

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 15677 of 2019

Md. Moynul Hoque

....Petitioner

-Vs-

The State of West Bengal & Ors.

..... Respondents

Mr. Prosenjit Mukherjee, Adv.
Mr. Arghya Kamal Das, Adv.

..... for the Petitioner

Mr. Bibek Jyoti Basu, Adv.
Mr. Uttam Kumar De, Adv.
Ms. Ankita Mukherjee, Adv.

.....for the State Respondent
Nos. 1, 3, 4 & 8.

Mr. Victor Dutta, Adv.

.....For the Respondent No. 2,
District Panchayat and
Rural Development Officer

Md. Sarwar Jahan, Adv.
Ms. Mousumi Mitra, Adv.
Mr. Asif Mehdi, Adv.

.....For the Respondent No. 9,
the Mission Director,
Paschim Banga Rajya
Shishu Shiksha Mission.

Heard On : 05.04.2023

Judgment on : 28.04.2023

Rabindranath Samanta, J:-

1. Challenge in this writ petition is against a letter dated 16th May, 2019 issued by the Joint Secretary to the Government of West Bengal, Panchayats and Rural Development Department whereby the petitioner was directed to step down from the post of Samprasarak of a Madhyamik Shiksha Kendra.
2. The background facts which led to the filing of the writ petition may be summed up as under:

The managing committee of Chandan Kuntha Madhyamik Shiksha Kendra by an advertisement published on 23.07.2007 invited applications from the eligible candidates to engage a Samprasarak in Life Science in the Shiksha Kendra. The petitioner and the private respondent namely Chandra Shekhar Mukherjee submitted applications for engagement as Samprasarak in Life Science. The Shiksha Kendra also published an advertisement for filling up a post of Samprasarak in History. However, since an eligible candidate has been selected and he has been discharging his duties, there is no dispute with regard to the engagement of the Samprasarak in history.

3. The managing committee of the Shiksha Kendra empanelled the private respondent Chandra Shekhar Mukherjee as the first candidate and the petitioner as the second candidate. Challenging the engagement of the private respondent the petitioner filed a writ petition being W.P No. 19439(W) of 2007 in this Court. A learned Single Bench disposed of the writ petition directing the District Panchayats and Rural Development Officer to consider the objection of the petitioner. In compliance of the Court's order the District Panchayats and Rural Development Officer passed an order observing that the process of selection to engage the private respondent as a Samprasarak in Life Science was improper and accordingly the selection of the private respondent was cancelled. By the

same order the District Panchayats and Rural Development Officer directed the authority of the Shiksha Kendra to take necessary steps for selection of Samprasarak in Life Science following the guidelines laid down by the Panchayats and Rural Development Department, Government of West Bengal. Though the petitioner was empanelled as the second candidate, but, he was not engaged as a Samprasarak.

4. Aggrieved by the order for not issuing any direction to engage him as a Samprasarak, the petitioner preferred an another writ application being W.P No. 15204(W) of 2009 in this Court. A learned Single Bench disposed of the writ application directing the District Panchayats and Rural Development Officer to engage the petitioner as Samprasarak in Life Science within a specified time. In compliance thereof the District Panchayats and Rural Development Officer issued engagement letter in favour of the petitioner and he joined the post of Samprasarak in Life Science in Chandan Kuntha Madhyamik Shiksha Kendra on 12.05.2016. After he joined the post, honorarium was disbursed to him for the period from 20.06.2016 to 31.05.2019 through his bank account with United Bank of India, Deshbandhu Road Branch.
5. Aggrieved by the order passed by the learned Single Bench allowing the petitioner to join the post of Samprasarak, the private respondent preferred a Mandamus Appeal being MAT No. 874 of 2016 before the Hon'ble Division Bench. By order dated 06.01.2018 the Hon'ble Division Bench set aside the order dated 22.05.2016 passed by the learned Single Bench and directed the petitioner to step down from the post of Samprasarak. Besides, the authority of the institution was directed to initiate a fresh selection process in accordance with the direction of the District Panchayats and Rural Development Department Officer passed on 11th June, 2009. The Hon'ble Division Bench observed in the order that after receiving the appropriate permission from the District Panchayats and Rural Development Officer the selection process would

be initiated and the selection process would be confined to the petitioner and the private respondent.

