

Form J(2)  
Item No. 12

**CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**CORAM:**

**THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**WPA 741 of 2022  
Sitadry Chakraborty  
Vs.  
State of West Bengal & Ors.**

**Appearance:-**

Mr. Ekramul Bari  
Mr. Debajit Kundu

.... For Petitioner

Mr. Subir Kumar Saha  
Mr. Bikramaditya Ghosh

.... For State

Dr. Sutanu Kumar Patra  
Ms. Supriya Dubey  
Ms. Rajlakshmi Ghatak

.... For SSC

Ms. Koyeli Bhattacharyya

.... For WBBSE

HEARD ON : 08.07.2022

DELIVERED ON : 08.07.2022

**JUDGMENT**

**HIRANMAY BHATTACHARYYA, J.:-**

This writ petition has been filed for issuance of mandamus to command the West Bengal School Service Commission (for short

“Commission”) to recommend the petitioner for appointment as an Assistant Teacher in History in any Bengali medium school within the jurisdiction of District Inspector of School (SE), Siliguri and for further direction upon other respondent authorities to issue appointment letter to the petitioner.

Petitioner participated in the selection process conducted by the School Service Commission in connection with 1<sup>st</sup> State Level Selection Test 2016 for appointment of Assistant Teachers for class IX and X in government aided/sponsored secondary/higher secondary school except the hill region. The petitioner was ultimately selected for appointment to the post of Assistant Teacher in History in a Bengali medium school and the Commission recommended the petitioner for appointment in Worker’s High School (HS) in History. Pursuant to said recommendation West Bengal Board of Secondary Education (for short “the Board”) requested the petitioner to join at the said school and issued appointment letter dated February 4, 2021. The petitioner found that the said School is a Hindi medium school and thereafter made a representation to the concerned District Inspector of Schools (SE) expressing her inability to join in the said post as the said school is a Hindi medium school. The petitioner thereafter made a prayer before the Commission and the Board for rectification of the recommendation and for appointing the petitioner to a suitable Bengali medium school. Since no steps were taken by the concerned respondent authority the instant writ petition has been filed.

Mr. Bari, learned advocate appearing for the petitioner submits that the Commission is duty bound to rectify the recommendation in favour of the petitioner as in spite of being aware of the fact that the petitioner applied

for the post of History in a Bengali medium school was recommended to a Hindi medium school. He further submits that there are vacancies in the post of Assistant Teacher in the concerned subject in various schools falling within the jurisdiction of the District Inspector of Schools, Siliguri but the District Inspector of Schools instead of resolving the dispute is sitting tight over the matter and have not taken any steps to intimate the Commission about the vacancy position in the subject History in a Bengali medium school within his jurisdiction.

Mr. Bari further refers to a memo dated February 8, 2021 issued by the District Inspector of Schools (SE), Alipurduar, within whose jurisdiction the Worker's High School is situated, which supports the case of the petitioner that the said school is a Hindi medium school and the petitioner is not suitable for that school. He further refers to the statement of staff position of Amiyo Pal Chowdhury Smriti Vidyalaya which is a Bengali medium school and points out that one post of Assistant Teacher in History is still lying vacant in the said school. He submits that the petitioner may be accommodated in the said post and consequential directions be passed upon the respondent authorities for recommendation and appointment of the petitioner to the said school.

Dr. Patra, learned advocate appearing for the Commission submits that the Commission acted as per the vacancy position indicated by the concerned District Inspector of Schools. He submits that from the vacancy position as indicated by the District Inspector of Schools it would be evident that the post of an Assistant Teacher in History (Bengali medium) was lying vacant in Worker's High School (HS). Thus, Dr. Patra submits that the

Commission should not be blamed for recommending the petitioner to the said school. He further refers to the statements made in the report filed in the form of affidavit pursuant to an earlier order passed in this writ petition.

Ms. Bhattacharyya, learned advocate appearing for the Board submits that the Board is only the appointing authority and it is only the District Inspector of Schools who furnishes information relating to vacancy position of the teaching staff of various schools. She, thus, submits that the Board is in no matter responsible for the present controversy. She further submits that the Board only issued appointment letter to the petitioner as per the recommendation made by the Commission.

