

19.09.2023
SL. 20
Court no.22
b.r.

W.P.A. 8544 of 2018

Nitai Chandra Mandal
Vs.
The State of West Bengal & Ors.

Mr. Samiran Mandal
Mr. S.C. Dhara
.... for the petitioner.

Mr. Pinaki Dhole
Mr. Avishek Prasad
..... for the State

Mr. Abhinanda Dan
..... for the respondent no.4.

Mr. Nitish Samanta
.... For the School Authority.

Affidavit of service filed in Court today is kept on record.

Pursuant to the direction made by this Court, a report in the form of affidavit of respondent no.3 affirmed on September 6, 2023 is filed today in Court, the same is taken on record.

The petitioner has also filed its exception affirmed on September 18, 2023 today in Court today, the same is taken on record.

In connection with the selection process for selection of **Group-C post for clerk**, the petitioner was an aspirant. The selection process was held in terms of the prior permission issued by the

respondent no.3 dated November 7, 2007, annexure R-1 at page 7 to the exception affidavit filed by the petitioner. The said prior permission did not whisper for any public advertisement to be caused to invite candidatures from the aspirants at large.

The petitioner participated in the selection process. The petitioner secured the second position in the selection process. Still the panel sent for approval was not approved by the respondent no.3.

Mr. Samiran Mondal, learned counsel for the petitioner submits that a valid right has been accrued in favour of the petitioner, the moment the petitioner has secured second position in the panel. It was the obligation on the part of the respondent no.3 to approve the same and consequently the petitioner was eligible to receive an employment at the relevant school.

Learned counsel for the petitioner submits that since the panel was kept pending and not approved by the respondent no. 3, the petitioner filed a first round writ litigation being **WP No. 31480(W) of 2017** in which a co-ordinate Bench passed its order dated **January 24, 2018** directing the **respondent no.3 to consider the issue raised by the petitioner.**

Referring to **annexure P-9 at page-43** to the writ petition, learned counsel for the petitioner submits the impugned order was passed by the

respondent no.3 dated May 30, 2018 when the respondent no.3 has rejected the claim of the petitioner. Such rejection is assailed through the instant writ petition.

Learned counsel for the petitioner submits that under the **Recruitment Rule of 2005**, specific provision is there that when the District Inspector (for short, the D.I.) rejects a panel, the school has a remedy to question the same before the previously the Director of School Education, who is presently the Commissioner of School Education, State of West Bengal. So the school should have challenged the said decision of the respondent no.3 and prayed for approval of the panel as the school was in dire necessity for appointment.

Referring to the said prior permission of the **D.I. dated November 7, 2007**, learned counsel for the petitioner submits that the prior permission did not speak for any public advertisement to be published in the newspaper for holding the relevant selection process and in absence of such provision in the prior permission which has also issued by the respondent no.3, the respondent no.3 subsequently cannot take a different stand deviating from its own prior permission and should not have rejected the panel on the ground that in absence of public

advertisement for holding the relevant selection process, the panel prepared was illegal.

Mr. Avishek Prosad, learned counsel led by Mr. Pinaki Dhole, learned counsel appearing for the respondent nos. 1 to 3 referring to the said impugned order submits that the respondent no.3 has made a clear finding on the basis of the law already settled by the Hon'ble Supreme Court of India that without causing any public advertisement in the newspaper, no selection process can be held. To ensure the fair play and fair participation in the selection process the public advertisement in the newspaper is an essential criteria for holding of a particular selection process. Accordingly, learned State counsel submits that, there is no illegality or error in the impugned order and the D.I. has rightly rejected the panel.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court first reiterates the settled law that while exercising power under judicial review in terms of Article 226 of the Constitution of India, a writ Court has a limited authority and jurisdiction to scrutinise the impugned order of the authority. The constitutional Court will only look at if there is any infirmity in the decision making process by the authority and whether there is any glaring perversity on the face of the impugned order.

