

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 18926 of 1994

Reserved on : 01.09.2023

Pronounced on: 09.10.2023

Sanjoy Kumar Bandyopadhyay

...Petitioner

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Rabilal Maitra

Mr. R. Maitra

Mr. M. Samanta

... for the Petitioner

Mr. Asish Kumar Guha

Mr. Rajendra Chaturvedi

...for the State

Rajarshi Bharadwaj, J:

1. The instant writ petition being WPA 18926 of 1994 (previously CO No. 18926 of 1994) is preferred by one Sanjoy Kumar Bandyopadhyay herein the writ petitioner for his absorption as an Assistant Teacher in Science and Mathematics group of Dogachhi High School (Co-Education), Nadia (hereinafter referred to as school) in view of the fact that Managing Committee of the school herein respondent No. 7 were taking steps to fill up the said post without considering the petitioner, a graduate in B.Sc and B.Ed and registered in Employment Exchange, Krishnagar, Nadia acting as the sole science teacher of the school in 1993.

2. The Learned Counsel for the Secretary, Managing Committee of the school herein respondent No. 5 submits that by strictly following Recruitment Rules laid down in Memo No. 1049/1(19) G.A dated 20.05.1993 and observing '2nd Stage' of recruitment process requested the District Employment Exchange, Krishnagar vide letter dated 07.04.1994 to send a list of eligible candidates having requisite qualifications for the post of Assistant Teacher. Since the name of the petitioner was not forwarded to the school by Employment Exchange Officer, District Employment Exchange, Krishnagar herein respondent No.7, he was not considered eligible for the post of Assistant Teacher at the school.

3. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the appointment of the writ petitioner as an Assistant Teacher in the school stands valid. The post held by the petitioner is maintainable on the basis of possessing the prescribed requisite qualifications and securing first place in the panel prepared after conducting an interview by the Selection Committee of the school. The recruitment of the petitioner is the combined effect of interim order dated 15.11.1994 and subsequent modified interim order dated 14.12.1994. The operative part of the order dated 15.11.1994 and 14.12.1994 respectively entailed:

"The petitioner will be allowed to participate in the selection process for filling up the post of Assistant Teacher in Science and Mathematics in the School in question, but the respondents are directed not to give any effect to the panel is to be prepared on the basis selection, until further orders. This order will be operative in the event the interview has not yet been completed"

" The respondents are at liberty to take steps to approve the aforesaid panel which shall be subject to the decision in the main writ petition. If such panel is approved, then the respondents are further given liberty to act upon such panel which shall also be subject to the decision of the main writ proceedings."

4. The petitioner was approved as an Assistant Teacher of the school with effect from 29.03.1996 entitled to pay scale of Rs 1420-3130/- by District

Inspector of Schools (S.E) Nadia herein respondent No.3 vide Memo No. 1110/Gen/SE dated 30.07.1996 “*on condition this approval of appointment will abide by the CO No 18926 (W) of 94*”

Service being regularised, the petitioner worked with full-service benefits till his retirement on 30.04.2019 and received Rs.25,350/- as last pay. A careful observation of the pension account depicts that retiral benefit has been drawn by the petitioner by way of withdrawal of pension on superannuation of an amount of Rs.12,675/-. Such conduct of the respondent authority acknowledges the post held by the petitioner thereby treating such post as subsisting.

5. For the reasons discussed above, the writ application is allowed. The writ petitioner shall continue to receive retiral benefits for the services rendered as Assistant Teacher in the school.

6. With the above observations and directions, the writ application is disposed of.

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

8. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(RAJARSHI BHARADWAJ, J)

Kolkata

09.10.2023

PA (BS)