

27.07.2023
Item Nos. 8-9
Crt.No.22
b.r.

WPA 446 of 2009

Subhasish Lal

-vs-

The State of West Bengal & Ors.

With

WPA 732 of 2009

IA No. CAN 1 of 2009

(Old No. 7703 of 2009)

Raju Bagdi

-vs-

The State of West Bengal & Ors.

Mr. Ranajit Chatterjee

.... For the petitioner in WPA 446 of 2009.

Mr.Sakti Pada Jana

Mr. Subhajyoti Das

**.... For the petitioner in WPA No. 732 of 2009
and Respondent No.5 in WPA 446 of 2009.**

Mr. Supriyo Chattopadhyay, Ld. A.G.P

Mr. Sabyasachi Mondal

**..... For the State/Respondents in both the
matters.**

These are hearing matters upon Affidavits.

Time to file affidavits-in-reply by Subhasish Lal affirmed on 24th of August, 2009 are extended till today, in both the writ petitions and are taken on record.

The above two writ petitions since were inter-linked on both facts and law, were taken up and heard from

time to time together and are being disposed of by this decision of this Court.

Both the writ petitioners in the said two writ petitions were aspirants for the **post of Group-D at Samla Manderboni Colliery High School, District-Paschim Burdwan.**

Pursuant to the prior permission for recruitment of staff for the school dated **September 10, 2021 annexure-P4 at page 28A in WPA 446/2009** (for short, the **first writ petition**) filed by Subhasish Lal, issued by the jurisdictional District Inspector of Schools(S.E) (for short, D.I.), the selection process for the said Group-D post was held. In the said prior permission issued by the D.I., it was specifically mentioned that the requisite criteria for the candidates should be the qualification with **Class-VIII** passed having capability of reading and writing **English and Hindi.**

Raju Bagdi being the writ petitioner in **WPA 732/2009** (for short, the **second writ petition**) secured first position in the selection process with a total **marks 10.37** whereas **Subhasish** secured second position with a **total marks 9** as would be evident from **annexure P-8 at pages 37 and 38** to the **first writ petition.** The panel was prepared by the relevant Selection Committee and was sent to D.I. for approval, **till date the panel was not approved.** Subhasish moved the previous writ petition,

inter alia, being **WP 23533 (W) of 2007** which was disposed of by a co-ordinate Bench on May 9, 2007 by directing the Director of School Education to dispose of the matter regarding the panel in question for the post of Class-IV staff reserved for the Scheduled Caste candidates prepared pursuant to the interview held on December 20, 2005 by passing a reasoned order in accordance with law, **annexure P10 at page 43** to the **first writ petition**.

Pursuant to the said direction dated May 9, 2008, the Director of School Education passed its order dated **December 3, 2008 annexure P13 at Page 52** to the **first writ petition**. The Director of School Education expressed his view on the facts of the case and then held that there was an **inordinate delay** to submit the panel before the D.I.. Considering that the Director of School Education directed the D.I. to take appropriate steps with regard to the approval of the panel strictly in accordance with law within a time frame stipulated therein.

Following the said direction of the Director of School Education, the D.I. took a decision dated **December 26, 2008 annexure P14 at page 54** to the **first writ petition** and held that the panel for the post of Group-D staff of the relevant school should be cancelled due to **inordinate delay** in submission of panel in question on the part of the School Authority.

Challenging both these decisions dated **December 3, 2008** passed by the Director of School Education and **December 26, 2008** passed by the D.I., Subhasish filed the **first writ petition**, *inter alia*, praying for the following:-

- a) Writ of and/or in the nature of Mandamus directing the Respondent to recall/rescind/cancel revoke the impugned orders/ memos dtd. 3.12.2008 issued by the Respondent no.2 and order/memo dtd. 26.12.2008 issued by the Respondent no.3.
- b) Writ of and/or in the nature of Mandamus directing the Respondents to act in accordance with law and recast the panel for the subject post of Class IV staff (reserved for S.C.) of the Respondent School by excluding the name of the Respondent no.5 therefrom and placing the petitioner in the first position therein;
- c) Writ of and/or in the nature of Certiorari directing the Respondents to certify and transmit the records of the case before this Hon'ble Court so that the impugned orders dtd. 3.12.2008 and 26.12.2008 passed by the Respondent DSE, and D.I. of Schools(SE), Burdwan, respectively may be quashed and conscionable justice done to the parties.
- d) Rule Nisi in terms of prayers(a), (b) and (c);
- e) Interim order directing the Respondents to act maintain status quo in respect of the post of class IV staff (reserved for S.C. candidates) of the Respondent School till disposal of the writ petition;
- f) Ad interim order interims of prayer (d);
- g) Such further writ or writs, order or orders, direction or directions as may be deemed fit and proper;"