In the light of the above settled principle of law, this Court proceeds to scrutinise the said impugned order dated **May 30, 2018 annexure p-9 at page 43** to the writ petition. The relevant observations and findings of the respondent no.3 in the said impugned order is quoted below-

“ Heard the submissions of the petitioner, the Teacher-in-Charge of the said School, the president of the said School and Subrata Satvaya, the respondent no.6 perused the relevant documents, observations of the Hon’ble Supreme Court of India in Case No.- Appeal (civil) 3595-3612 of 1999, Secretary, the State of Karnataka & Others -vs- Uma Devi & Others, and it is observed that:-

- 1. As per prior permission accorded by the District Inspector of Schools (SE), Bankura the said school authority hold an interview on 06.07.2008 on the basis of the list of eligible candidates sponsored by the employment Exchange Officer, Khatra only for appointment to the vacant post of clerk.*
- 2. The selection Committee prepared a panel for appointment to the post of clerk on the same date of interview and the said panel was approved by the Managing Committee of the said school.*
- 3. The respondent no.6 Subrata Satvya was 1st position and the petitioner i.e. Nitai Chandra Mandal was 2nd position in the panel.*
- 4. As per submission of the President and Teacher-in-Charge of the said School no advertisement was published in any daily news paper seeking application from*

eligible candidates from SC category for appointment to the post of clerk in the said School.

5. *In this connection paragraph 30 of the judgement dated 10.04.2006 of the Hon'ble Supreme Court of India, in case no-Appeal (civil)-3595-3612 of 1999, Secretary, the State of Karnataka –vs- Uma Devi & Ors. is set out below.*

Para 30- In union Public Service Commission-vs-Girish Jayanti Lal Vaghela & Others [2006 (2) SCALE-115], this court answered the question, who was a Government servant and stated:-

“ Article 16 which finds place in Part-III of the Constitution relating to fundamental rights provided that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article-16 is to create a constitutional right to equality of opportunity and employment of public offices. The word ‘Employment’ or ‘Appointment’ covers not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc.

The appointment to any post under the state can only be made after proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter

se merit of candidates who had applied in response to the advertisement made. A regular appointment to a post under the state or union cannot be made without issuing advertisement in the prescribed manner which may in some cases includes inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the state or union without issuing advertisement inviting application from eligible candidates and without holding a proper selection where all eligible candidates get fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (see B.S. Minhas –vs- Indian Statistical Institute & Others, A.I.R.-1984 SC 363”.

Now examining the fact of this case in the perspective of the above noted observation of the Hon’ble Supreme Court of India, as no advertisement was published for appointment to the post of clerk from SC category in the said school, the said panel prepared by the selection committee should not be approved to protect guarantee enshrined under Article 16 of the Constitution.

Hence in the light of the above stated observations as the said school authority did not publish advertisement in any daily news paper for appointment to the post of clerk from SC category inviting applications from eligible candidates, so the panel prepared by the selection committee of the

said school, for appointment to the said post could not be approved.

As the said panel could not be approved, so the question of issue of appointment letter in favour of the petitioner, who was 2nd position in that panel, does not arise.

The matter is thus disposed of.

All concerned be informed accordingly.”

From the observations and findings and of course the reasons mentioned in the said impugned order as quoted above, this Court is convinced that while conducting the hearing and passing the impugned order, the respondent no.3 has appreciated the law prevailing on the field in its true and correct perspective. The admitted fact is that there is no advertisement published with regard to holding of the relevant selection process. It was merely the recommendation of the employment exchange on the basis whereof the panel was prepared.

Mr. Nitish Samanta, learned counsel appearing for the School Authority has confirmed that before conducting the said selection process no advertisement was published in the newspaper.

The principle of law settled for causing advertisement is to maintain the fair participation, transparency and fairness in the selection process. In

absence of such advertisement, the law is well settled that any selection process stands vitiated.

Inasmuch as merely being empanelled, an aspirant cannot claim any right of employment. The school is not aggrieved by the impugned order, hence, school chose not to question the same before the Commissioner of School Education, West Bengal.

In view of the above discussion and reasons, this Court is of the firm view that, there is no infirmity in and perversity on the face of the said impugned order dated **May 30, 2018 annexure P-9 at page 43** to the writ petition and accordingly, the same stands **affirmed.**

Accordingly, this writ petition **WPA 8544 of 2018** being devoid of any merit stands **dismissed**, without any order to costs.

Parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)