

WPA 12307 OF 2011

Sunil Maji

Vs.

State of West Bengal & Ors.

Mr. Santanu Das

....For the Petitioner

Mr. Suman Dey

...For the Respondent
Nos. 1 to 3

This is a hearing matter.

This writ petition has assailed the impugned order dated **December 10, 2010** passed by the respondent no.2, **Annexure-P9 at page 59** to the writ petition. The writ petitioner claimed approval of the selection process and permission for the post of Second Clerk at the relevant Higher Secondary School for the normal section for which a prior permission for approval was issued by the respondent no.3 way back on **May 19, 2008, Annexure-P10 at page 53** to the writ petition.

The respondent no.2 rejected the claim of the petitioner relying upon a **Circular being No.333-SE (Apptt.)/10M/32/01 Pt.** dated **June 8, 2007, Annexure-R18 at page 21** to the report in the form of affidavit filed by the respondent no.2.

Mr. Santanu Das, learned advocate appearing for the petitioner submits that, the said **Circular dated**

June 8, 2007 was **subsequently modified** by a **Memo No.2356 (20)-G.A./OM-15/2007 dated October 3, 2007**.

Placing reliance upon the said Circular dated **October 3, 2007** learned counsel for the petitioner submits that the appointment of the petitioner cannot be denied. Learned counsel further relied upon the **District Level Inspection Report** (for short **DLIT**), **Annexure-R4 at page 18** to the exception affidavit filed by the petitioner and submits that, number of sanctioned posts for the post of **Clerk** was **three**. He submits that, the reasons in the impugned decision shown, thus, cannot sustain. He prays for quashing of the said impugned order and appointment of the petitioner.

Mr. Suman Dey, learned State counsel appearing for the respondent nos. 1 to 3 submits that, even if the said **later Circular dated October 3, 2007** would be taken into account that would not change the reasons in the impugned order on the basis whereof the claim of the petitioner was rejected. Referring to the said DLIT report specifically at **page 19** from the exception affidavit filed by the petitioner, learned State counsel submits that, the sanctioned posts for **Clerk** being three, as mentioned therein, is merely a **inventory report** and not the posts sanctioned by the relevant State authority.

Considering the rival contentions of the parties and considering the materials on record it is clear to the mind of this Court that, while passing the reasoned order, the

said subsequent Circular dated **October 3, 2007** which has modified the **Circular dated June 8, 2007, Annexure-R18 at page 21** to the affidavit report filed by the respondent no.2 was not at all considered and no finding was recorded on the basis thereof.

In view of the above, the impugned **order dated December 10, 2010, Annexure –P9 at page 51 to the writ petition stands set aside and quashed.**

The **respondent no.2 shall revisit the issue** taking into consideration the said **subsequent Circular dated October 3, 2007** already relied upon by the respondent no.2. While considering the issue, the respondent no.2 shall also take into account the document being **Annexure-R4 at page 18** to the exception affidavit filed by the petitioner.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner as also the merits of the contentions raised by the learned State counsel in any manner.

The respondent nos. 4 and 5 are not represented today.

In view of the above, the respondent no.2 upon issuing a seven days' prior hearing notice upon the petitioner and the respondent nos. 4 and 5 shall revisit the issue by passing its reasoned order in accordance with law.

The respondent no. 2 shall carry out and complete the entire exercise, as directed above, ***positively*** within a period of six weeks from the date of communication of this order. The respondent no.2 then shall communicate its reasoned order to the petitioner and the respondent nos. 4 and 5 within a further period of two weeks from the date of the reasoned order to be passed.

The petitioner and the school authority shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the respondent no.2 but the ***same shall not travel beyond the claim made in the writ petition.***

It is also made clear that this order shall not create any equity or right in favour of the petitioner if the petitioner is not eligible to receive his claim strictly in accordance with law. The respondent no.2 shall not be influenced by any observation made herein and shall proceed freely and independently in accordance with law.

In the event the reasoned order goes in favour of the petitioner, the respondent no.2 and the relevant school authorities then shall immediately give effect thereto ***positively*** within a period of ***six weeks*** from the date of communication of the reasoned order to the petitioner and the respondent nos.4 and 5.

It is made clear that, at present the ***District Inspector of Schools, Paschim Burdwan*** being the

jurisdictional District Inspector of Schools, shall decide the issue in the manner and mode as directed above.

On the above terms this writ petition, **WPA 12307 of 2011** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)