Raju was also aggrieved with the said two decisions and he filed the **second writ petition** praying, inter alia, as follows:-

- a) A writ in the nature of Mandamus asking the respondents as to why the order dated 26th December, 2008 passed the District Inspector of School (SE), Burdwan should not be set aside and quashed forthwith;
- b) A Writ in the nature of Mandamus directing the respondents to cancel, rescind and withdraw the order dated 26th December, 2008 passed the District Inspector of School (SE), Burdwan forthwith;
- c) A writ in the nature of Mandamus asking the respondents particularly the District Inspector of School, Secondary Education, Burdwan being respondent no.3 as to why petitioner's panel prepared by the Selection Committee on 20.12.2005 for the post of Group 'D' staff in Samla Manderboni Colliery High School should not be given approval forthwith;
- d) A writ in the nature of Mandamus directing the respondents particularly the respondent no.3 to grant approval of the panel of the petitioner prepared by the Selection Committee on 20.12.2005 for the post of Group 'D' staff in Samla Manderboni Colliery High School forthwith;
- e) A writ in the nature of Mandamus directing the respondents to issue appointment letter in favour of the petitioner on the basis of the panel prepared by the Selection Committee on 20.12.2005 for the post of Group 'D' staff in Samla Manderboni Colliery High School forthwith;
- f) A writ in the nature of Certiorari directing the respondents to produce the entire records relating to the above case so that after perusal of the same conscionable justice may be done;

- g) Rule NISI in terms of prayers (a) to (f) above;
- h) Grant an interim order directing the respondents particularly the District Inspector of School, Secondary Education, Burdwan being respondent no.3 to take necessary steps for granting approval of the panel to the post of Group 'D' staff in Samla Manderboni Colliery High School which was prepared by the Selection Committee on the basis of the interview held on 20.12.2005 forthwith;
- i) Grant an interim order directing the Respondent school authority to issue letter of appointment in favour of the petitioner to the post of Group 'D' staff in Samla Manderboni Colliery High School forthwith;
- j) Cost of and incidental to this application be costs in the cause;
- k) Such further or other order or orders be passed and direction and/or directions be given as to this Hon'ble Court may be deem fit and proper;"

Both the said two writ petitions were taken up for consideration by co-ordinate Bench on March 23, 2009 when directions were made for filing affidavits and the School Authority was directed not to take any further step to fill up the posts.

Pursuant to the direction of the co-ordinate Bench as stated above, the parties except the State-Respondents have filed and exchanged their respective affidavits. It is to be noted that Raju was impleaded by Subhasish as a party respondent in the first writ petition.

Mr. Ranajit Chatterjee, learned Counsel for Subhasish in the **first writ petition** referring to **page 28A** from the **first writ petition** submitted that while issuing the prior permission, the D.I. fixed the criteria for the aspirants that the aspirants for the post Class IV, Group-D staff must be Class-VIII passed with the capability of reading and writing English and Hindi. This was the **rule of the game**. Referring to **page 36** from the **first writ petition**, he submitted that this was a document authored by Raju bearing his signature, which clearly depicted that Raju was not eligible to right his name in Hindi. Raju was also not eligible to right Hindi though the school concerned was Hindi medium. This document was authored by Raju before the selection committee under their instruction during the selection proces.

Learned Counsel in support of his contention relied upon the averments made in Paragraphs 10 to 12 from the first writ petition, he submitted that this was the document of Raju was asked to be authored before the interview board and the same depicted that Raju was not eligible to right Hindi neither eligible to right his name in Hindi.