6. On 28th May, 2019 the concerned District Panchayats and Rural Development Officer informed the executive officer to take appropriate steps in terms of the order dated 6th August, 2018 passed by the Hon'ble Division Bench as regards engagement of a Samprasarak in Life Science. The executive officer, Rampurhat-I Panchayat Samiti by a Memo dated 31.05.2019 asked the petitioner to step down from the post of Samprasarak in Life Science. By the same communication the executive officer informed the petitioner that his honorarium would be stopped henceforth.
7. By a letter dated 16th May, 2019 the Joint Secretary to the Government of West Bengal, Panchayats and Rural Development Department informed the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission that engagement of Samprasarak/Samprasatika had already been stopped from 01.01.2010 and the new recruitment process would be made according to Right of Children to Free and Compulsory Education Act, 2009 and according to prescribed qualification and through examination. By that letter the Mission Director was requested to inform the concerned District that both the petitioner and the private respondent would be given preference during examination. In such context, the petitioner states that on 19.03.2012 one Asgar Ali was engaged as a Samprasarak in Geography in the aforesaid Madhyamik Shiksha Kendra by order of this Court passed in a writ petition being W.P No. 17299(W) of 2010. But, the authority of the Madhyamik Shiksha Kendra conversely, did not comply with the order dated 6th August, 2018 passed by the Hon'ble Division Bench of this Court.
8. The Hon'ble Division Bench directed the concerned authority to complete the proceeding in terms of the order dated 11th June, 2009 passed by the District Panchayats and Rural Development Officer not from the stage of issuance of advertisement. The order dated 11th June, 2009 passed by

the District Panchayat and Rural Development Officer is still in force in view of the order dated 6th August, 2018 passed by the Hon'ble Division Bench in the Mandamus Appeal. The order dated 1st January, 2010 issued by the Panchayats and Rural Development Department stopping the engagement of Samprasarak has no binding effect in view of the order dated 11th June, 2009 passed by the District Panchayats and Rural Development Officer and the order dated 6th August, 2018 passed by the Hon'ble Division Bench. The petitioner contends that the letter dated 16th May, 2019 issued by the Joint Secretary to the Government of West Bengal bypassing the order dated 11th June, 2009 passed by the District Panchayats and Rural Development Officer and in defiance of the order passed by the Hon'ble Division Bench in the Mandamus Appeal is patently illegal and the same is liable to be quashed.

9. Under the aforesaid circumstances the petitioner prays that the impugned letter dated 16th May, 2019 issued by the Joint Secretary to the Government of West Bengal, Panchayats and Rural Development Department be set aside and the respondent authorities be directed to engage the first empanelled candidate for the post of Samprasarak in Life Science in the Shiksha Kendra.
10. The respondent No. 9, the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission in his affidavit-in-opposition states that initially Paschim Banga Rajya Shishu Shiksha Mission, the Shishu Shiksha Karmashchi and Madhyamik Shiksha Karmaschici were under the administrative control of the Panchayats and Rural Development Department. Subsequently, such educational schemes have been transferred to the Education Department with effect from 01.12.2020.
11. Initially engagement of Samprasarak/Samprasarika was for only one year and such engagement needed to be renewed year to year basis. By G.O dated 23rd April, 2010 the previous policy was modified to this extent that a Samprasarak would remain engaged up to the age prevailing provided his service was satisfactory. After the order dated

01.01.2010 was issued by the Panchayats and Rural Development Department, Government of West Bengal engagement of Samprasarak was stopped with effect from 01.01.2010. However, the panel approved by Panchayat Samiti till 31.12.2009 would not come under the purview of the order. This answering respondent submits that the aforesaid Government orders were not produced before the Hon'ble Division Bench when the solemn order dated 06.08.2018 was passed. This respondent also submits that since the engagement procedure has been changed and the Managing Committee of the Institution lost its authority the order dated 11th June, 2009 passed by the District Panchayats and Rural Development Officer has lost its legal force to conduct any engagement process on and from 01.01.2010. On such grounds and denying and disputing the averments as made in the writ application this answering respondent submits that the writ application is liable to be dismissed.