Mr. Saha, learned advocate appears for the State and seeks time to take instruction as to the vacancy position available in the subject History in Amiyo Pal Choudhury Smriti Vidyalaya as well as in other nearby schools situated within the jurisdiction of the District Inspector of Schools (SE), Siliguri. He points out that the District Inspector of Schools (SE), Siliguri has not been impleaded as a party respondent in this petition.

In reply Mr. Bari prays for leave to implead the District Inspector of Schools (SE), Siliguri as a party respondent in the instant writ petition.

As prayed for by Mr. Bari, leave is granted to the learned advocate-on-record of the petitioner to implead the District Inspector of School (SE), Siliguri as a party respondent in this writ petition and necessary amendments be carried out in the cause title of the instant writ petition on or before July 15, 2022.

Since Mr. Saha can represent the District Inspector of Schools (SE), Siliguri, no copy of the writ petition need be served upon him. However, the

petitioner shall be obliged to serve a copy of the amended cause title of the writ petition upon the learned advocates appearing for the respondents immediately after the said amendment is carried out.

Heard the learned advocates for the parties and perused the materials on record. It is not in dispute that the petitioner was selected for appointment as an Assistant Teacher in History in a Bengali medium school. However, due to some technical difficulties petitioner was recommended to a Hindi medium school instead of Bengali medium school.

The root of the present controversy may be either in the vacancy position indicated by the concerned District Inspector of Schools or the recommendation made by the Commission. No useful purpose will be served by making an enquiry to fix the responsibility upon the person or authority who was instrumental for this present situation. On the other hand, petitioner should not be made to suffer for the error/mistake committed by the respondent authority/authorities in conducting the entire process. More than a year has already elapsed since the appointment letter was issued in favour of the petitioner. The right to be appointed as an Assistant Teacher in History in a Bengali medium school accrued in favour of the petitioner which should not be defeated and the respondent authorities are obliged to appoint her to a suitable post.

In view thereof, this Court is of the considered view that justice would be subserved if the petitioner is recommended for appointment to a Bengali medium school for the post of an Assistant Teacher in History in a school falling within the jurisdiction of District Inspector of Schools (SE), Siliguri

since the petitioner resides within the sub-division Siliguri falling within the jurisdiction of the District Inspector of Schools (SE), Siliguri.

District Inspector of Schools (SE), Siliguri is directed to ascertain as to whether a post of Assistant Teacher in History at Amiyo Pal Choudhury Smriti Vidyalaya as appearing in the vacancy position of Utsosri portal which is annexed at page 40 of the writ petition is still vacant and if such vacancy is still available, to report such vacancy to the Commission. In case there is no available vacancy in that school, the concerned District Inspector of Schools shall ascertain as to whether there is any vacancy in the relevant subject in any Bengali medium school falling within his jurisdiction but preferably in a school which is near to the residence of the petitioner and to report such vacancy to the Commission. The District Inspector of Schools (SE), Siliguri is directed to report vacancy position in terms of this order to the Commission within a period of three weeks from date for appointment of the petitioner.

Upon receipt of the vacancy report from the District Inspector of Schools (SE), Siliguri, the Chairman of the West Bengal Central School Service Commission, being the respondent no.4, shall make recommendation to the Board for appointment of the petitioner and shall also serve a copy thereof to the petitioner within a period of two weeks therefrom.

The Board shall thereafter issue the appointment letter as per the recommendation of the Commission as expeditiously as possible but positively within a period of two weeks from the date of receipt of recommendation from the Commission.

Mr. Bari prays that leave may be given to the petitioner to seek appropriate reliefs in future in respect of the reliefs claimed in prayer (b) of the writ petition.

Prayer (b) of the writ petition, in the considered view of this Court, is premature at this stage and the same is thus left open to be decided in future.

With the above directions, WPA 741 of 2022 stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all usual formalities.

**(Hiranmay Bhattacharyya, J.)**