned order dated

December 5, 2022 and it would be evident from record that no prior notice of hearing was given to the petitioner as submitted by Mr. Shamim Ul Bari, learned advocate appearing for the petitioner.

On a scrutiny of the said impugned order it also appears to this Court that, at least there is no recording to the effect that any notice was served upon the petitioner or any opportunity of hearing was granted to the petitioner.

In view of the above, the said impugned order dated December 5, 2022 cannot sustain in the eye of law as the same was issued in violation of the elementary principles of natural justice.

However, the added respondent, namely, the Assistant Secretary to the Government of West Bengal, School Education Department, the author of the said impugned order dated December 5, 2022 shall revisit the issue on **January 5, 2023 at 12.00** noon at the office of the added respondent, as agreed and suggested by the parties and after giving an opportunity of hearing to the petitioner and the respondent No. 5 shall decide the issue with its reasoned order/decision.

The said reasoned order/decision shall be communicated in writing to the petitioner and the respondent No. 5 within two days thereafter.

The added respondent shall decide the issue strictly in accordance with law and in the light of all the relevant circulars, Rules and Regulations.

It is made clear that, this Court has not gone into the merit of the claim of the petitioner in any manner and the impugned order was set aside only on the basis of opportunity of hearing not being granted to the petitioner.

All other points are kept open for the petitioner and the respondent No. 5 to urge before the added respondent and the added respondent then shall decide the issue with reasons in the light of the law prevailing of the subject.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

It is made clear that, the petitioner may be permitted to participate in the hearing through his authorized representative.

On the above terms, this writ petition being **W.P.A. 28407 of 2022** stands disposed of.

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

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

(Aniruddha Roy, J.)