

05.01.2022
Sl. No.5
Ct. No.2

***Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction***

[via video conference]

W.P.A. 2579 of 2021

**Padma Kamal Das
-Vs-
The State of West Bengal & Ors.**

Mr. Arijit Dey.
Mr. Bikash Singha.

...for the petitioner.

Mr. Subir Kumar Saha, A.G.P
Mr. Momenur Rahman.

... for the State

Affidavit of service be kept with the record.

The petitioner was appointed in a Group-D post of Laboratory Assistant in Margarate (Sister Nivedita) English School (Higher Secondary) at Pradhan Nagar, Siliguri by the managing committee decision on 1st March, 2003. He joined the said post on 3rd March, 2003 and has been rendering service till date without any break. At the time of his initial appointment he was aged about 25 years and had requisite qualification for the said post. It is also stated by the petitioner that he belongs to Schedule Caste community. Further case of the petitioner is that there are eight sanctioned Group-D posts in the school committee of which six posts are vacant. Amongst the remaining Group-D staff, one is from general category and the other is from ST category. The Group-D staff employed in SC category

retired on superannuation on 30th October, 2017. With the permission the District Inspector of Schools, the school authority is going to fill up the vacant sanctioned post in Group-D from the candidates belonging to SC community. Accordingly, the school authority published advertisement in two newspapers, viz., “The Statesman” and “Uttar Banga Sambad” on 10th December, 2021. However, in the advertisement notice it was not specifically mentioned as to whether the said Group-D post would be filled up by General or SC or ST category. The petitioner having requisite age limit and academic qualification at the time of his initial appointment, made a representation before the respondent authorities on 15th December, 2021 requesting them to permit him to appear in the selection process for filling up the said Group-D post upon the relaxation of the upper age limit. But the respondent authorities did not make any response to such representation made by the petitioner. So, is the instant writ petition.

Having heard the learned Advocates for the petitioner and the State of West Bengal, I like to state that in **Gobinda Chandra Mondal vs. Principal, Rabindra Mahavidyalaya** reported in **2013 (1) CHN 9** the Full Bench of this Court as follows:-

It was held by the Full Bench of this Court in paragraph 23 is hereunder:-

“In view of the above discussion we conclude as follows:

No ad hoc or temporary appointee can be absorbed nor be regularized in any post in

Government or Government-aided establishment de hors Recruitment or Service Rule ordinarily.

If the appointment is made without undertaking selection procedure under Rule on ad hoc or temporary basis engaging the candidates having requisite qualification namely age and education at the time of appointment against substantive post the candidates in those cases shall be allowed to compete and/or participate in the selection process along with other eligible candidates at the time of regular recruitment process condoning the age as they have acquired right to be considered. Of course, their services must be continuous and without any break in the vacancy of substantive post at the time when the regularization is demanded and selection process undertaken. But in case where the appointees are not qualified at all and they have been engaged for rendering services as an ad hoc basis or temporary measure their case cannot be considered under any circumstances either against substantive post or the post yet to be created.

Now all these matters will be sent down to the learned Trial Judge for disposal.”

Relying on the aforesaid decision in **Gobinda Chandra Mondal (supra)**, the Division Bench of this Court in **Debleena Ghosh vs. State of West Bengal & Ors** reported in **2013(3) CHN 746** held that no ad hoc or temporary appointee could be absorbed nor be regularized in any post in Government or Government aided establishment de hors Recruitment or Service Rule ordinarily. If appointment was made without undertaking selection procedure under Rule on ad hoc or temporary basis engaging candidates having requisite qualification namely age and education at the time of appointment against substantive post, candidates in those cases could be allowed to complete and/or participate in selection

process along with other eligible candidates at time of regular recruitment process condoning age as they have acquired right to be considered. The same principle is also laid down in a subsequent unreported decision in **Sanjay Dutta & Ors. vs. The State of West Bengal & Ors : W.P No.14111(W) of 2017**, decided on 7th December, 2017.

It is not disputed that the petitioner has been working in respondent No.3 school since 3rd March, 2003. At the time of his initial appointment, he had requisite age to be selected in the substantive post. He had also the academic qualification. He has been continuously working without any gap for more than 240 days in respondent No.3 school.

Therefore, relying on the ratio laid down in **Gobinda Chandra Mondal (supra)** followed by the other decisions, mentioned above, the petitioner is entitled to take part in the selection process.

Accordingly, the respondent No.4 is directed to allow the petitioner to take part in the selection process in the substantive post of Group-D of the said school.

The instant writ petition is, thus, disposed of on contest, however, without cost with the above direction.

(Bibek Chaudhuri, J.)