12. The petitioner in his affidavit-in-reply reiterating his stand as stated in the writ petition submits that in view of the order dated 11.06.2009 passed by the District Panchayats and Rural Development Officer and the solemn order dated 06.08.2018 passed by the Hon'ble Division Bench in the Mandamus Appeal the Government order dated 01.01.2010 will not stand in the process of engagement of Samprasarak in a Shiksha Kendra.
13. Admittedly, the petitioner Md. Moynul Hoque and the private respondent Chandra Sekhar Mukherjee, in response to an advertisement dated 23.07.2007 issued by the Managaing Committee of Chandan Kuntha Madhyamik Siksha Kendra, made applications for engagement as a Samprasarak in Life Science in the Shiksha Kendra. The managing committee, for the purpose of selecting a candidate for the post, prepared a panel wherein the private respondent was empanelled as the first candidate. Challenging this panel the petitioner approached this Court by preferring a writ petition being W.P No. 19439(W) of 2007. By order dated 5th December, 2007 passed by a learned Single Bench the writ

petition was disposed of directing the District Panchayats and Rural Development Officer to consider and dispose of the representation of the petitioner by a reasoned order within a specified time. In compliance thereof, the District Panchayats and Rural Development Officer disposed of the representation of the petitioner by passing the following order:

“Therefore, on the basis of available records and listening to all the parties concerned, the undersigned comes to this conclusion that the process of selection to the post of Samprasarak for Life Science in Chandan Kuntha Madhyamik Siksha Kendra is improper and inadequate. Therefore, the panel containing selection of respondent No. 7 i.e. Chandra Shekhar Mukherjee stands cancelled. The authority concerned i.e. the managing committee of Chandan Kuntha Madhyamik Siksha Kendra is directed to take necessary steps for selection of Samprasarak in Life Science following the guidelines laid down by the Panchayats and Rural Development Department, Government of West Bengal.”

14. Since the managing committee of the Siksha Kendra did not initiate any process to engage Samprasarak, the petitioner again approached this Court by preferring a writ petition being W.P 15204(W) of 2009 seeking his engagement as a Samprasarak in the Siksha Kendra. By an order dated 22.02.2016 the writ petition was disposed of by a learned Single Bench directing the Panchayats and Rural Development Officer to engage the petitioner as Samprasarak in Life Science within a period of two weeks from the date of communication of the order. In compliance of this order the District Panchayats and Rural Development Officer by Memo dated 09.05.2016 engaged the petitioner as a Samprasarak in Chandan Kuntha Madhyamik Shiksha Kendra and accordingly the petitioner joined the post of Samprasarak on 12.05.2016.
15. After the petitioner was engaged as a Samprasarak, the private respondent Chandra Shekhar Mukherjee preferred a Mandamus Appeal

being MAT 874 of 2016. By order dated 06.08.2018 the Mandamus Appeal was disposed of by the Hon'ble Division Bench by passing the following direction:

“ As a result of the above, Moinul Hoque not having any right to the post, shall step down from the post of Samprasarak immediately. The authority of the institution shall initiate fresh selection process in accordance with the decision of the District Panchayats and Rural Development Officer dated 11.06.2009 after receiving his permission to do so. If such process is initiated, Chanra Shekhar and Monul shall be entitled to participate. Needless to observe, in such case, the selection process shall be confined to the candidates who had earlier participated in the process.”

16. It is not in dispute that in compliance of the order dated 06.08.2018 the petitioner stepped down from the post of Samprasarak.
17. The order of the Hon'ble Division Bench as excerpted above clearly demonstrates that after the petitioner steps down from the post of Samprasarak, the authority of the institution shall initiate fresh selection process in accordance with the decision of the District Panchayats and Rural Development Officer dated 11th June, 2009 after receiving his permission to do so. If such process is initiated, the private respondent and the petitioner shall be entitled to participate and the selection process shall be confined to the petitioner and the private respondent and none else.
18. As the case of the petitioner suggests, no process was initiated by the authority of the Shiksha Kendra for engagement of Samprasarak in compliance with the order of the Hon'ble Division Bench as well as the order dated 11th June, 2009 passed by the District Panchayats and Rural Development Officer. On the other hand, the whole matter has been complicated on issuance of the impugned letter dated 16th May, 2019 by the Joint Secretary to the Government of West Bengal, Panchayats and

Rural Development Department. The contents of the impugned letter dated 16.05.2019 addressed to the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission round which the bone of contention hovers may be reproduced as under:

“ With reference to the above order of Hon’ble High Court, Calcutta dated 06.08.2018, I am directed to inform you that the engagement of procedure of Samprasarak/Samprasarika has already been stopped from 01.01.2010 vide this Deptt. Order dated 01.01.2010. Now the new recruitment process will be made according to RTE Act, 2009, i.e. according to the prescribed qualification and through examination.

