

Item no. 03

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Hiranmay Bhattacharyya
W.P.A. 13757 of 2017

Sri Dilip Kumar Dolui.
vs.
State of West Bengal & Ors.

Appearance:

For the Petitioner : Mr. Saktipada Jana

For the respondent no. 5: Mr. Biswaroop Bhattacharya
Mr. Haridas Das

For the State : Mr. Santanu Kr. Mitra

Heard on : 17.01.2023

Judgment on : 17.01.2023

Hiranmay Bhattacharyya, J.:

01. The petitioner has challenged the order of the District Inspector of Schools (SE), Purba Medinipur (for short "DI") dated March 28, 2017 whereby the DI held that no decision with regard to approval of pending panel in question can be taken.

02. The petitioner claims to have participated in the interview for the post of Clerk in Group-C in Gopalnagar Girls High School (for short "the School") pursuant to an interim order passed by a coordinate Bench of

this Court in WP 632 (W) of 2008 on 15.01.2008. Several writ petitions were filed by intending candidates praying for an order to allow them to participate in the interview for the said post and pursuant to interim orders passed by this Court in those writ petitions such candidates were also allowed to participate in the interview. In the meantime, writ petitions filed by some intending candidates, stood disposed of and since the concerned DI informed the school authority vide letter dated December 31, 2008 that no decision in respect of pending panel can be taken as several writ petitions are pending, the writ petitioner got the writ petition being W.P. 632(W) of 2008 enlisted for final disposal of the same. The said writ petition was disposed of by an order dated October 3, 2016 by directing the concerned DI to take steps in accordance with law in respect of the pending panel within the time limit specified in the said order. Pursuant to the said direction, the concerned DI passed the order dated March 28, 2017 which is under challenge in this writ petition.

03. Mr. Jana, learned advocate appearing for the petitioner draws the attention of the Court to an order dated April 25, 2008 passed by a coordinate Bench by this Court in WP 25467 (W) of 2007 and submits that the concerned DI ought to have approved the panel in question since there was a positive direction to that effect in the order dated April 25, 2008. He thereafter referred to the order dated May 14, 2008 passed by a coordinate Bench in WP 919 (W) of 2008 in the case of Dilip Mondal

vs. State of West Bengal & Ors. wherein the coordinate Bench directed the school authorities to fill up the posts in question by initiating the process of selection afresh after inviting application by making publication in the newspapers having wider circulation and then consider the cases of those who have applied. He further submits that since a coordinate Bench of this Court by an order dated 25.04.2008 passed in WP 25467 (W) of 2007 directed approval of the panel in question, the subsequent order of a coordinate Bench in the case of Dilip Mondal (supra) could not have been passed. He submits that the order passed in the case of Dilip Mondal (supra) of 14.05.2008 should be recalled by this Court and the DI be directed to approve the panel in terms of the order passed on 25.04.2008 in WP 25467 (W) of 2007.

04. Mr. Mitra, learned advocate representing the State submits that the DI was faced with two conflicting orders of coordinate Benches with regard to the panel in question- one directing approval of the panel and the other directing the school authority to fill up the posts by initiating the process of selection afresh. He submits that an application, being CAN 474 of 2009 filed in connection with WP 632 (W) of 2008 was also pending for disposal. He concluded by submitting that under such circumstances, the DI thought it fit not to take a decision with regard to approval of the pending panel in question.

05. Mr. Bhattacharyya, learned advocate representing the school authority submits that the school authority is very eager to fill up the

vacant posts. He further submits that the DI be directed to approve the panel in terms of the order passed by a coordinate Bench in WP 25467 (W) of 2007 on April 25, 2008.

06. Heard the learned advocates for the parties and perused the material placed. Record reveals that the date of interview/selection test for appointment to the post of clerk, Group-C staff for the school was fixed on January 20, 2008. A coordinate Bench of this Court passed an interim order on January 17, 2008 in WP 919 (W) 2008 in the case of Dilip Mondal (supra) by directing the school authority to allow Dilip Mondal along with other eligible candidates to participate in the interview/selection test to be held on January 20, 2008. It was further directed that after holding the interview the mark sheet of the petitioner shall be kept in a sealed cover and the result shall not be published without the leave of the Court. It is not in dispute that the interview for appointment to the said post was held on January 20, 2008 and WP 25467 (W) of 2007 was disposed of on April 25, 2008 directing the respondents to approve the panel and thereafter appointments be made by the school authority within the time limit mentioned in the said order. When the matter was taken up for hearing by the Hon'ble Court on 25.04.2008, the school authority was represented by its counsel. However, it is surprising to note that the attention of the coordinate Bench was not drawn to the order dated 17.01.2008 passed in Dilip Mondal (supra) wherein the marksheet of the petitioner therein was

directed to be kept in a sealed cover with a direction not to publish the result without the leave of the Court.

