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No.
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**03.05.
2023**

W.P.A. 4621 of 2023
Md. Rafiqul Islam
-Versus-
The State of West Bengal & Ors.

Mr. Shamim Ul Bari
Ms. Molly Saha
Ms. Keya Sutradhar

..... For the Petitioner

Mr. Pinaki Dhole
Mr. Pinaki Bhattacharyya

.....For the State Respondents

The petitioner states that a post of Librarian was sanctioned for Hatgachha K.C. Amritamoyee High School (H.S.), North 24 Parganas. The Additional District Inspector Schools (S.E), Bashirhat by a memo dated 10.08.2007 accorded prior permission to the school authority to fill up the post of Librarian. In order to fill up the posts, the School Authority sought for names from the Central Employment Exchange at Kolkata. In reply thereto, the Central Employment Exchange sponsored the names of twenty eligible candidates to the School Authority.

The School Authority, by issuing call letters, asked the candidates including the petitioner for interview on 12th December, 2007. The petitioner and other candidates appeared at the interview board. After conclusion of the

interview the Selection Committee prepared a panel of eligible candidates and the petitioner was empanelled as the first candidate.

Thereafter the School Authority forwarded the panel to the Additional District Inspector of Schools (S.E), Basirhat for its approval. But, since then the Additional District Inspector of Schools (S.E), Basirhat is sitting tight over the panel.

Since no response was received from the Authority concerned, the petitioner by making representations to the concerned authorities made appeal to them to approve the panel in which he was empanelled as the first candidate.

The petitioner submits that similarly circumstanced candidates, who were empanelled as the first candidate in panels in respect of some other schools, the concerned authority i.e. the Additional District Inspector of Schools (S.E) accorded approval to the panels and those candidates have already joined as Librarian in those Schools. In such factual matrix, the petitioner complains that due to non approval panel in which he figures as the first candidate by the authority concerned, he has been discriminated. Under

such circumstances, the petitioner, inter alia, seeks the following relief :

“A writ of or in the nature of Mandamus do issue commanding the respondents, their agents, servants, subordinates, employees and/or assignees particularly the Additional District Inspector of Schools (SE) Basirhat, North 24-Parganas to accord approval to the panel prepared by the selection committee pursuant to the interview lheld on 12.12.2007 for filling up the post of Librarian of Hatgachha K.C. Amritamoyee High School (H.S.), Post – Hatgachha, District – North 24-Parganas forthwith and further command the respondents to take consequential steps thereto without any delay.”

In his report, the respondent No. 3, the District Inspector of Schools (S.E), North-24 Parganas submits that since there is no post-sanctioning Memo relating to the sanction of the post of Librarian of Hatgachha K.C. Amritamoyee High School (H.S.), no approval could be accorded to the panel. It is also averred in the report that relevant official records pertaining to sanctioning the post of Librarian are available with concerned office. This answering respondent also submits that owing to the long delay on the part of the petitioner to approach this Court by filing this writ petition, the writ petition is liable to be dismissed.

However, the petitioner in his exception to the report denies all the averments as made in the report.

Learned Counsel appearing for the petitioner submits that by Memorandum dated 10th August, 2007, the Additional District Inspector of Schools (S.E), Basirhat gave prior permission to the School Authority to fill up the post of a Librarian in the School. Learned Counsel submits that in terms of permission as accorded by the authority concerned, the School Authority initiated the recruitment process in accordance with law as prevailed then and prepared the panel. Learned Counsel submits that though his client was empanelled as the first candidate, the authority concerned on one pretext or the other is delaying to accord approval to the panel. On such score, learned Counsel submits that since the petitioner has made out a case based on a panel prepared by the selection committee in accordance with law, the authority concerned should be directed to approve the panel immediately.

Per contra, learned Counsel appearing for the State respondents submits that after a throw search of the relevant records of the concerned department, no document was available by which it is found that the post of Librarian of the said School was sanctioned by the authority concerned.

In such context, learned Counsel submits in the absence of sanction of the post, the panel as prepared by the School Authority cannot be approved.

