

129 24.8.2023

Ct-08

ar

MAT 802 of 2023

with

I.A No. CAN 1 of 2023

Jakir Hosen Khan

Vs.

The State of West Bengal & Ors.

Mr. Partha Sarathi Deb Barman

Mr. Santanu Das Adhikari

... For the Appellant

Mr. Sabyasachi Mondal

Mr. A.S Fazlul Karim

... For the Respondent no. 6

Mr. Bhaskar Prasad Vaisya

Mrs. Tapati Samanta

... For the State

1. We have heard the learned counsel appearing for the parties.

2. The appeal is arising out of an order dated 22nd March, 2023 passed in a writ petition where the selection of respondent no. 6 for the post of Group-D staff in Nega Balika Vidyalaya (High), District-Purba Midnapore (hereinafter referred to the said school) was challenged. The materials on record reveals that pursuant to an advertisement made by the School authority an interview was held on 19th October, 2008 for the post of Group-D where the petitioner and the respondent no. 6 along with other candidates participated. Secondly, a panel was prepared in which the respondent no. 6 appears to be secured first position and the appellant was in

third position. The candidate who stood second in the panel had died in the mean time.

2. The appellant has contended that the respondent no. 6 did not have the requisite qualification at the material point of time. Therefore, her name should not have been paneled as first candidate. It was on the basis of such submission learned Single Judge passed the following order:-

“This Court finds it apt to relegate the issue to the Commissioner of School Education, West Bengal, for taking decision on the validity of panel based on which respondent no.6 has been appointed in the post of Group-D in the said school. It appears from page 51 of the affidavit-in-opposition used by the respondent no.6 that she was appointed as Group-D staff on 15th September, 2009 in the said school therefore it is presumed that such appointment was made in favour of the respondent no.6 pursuant to the panel approved by the concerned District Inspector of Schools wherein respondent no.6 stood first and the petitioner herein stood third.

It has been contended on behalf of the State respondents also that respondent no.6 has been working as Group-D staff of the said school from 15th September, 2009 till date.

In view of aforesaid facts the Commissioner of School Education, West Bengal is directed to take decision on validity of approval accorded by the concerned District Inspector of Schools to the panel in question within a period of twelve weeks

from the date of communication of this order after granting opportunity of hearing to the petitioner, the respondent no.6 and the said school authority or their representatives.

The reasoned decision to be passed by the Commissioner of School Education and the same shall be communicated to the parties within two weeks from the date of taking such decision.”

3. The appellant is aggrieved by the latter part of the order where the learned Single Judge relied upon the decision of the Hon'ble Full Bench in the case of **Tulsi Roy Vs. Krishanu Roy**, reported in **2011(2)CHN(CAL)1021** observed that if the Director decides in terms of this order that selection process is vitiated then on cancellation of appointment of the respondent no. 6 such resultant vacancy needs to be filled up in terms of the recruitment rules prevalent today.

4. Learned counsel representing the appellant submits that in the event the appointment of the respondent no. 6 is set aside and the resultant vacancy is filled up in terms of the rule prevailing at the relevant point of time, the candidature of the appellant may not be considered due to over age.

5. It appears that the writ petition was filed in the year 2009 challenging the selection process and if the writ petition were disposed of

in the year 2009 or soon thereafter, the age bar would not have operated against the writ petitioner/appellant. The delay in disposal of the writ petition cannot act against the petitioner, if he is found to be otherwise eligible.

6. On such consideration, in the event a new selection process is initiated, the candidature of the petitioner shall not be rejected on the ground of over age.

7. The order of the learned Single Judge is affirmed with the aforesaid clarification.

8. On such consideration, the appeal being MAT 802 of 2023 is allowed and stands disposed of.

9. In view of disposal of the appeal nothing remains to be decided in the application for stay being CAN 1 of 2023 and the same is accordingly disposed of.

10. However, there shall be no order as to costs.

11. In view of the pendency of the appeal time line mentioned in the order is suitably extended and time line should be counted from this date.

12. The statement of facts filed on behalf of the State is taken on record.

11. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)