You are therefore, requested to inform the concerned district that both Md. Moynul Hoque and Sri Chandra Sekhar Mukherjee will be given preference during examination when the above recruitment procedure will take place and also as per order of Hon’ble High Court dated 06.08.2018, Md. Moynul Hoque shall step down from the post of Samprasarak immediately from Chandan Kuntha MSK.”

19. Now, the point which begs consideration is whether the impugned letter dated 16.05.2019 issued by the Joint Secretary bears any legal force after the order dated 06.08.2018 passed by the Hon’ble Division Bench in the Mandamus Appeal being MAT 874 of 2016.
20. As it appears, the order dated 06.08.2018 was passed by the Hon’ble Division Bench in presence of the state respondents and the Mission Director, PaschimBanga Rajya Shishu Shiksha Mission. Therefore, the order which has attained finality is binding on all the concerned state authorities including the Joint Secretary to the Government of West Bengal, Panchayats and Rural Development Department. So far as the issue relating to the petitioner and the private respondent is concerned, the order dated 06.01.2018 of the Hon’ble Division Bench occupies the field and any order passed by any of the state authorities in disobedience

to the solemn order of the Hon'ble Division Bench will be treated not warranted by law.

21. Therefore, the concerned authority will have to initiate the process of selection strictly in compliance with the order of the Hon'ble Division Bench.
22. However, meanwhile, by virtue of a Government order dated 21.02.2013 issued by the Panchayats and Rural Development Department, Government of West Bengal all the existing Managing Committees of Madhyamik Shiksha Kendras have been dissolved and in its place Madhyamik Shiksha Kendra administrative committee has been formed. But, Madhyamik Shiksha Kendra administrative committee is not now empowered to initiate process of engagement of Samprasaraks in a Madhyamik Shiksha Kendra. That being so, the respondent No.2, the District Panchayats and Rural Development Officer and the District Nodal Officer (SSK) and (MSK), Birbhum may be directed to initiate fresh selection process in terms of his letter dated 11.06.2009 and the solemn order dated 06.08.2018 passed by the Hon'ble Division Bench for engagement of a Samprasarak in Life Science in the Shiksha Kendra restricting the engagement process to the petitioner and the private respondent only. As the mode of selection process then prevailed as per the guidelines of Madhyamik Shiksha Karmachui vide Memorandum dated 10th July, 2003, there was no need of taking written and verbal test of the candidates to prepare panel of selected candidates. The selection procedure, as then prevailed, panel of successful candidates was to be prepared on the basis of academic score of the candidates.
23. Accordingly, the point as raised is answered in the negative.
24. In view of the observations as recorded above and in exercise of the extraordinary power of this Court the writ petition may be disposed of by passing the following order:

The letter dated 16th May, 2019 issued by the Joint Secretary to the Government of West Bengal, Panchayats and Rural Development Department is hereby set aside.

The respondent No.2, the District Panchayats and Rural Development Officer and the District Nodal Officer (SSK) and (MSK), Birbhum is directed to prepare a panel for engagement of a Samprasarak in Life Science in Chandan Kuntha Madhyamik Shiksha Kendra following the guidelines as prevailed on 23.07.2007 confining the selection process to the petitioner Md. Moynul Hoque and the private respondent Chandra Shekhar Mukherjee within four weeks from the date of communication of this judgment and order.

25. After the panel is prepared the respondent No.2 shall engage the first empanelled candidate as a Samprasarak in Life Science in Chandan Kuntha Madhyamik Shiksha Kendra within two weeks thereafter.
26. After the first empanelled candidate is engaged as Samprasarak in the Shiksha Kendra, he will be allowed all the service benefits as available to Samprasaraks/Samprasarikas of a Madhyamik Shiksha Kendra.
27. With the aforesaid directions the writ petition and connected application, if any, stands disposed of.
28. Parties may act on the Server Copy of this judgment and order.
29. Urgent certified website copies of this judgment and order if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)