The unchallenged Memorandum No. BHT/256/G dated 10th August, 2007 issued by the Additional District Inspector of Schools (SE), Basirhat (Annexure P/1) clearly evinces that the Additional District Inspector of Schools (S.E), Basirhat, by this memo gave prior permission to the School Authority to fill up the post of Librarian of the School. This Memorandum shows that the post of Librarian meant for the School is permanent in nature. This Memorandum unequivocally indicates that the post of a Librarian for the School was sanctioned by the authority concerned in accordance with law. No iota of document has been produced on behalf of the State Authorities challenging the genuineness of the aforesaid Memorandum dated 10th August, 2007. Therefore, this Court without any hesitation in mind and placing reliance on the Memorandum dated 10th August, 2007 issued by the government office holds that this public documents gives presumption that a post of Librarian was sanctioned for the aforesaid school. Such presumption remains un rebutted by the state authority. The Additional District Inspector of Schools (SE),

Basirhat, in my view, accorded approval to the school authority to fill up the post of Librarian after being satisfied with the relevant documents pertaining to the sanctioning of the post of a Librarian.

As pointed out by Mr. Shamim Ul Bari, learned Counsel for the petitioner, by the Memo dated 30th July, 2009 issued by the Director of School Education, Government of West Bengal, directed the District Inspectors of School (S.E) as well as the Additional District Inspectors of Schools (S.E) to discharge their duties in accordance with law which are vested in them to avoid any unnecessary litigation before any Court of law.

There is no cavil of doubt that while there was a post of Librarian sanctioned for the School, the Additional District District Inspector of Schools (SE), Basirhat was the appropriate authority to accord prior permission to fill up the post. By the Memorandum as referred to above, the Additional District Inspector of Schools (S.E), Basirhat, in exercise of power vested in him, duly accorded permission to the School authority to fill up post. As it is evident from the documents on record, the School Authority after getting the names sponsored by the concerned Employment Exchange called the eligible candidates for interview and

after completion of the interview the selection committee prepared the panel. As the panel, annexed to the writ application exhibits, the petitioner has been empanelled as the first candidate.

Now, the question is whether the plea of the State authority that the panel cannot be approved owing to non-availability of post sanctioning order is tenable in law?

In such context, from some communications which were supplied to the petitioner from a number of Schools, namely, Sahebkhali Nityananda High School (H.S.); Chouhata Adarsha Vidyapith (H.S.); Dheknamari Damodar Adibasi Vidyapith (H.S.); Atapur Kenaram High School and Basirhat P.C.M. Girl's High School (H.S.), it appears that though no post-sanctioning Memo of Librarian was available with the School Authorities, the empanelled candidates prepared for the purpose of appointment to the posts of Librarian were approved by the authority concerned.

However, here in the case on hand, the scenario is different. Here, the document, particularly the document dated 10th August, 2007 clearly demonstrates that as against the sanctioned posts of Librarian obviously made beforehand, the Additional District Inspector of Schools

(S.E) permitted the school to go ahead with the recruitment process.

It is contended by the State authority that owing to the belated filing of the writ application, the writ application is liable to be dismissed.

But in view of the observation as above, it is evident that despite the panel prepared in accordance with law, the Additional District Inspector of Schools (S.E) sat tight over the matter for years together for no fault on the part of the petitioner. The wrong committed by the State Authorities since Preparation of the panel is continuing wrong and because of this the writ petition should not be frustrated because of any delay.

Accordingly, the panel as posed is answered in the negative.

Having heard the learned Counsels appearing for the parties and in view of the observations as recorded above I feel that the instant writ application has merit to succeed and the writ application may be disposed of by passing the following order.

The concerned state respondent, especially the respondent No. 4, the Additional District Inspector of

Schools (S.E), Basirhat Sub-Division, North 24-Parganas is directed to approve the panel as submitted to him by the School Authority vide Memo dated 26th December, 2007 within a period of four weeks from the date of communication of this order. After the panel is approved by the respondent No. 4, the School Authority shall appoint the petitioner within seven days thereafter.

With the aforesaid directions the writ petition stands disposed of.

There will be no order as to costs.

All parties may act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat copy of the order, if applied for, be supplied to the parties on priority basis on compliance of necessary formalities, on priority basis.

(*Rabindranath Samanta, J.*)