Learned Counsel for the petitioner then referred to a document at **page 33** from the **first writ petition** and submitted that the admit card issued by the West

Bengal Board of Secondary Education for Raju also depicted his subjects were Bengali, English and not Hindi. He relied upon **page 35** to the **first writ petition** and submitted that the admit card of Subhasish depicted that Hindi was his one of the subjects. Referring to the score-sheets **annexure P8 at pages 37 and 38** from the **first writ petition**, learned Counsel submitted that though Raju did not have the requisite qualifications for the post, he **secured 10.37** and Subhasish with the requisite qualifications **secured 9**. The marks awarded to Raju as would be evident from the **page 36** to the **first writ petition**, if gets deducted since Raju does not have the requisite qualifications, then automatically Subhasish comes within the consideration zone for the post.

Mr. Chatterjee then relied upon the averments made in **paragraph nos. 9,10 and 11** from the Affidavit-in-Opposition affirmed by Raju and submitted that the case made out by the petitioner in the relevant paragraphs of the writ petition were not denied by **Raju and Raju did not challenge the authenticity or veracity of the document at page 36 to the first writ petition where he was found to be ineligible to read and right Hindi.**

Mr. Chatterjee then submitted that the selection of Raju who did not have any qualification in Hindi was

clearly in **violation of the Rule of the selection process where Hindi was a mandatory requirement.**

He submitted that the selection of Raju was therefore totally illegal and wrongful and the scored sheet demonstrates that since Raju was awarded marks on the document at **page-36** to the **first writ petition**, Subhasish was not selected and could have come within the consideration zone, if that score was not taken into account.

He submitted that, **rule of the game** cannot be changed while conducting the selection process. He submitted that, in the event the selection of first candidate is found to be not correct or in appropriate or illegal, the second candidate in the list must get the chance. In support, Mr. Chatterjee had relied upon the following decisions:-

- (A) ***In the matter of : Uttam Kumar Mahato – vs- State of West Bengal & Ors. W.P. No. 21492(W) of 2005;***
- (B) ***In the matter of : District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. –vs- M. Tripura Sundari Devi reported at (1990) 3 SCC 655;***

(C) **In the matter of : Rej Prakash Pathak & ORS. -VS- Rajasthan High Court and others. reported at (2013) 4 SCC 540;**

Mr. Subhajyoti Das, learned counsel appeared for **Raju Bagdi** being the **respondent No.5 in the first writ petition** and the **petitioner in the second writ petition** submitted that, the selection committee being the master of selection process had selected Raju Bagdi after being satisfied with the performance of Raju Bagdi. The writ Court cannot probe into the mental process of the selection committee. As to whether Raju Bagdi was eligible to read and writ Hindi, after he being selected by the selection committee, that question cannot be reopened by this Court sitting in writ jurisdiction. Unless a proper trial is held on the fact finding enquiry such question cannot be gone into by this Court. He submitted that, once Raju was selected, a favourable right of employment was created in his favour, which cannot be taken away. Referring to the impugned decisions passed by the Director of School Education Department and the D.I., he submitted that even if any delay had occurred on the part of the school authority in sending the selected panel for approval before the

D.I. for that Raju had nothing to contribute. There was no delay and laches on the part of the Raju. Raju being a selected candidate in a validly held selection process by the properly constituted selection committee, his selection cannot be interfered with on the ground of alleged delay on the part of the school authority not sending the panel in time. Hence, he submitted that both the impugned decisions dated **December 3, 2008** and **December 26, 2008** are liable to be set aside.

In support of his contention, Mr. Das relied upon a decision of the Hon'ble Supreme Court in the matter of **Dhananjay Malik -vs- State of Uttaranchal & Ors. reported at (2008) 4 SCC 171.**

Referring to the averment made in **paragraph 8** from his client's Affidavit-in-Opposition, Mr. Das submitted that the Headmaster of the school where Raju studied had issued a certificate to the effect that Raju attended the Hindi classes.