07. By the order dated 17.01.2008, the coordinate bench restrained the school authority from publishing the result without the leave of the Court.

08. No document has been produced before this Court to show that leave was granted by the Court to publish the result of the interview. Therefore, the question of preparation of panel for appointment to the post could not and did not arise before the order dated 14.05.2008 was passed in W.P. 919(W) of 2008.

09. This Court, however, fails to understand as to why the school authority who was represented on 25.04.2008 suppressed the fact of the subsisting restraint order upon the school from publishing the result. This Court accordingly, holds that the order dated 25.04.2008 was obtained by practising fraud upon the Court. It is well-settled that the fraud vitiates all acts. This Court accordingly holds that the order dated 25.04.2008 is nullity in the eye of law.

10. It further appears from the order dated 14.05.2008 that the coordinate Bench after taking into consideration the judgment and order passed in several writ petitions disposed of WP 919 (W) of 2008 by directing the school authority to fill up the posts in question by initiating the process of selection afresh after inviting applications by making publications in the newspapers having wider circulation and then

consider the cases of all those, who have applied. By the said order it was also made clear that the result of the interview in question shall not be given effect to or shall not be taken into account in any manner whatsoever. Therefore, the effect of the order dated May 14, 2008 is that the selection process initiated by the school authority which, according to the petitioner, culminated with the preparation of the impugned panel stood automatically cancelled by the order dated May 14, 2008. The school authority did not challenge the said order before any higher forum and, therefore, the said order already attained finality.

11. This Court is further astonished to find that after the order dated May 14, 2008 was passed in the presence of the school authority, a panel was forwarded by the school to the DI three days thereafter i.e. on May 17, 2008 for approval of the said panel. The school authority could not explain how they could forward the impugned panel for approval after the order dated 14.05. 2008 was passed directing the school to initiate the selection afresh. Such conduct of the school authority is not appreciated by this Court. This Court would have been well justified in initiating a contempt proceeding against the school but refrains from taking such action as the same would not enure to the benefit of the petitioner.

12. The earlier writ petition filed by the writ petitioner, being WP 632 (W) of 2008, came up for final hearing on October 3, 2016 before another coordinate Bench of this Court. From the said order it appears that

though the orders passed in WP 919 (W) of 2008 and WP 25467 (W) of 2007 were referred to but no submission was made by the school authority or any of the parties to the writ petitions with regard to the effect of the orders passed in those writ petitions. However, the said writ petition was disposed of by an order dated 03.10.2016 by directing the concerned DI to take steps in accordance with law in respect of the pending panel after giving an opportunity of hearing to the parties concerned.

13. The writ petitioner did not pray for recalling the order dated 14.05.2008 even at the time of final hearing of W.P. 632(w) of 2008. The order dated 3.10.2016 passed in the said writ petition directed the DI to take a decision in accordance with law. For the aforesaid reasons, the prayer for recalling the order dated 14.05.2008 cannot be entertained at this stage. In view of such findings, the decision of a coordinate bench of this Court in the case of **Prakash Chandra Purkait vs. State of West Bengal & Ors.** reported at **(2002) 1 CLT 519 (HC)** is of no assistance to the petitioner.

14. After going through the order dated March 28, 2017 this Court finds that the DI held that no decision can be taken in regard to approval of the pending panel in question in view of the contradictory orders passed by the coordinate Benches of this Court in WP 919 (W) of 2008 and WP 25467 (W) of 2007. Since the selection process which culminated with the preparation of the panel in question stood cancelled

by the order dated May 14, 2008 passed in W.P. 919 (W) of 2008, the D.I. cannot be said to be at fault for not approving the said panel.

15. For all the reasons, as aforesaid, this Court is of the considered view that there is no infirmity in the decision making process warranting interference by this Court in exercise of the power of judicial review. This Court, therefore, holds that the question of approval of the panel as directed by the order dated 25.04.2008 does not and cannot arise at all. This Court has already held that the order dated 14.05.2008 has attained finality and it would be open to the respondent authority to take steps in accordance with law.

16. The writ petition is, thus, devoid of any merit and the same accordingly stands dismissed without, however, any order as to costs.

17. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)