

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA 14037 of 2009

Soma Bairagya (Chakraborty) ...Petitioner

$$V_s$$

The State of West Bengal and Others ... Respondents

Mr. Subir Bhattacharya, Adv.

... for the Petitioner

Mr. Rezaul Hossain, Adv.

... for the State respondents

Mr. Jyoti Prakash Chatterjee, Adv.

Mr. Debottam Das, Adv.

Ms. Shilpa Thapa, Adv.

... for respondent nos. 9 & 10

Mr. Arjun Roy Mukherjee, Adv.

Ms. Saheli Chakraborty, Adv.

... for respondent no. 12

Heard On : 27.03.2023

Judgment on : **11.04.2023**

Rabindranath Samanta, J:-

1. Aggrieved by the inaction on the part of a school authority in not forwarding the panel of best eligible candidates for the post of a para-

teacher to the District Project Officer, the petitioner has preferred this writ petition.

2. It may be noted that during the pendency of the writ petition, the Project Director, Paschim Banga Rajya Samagra Shiksha Mission has been impleaded as respondent no. 12 by order dated 13th March, 2023.
3. The background facts which led to the filing of the writ petition may be summarised as under:

The petitioner Soma Bairagya (Chakraborty) passed Madhyamik Examination in the year 2002 obtaining first division. She passed Higher Secondary Examination in the year 2004 also by obtaining first division. Thereafter, she qualified B.A. (Hons. in Bengali) from the University of Kalyani in 2007. In response to an advertisement dated 4th February, 2009 made by the Managing Committee of Akabpur Junior High School, the respondent no. 9 herein, inviting application from the eligible candidates for filling up one post of para-teacher in Bengali in the school, the petitioner applied for the same on 5th February, 2009. After submission of the application, the petitioner came to know that the Secretary of Akabpur Junior High School desired to accommodate his brother for the post in his school. With such intention in mind, he disclosed at the locality that female candidates would not be selected for the aforesaid post. The petitioner states that at the time of the advertisement, the school authority did not disclose that only male candidates would be eligible for the post. Getting such information, the petitioner, by submitting an application to the District Project Officer, Sarva Siksha Mission, Burdwan, requested him to look into the matter so that appropriate selection was made in the school.

4. The school authority was sitting tight over selection of the para-teacher though considerable time passed since the eligible candidates applied for the post. The petitioner came to learn that 21 (twenty-one) candidates applied for the post of para-teacher and she was the best candidate having highest academic marks as per the Rules framed by Sarva Siksha Mission. She deserves to be selected for the post of para-teacher in Bengali in the school. While the school authority was maintaining silence over the selection of para-teacher, the petitioner submitted an application to the Block Development Officer, Srirampur, Purbasthali-I requesting him to take appropriate steps so that no illegality in selection of para-teacher in the school took place. She ventilated her grievances by writing a letter to the Secretary of a Bengali daily namely 'SANGBAD' which was published in the newspaper on 10th June, 2009. Thereafter, on 29th June, 2009, she submitted another representation to the Headmaster, Akabpur Junior High School intimating him that she came to know from the office of the District Project Officer that the school authority did not send the panel of best eligible candidates for the post even after expiry of five months since the submission of the applications. By the representation, she requested him to take appropriate steps so that the best eligible candidate was selected for the post.
5. By an another representation dated 30th June, 2009, the petitioner informed the Sub-Divisional Officer, Kalna that the Secretary of the Managing Committee of the school was trying to engage his younger brother as a para-teacher in the school though he did not obtain the highest marks. She knocked the doors of all concerned authorities to get redressal of her grievances, but all her efforts were in vain. Ultimately, the petitioner by issuing a notice dated 3rd July, 2009 through her Learned Advocate asked the school authorities to take

appropriate steps so that the best candidate could be engaged as para-teacher in Bengali in the school, but to no effect.