Mr. Supriyo Chattopadhyay, Learned Additional Government Pleader, appeared for the State-Respondents clubbing the two writ petitions together made his submissions. He submitted that, the panel sent for approval by the relevant school

authority **has not yet been approved**. As such Subhasish had no right to challenge the panel. He submitted that, since **July 2009** when the **West Bengal School Service Commission Act, 2008** came into force, the method and mode of selection for Group-D staff for which both the petitioners were aspirants had undergone a sea change. The managing committee or the school authority had no role to play for holding the selection process or for causing any appointment thereunder. The respective authorities mentioned the 2008 Act are now empowered to conduct a selection process and appoint the selected candidates. **The West Board of Secondary Education** is the **appointing** authority and **The West Bengal School Service Commission** is the **recommending** authority. Since the panel was not approved and in the meantime the said 2008 Act came into force, the relevant panel sent by the school authority, even though a delayed one, cannot be taken into consideration at present.

In reply, Mr. Ranajit Chatterjee, learned counsel for the petitioner in the **first writ petition** submitted that, the relevant process was held in 2005-2006, when the 2008 Act was not in force. He submitted that, once the panel was prepared and

sent for approval contemporaneously, it was the obligation of the D.I. to approve the same then and since the same was not done, the same should be directed to be approved at this stage applying the relevant rules for selection process prevailing in 2005-2006.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court is convinced that the mandatory requirement for selection for Group-D staff as mentioned in the prior permission issued by D.I. at **Page 28A to the first writ petition** that a candidate must have Class-VIII passed qualification with capability of reading and writing English and **Hindi**. In absence of any denial or challenge thrown by Raju to the document **at Page 36 to the first writ petition**, it appeared to this Court that, Raju found to be not eligible to write his name in Hindi and further not eligible to write Hindi. Raju primarily did not qualify the criteria of the selection process which was the **rule of the game**. Thus the question of selecting Raju in the relevant selection process **was in violation of the fundamental Rule of the selection process** fixed by the D.I. while issuing the prior permission for selection process. Thus the **selection of Raju was totally in**

violation of the selection procedure, Rules and criteria and is hereby declared as bad and wrongful.

In so far as the two impugned decisions one by the Director of School Education dated **December 3, 2008, annexure P-13 at Page 52** and the decision of the D.I. **dated December 26, 2008 annexure P-14 at page 54 to the first writ petition**, this Court, is of the firm view that the delay, if any, in submitting the panel by the school authority before the D.I., it was totally attributable to the school authority and not to the selected candidates. The selected candidates had no role to play as it is an administrative and ministerial act between the school authority and the office of the D.I. Thus, **the time stipulation stated under the relevant rule is directory and not mandatory.** Therefore, even if, any delay occurred, the same could not and should put any fetter on the selected candidate.

However, though this Court has already held that the selection of Raju was **bad** in the eye of law as the same was in violation of the basic rule of the relevant selection process, but even then this Court is also of the firm opinion that this **two impugned decisions dated December 3, 2008** and December

26, 2008 cannot sustain in law and therefore, the said **two impugned decisions annexure P 13 at page 52 dated December 3, 2008 and annexure P 14 page 54 dated December 26, 2008 to the first writ petition** stand **set aside and quashed**.

Now, the question comes as to the fate of Subhasish being the petitioner in the first writ petition. It is an admitted position that the panel was not approved far to speak of issuance of any appointment in favour of Subhasish. The law is well settled that, mere empanelment would not create any right in favour of an aspirant in a selection process, unless the appointment is issued in its favour. Since July 2009, the law of the selection process was undergone a sea change with the promulgation of the **West Bengal School Service Commission Act, 2008**. It is true that Subhasish having secured second position, the moment the selection of Raju is declared to be bad and void, Subhasish comes within the consideration zone. However, in view of the change of law with the promulgation of the said **2008 Act** if any direction is made for revival, approval of and giving effect to the panel, which was not approved till date, for considering the name of the petitioner which was prepared by the relevant school

authority in 2005-2006, the same would amount to be in violation of the statutory provisions under the said 2008 Act, which not permissible in law. In fact, in the eye of law, with the promulgation of the said 2008 Act, the concerned panel prepared by the school and submitted before the D.I. which is still not approved, has lost its force and cannot be given a rebirth thereto.

In view of the foregoing reasons and with the foregoing observations both these writ petitions being **WPA 446 of 2009 and WPA 732 of 2009** stand **disposed of**, without any order as to costs.

All **connected applications** are also consequently **disposed of**.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)