6. The petitioner complains that the Secretary of the school authority is trying to cancel the selection process for the post of para-teacher as his brother could not come within the zone of best eligible candidate for the post.
7. Under the aforesaid circumstances, the petitioner seeks direction upon the school authority to forward the panel of best eligible candidates for the post of para-teacher in Bengali to the District Project Officer, Sarva Siksha Mission, Burdwan and direction upon the concerned respondents to dispose of the representations made by her.
8. The respondent no. 4, in the affidavit-in-opposition, states that the managing committee of the school, in terms of the permission granted by the respondent no. 4, issued advertisement on 4th February, 2009 inviting applications from the eligible candidates for engagement of an additional para-teacher on contractual basis. The managing committee of the school, in its meeting held on 7th July, 2009, by adopting a resolution prepared a panel of 03 (three) candidates showing participation of 06 (six) applicants instead of 21 (twenty-one) applicants. The petitioner made complaints on 12th February, 2009 and 1st April, 2009 to the District Project Officer seeking a direction so that she could be engaged as a para-teacher. On the basis of the complaints made by the petitioner, Assistant Inspector of Schools, Kalna, enquired into the matter and after a thorough enquiry and verification of the relevant records, he submitted a report to the Sub-Divisional Officer, Kalna, Burdwan, now Purba Bardhaman. The report submitted by the Assistant Inspector of Schools reveals that total 21(twenty-one) applicants made application to the school authority for appointment of a para-teacher in the subject of Bengali.

But the school authority illegally prepared a panel on 7th July, 2009 of 03 (three) candidates showing participation of 06 (six) applicants excluding 15 (fifteen) applicants, most of whom scored higher marks than that of the topper of the panel. The Sub-Divisional Officer, Kalna forwarded the report to the District Project Officer, Sarva Siksha Mission, Purba Bardhaman. This answering respondent states that inspite of preparation of panel on 7th July, 2009 the school authority did not submit the same to the Office of the District Project Officer for necessary approval. After receiving the report from the Sub-Divisional Officer, Kalna, the District Project Officer vide memo dated 31st December, 2009 informed the school authority to furnish the clarification regarding prolonged delay in submitting the panel of candidates for approval. In response to the letter dated 31st December, 2009, the headmaster of the school by his letter dated 22nd January, 2010 replied to the District Project Officer mentioning therein the reasons for failure on the part of the school authority to prepare the panel of candidates for engagement of the para-teacher. The headmaster of the school by his earlier letter dated 15th July, 2009 informed the District Project Officer that he did not sign the illegal panel which was prepared on 7th July, 2009. By memorandum dated 20th April, 2010 issued by the Paschim Banga Sarva Shiksha Mission, engagement of para-teacher, the permission of which was granted prior to the issue of letter dated 27th March, 2010, was to be completed as usual. However, the ongoing process of engagement of para-teacher should be completed by 31st May, 2010. No new process of initiating engagement of para-teacher should be undertaken post 27th March, 2010. This answering respondent further states that though the panel was prepared on 7th July, 2009, the school authority did not submit the same to the Office of the District Project Officer for approval in time. Ultimately, the headmaster of the school vide a letter

dated 20th September, 2013 forwarded the same panel prepared on 7th July, 2009, but adopted anew by the Managing Committee, to the District Project Officer, Purba Bardhaman for approval.

9. After receiving the letter dated 20th September, 2013 from the headmaster of the school, this answering respondent vide memo dated 24th September, 2013 informed the headmaster of the school that there was no possibility to engage para-teacher in the school since the school authority submitted the panel belatedly and after issuance of the Government memorandum dated 20th April, 2010. On such grounds, this answering respondent submits that the writ petition is liable to be dismissed.
10. However, the petitioner in her affidavit-in-reply, disputing the averments as made in the affidavit-in-opposition, submits that she being the best candidate having highest academic marks should be engaged as a para-teacher in Bengali in the school.
11. As it appears from the affidavit-in-opposition, the respondent no. 4, District Project Officer, Sarva Shiksha Mission, Burdwan, now Purba Bardhaman by memo dated 13th January, 2009 permitted the Managing Committee of the school namely, Akabpur Junior High School to engage a para-teacher in the subject of Bengali for the school. Admittedly, in terms of such permission, the Managing Committee of the school made an advertisement on 4th February, 2009 inviting applications from the eligible candidates for engagement of a para-teacher in Bengali in the school. The petitioner applied for the post on 5th February, 2009. It is the grievance of the petitioner that though the candidates including herself applied for the post in time, the Managing Committee sat tight over the matter as to preparation of panel of eligible candidates. Getting an information that the Secretary of the school was interested in engaging his younger brother for the post of para-teacher in the school and sensing

that illegalities might take place as to preparation of the panel, the petitioner made complaints on 12th February, 2009 and 4th April, 2009 to the District Project Officer seeking direction for her appointment as para-teacher on proper verification of the matter. As stated in the affidavit-in-opposition, the Sub-inspector of Schools, Kalna Sub-Division made an enquiry into the allegations as made in the complaints of the petitioner and by memo dated 10th August, 2009 submitted a report to the Sub-Divisional Officer, Kalna stating therein that total 21(twenty-one) applicants made application to the school authority for appointment of para-teacher, but the school authority illegally prepared a panel dated 7th July, 2009 of 03 (three) candidates showing participation of 06 (six) applicants excluding 15 (fifteen) applicants, most of whom scored higher marks than the topper of the illegal panel. As to such averments in the affidavit-in-opposition, the school authorities, the respondent nos. 9 and 10, despite their appearance before the Court, did not choose to use any affidavit to controvert such averments. As I find, the Sub-Divisional Officer, after receiving the report from the Assistant Inspector of Schools, forwarded the report to the District Project Officer. After receiving the report from the Sub-Divisional Officer, the District Project Officer vide memo dated 31st December, 2009 told the school authority to clarify as to prolonged delay in submitting the panel of candidates for approval. Initially, the headmaster of the school vide letter dated 22nd January, 2010 informed the District Project Officer that since the panel prepared by the Managing Committee was illegal, he did not sign it. Ultimately, after lapse of a considerable period, the headmaster of the school by letter dated 20th September, 2013 submitted the earlier panel dated 7th July, 2009 approved afresh by the Managing Committee of the school by a resolution dated 13th August, 2013.

12. It is contended by the answering respondent no. 4 that after the memorandum dated 20th April, 2010 issued by the Paschim Banga Sarva Siksha Mission came into force, no new process could be initiated to engage any para-teacher after 27th March, 2010.
13. Mr. Subir Bhattacharya, learned counsel appearing for the petitioner submits that the score-sheet prepared by the Managing Committee reveals that amongst the 21 (twenty-one) candidates who applied for the post, the petitioner secured highest marks of 17.717. Learned counsel further submits that as per the guidelines as was prevalent then, selection of a para-teacher was made on the basis of academic marks secured by a candidate. According to learned counsel, the petitioner who is the most deserving candidate, cannot be thrown out citing the delay and the Government memorandum dated 23rd April, 2010. Learned counsel emphasises that this Court, in exercise of its extra ordinary power, may direct the authority concerned to engage the petitioner who having highest academic score **tops the panel**.
14. *Per contra*, Mr. Arjun Roy Mukherjee, learned counsel appearing for the added respondent no. 12, the Project Director, Paschim Banga Samagra Shiksha Mission and the respondent no. 4, the District Project Officer submits that in terms of the memo dated 27th March, 2010 issued by the State Project director and in terms of the memorandum dated 20th April, 2010 issued by the Paschim Banga Sarva Siksha Mission, the answering respondents are legally fettered to approve any panel for engagement of a para-teacher and to engage the petitioner.
15. As the real picture comes out from the score-sheet annexed to the affidavit-in-opposition, 21 (twenty-one) candidates applied for the post of para-teacher in Bengali in the aforesaid school. The score-sheet signed by the headmaster of Akabpur Junior High School reveals that score-sheet was prepared taking into consideration of the marks

obtained by each of the candidates in Madhyamik Examination, Higher Secondary Examination, Graduation and B.Ed. Degree, if any. It is crystallised from the score-sheet that the petitioner, Soma Bairagya (Chakraborty) who secured 65% marks in Madhyamik Examination, 64.3% marks in Higher Secondary Examination and 47.87% marks in Graduation secured the highest marks, i.e., 17.717marks amongst the 21 (twenty-one) candidates.

16. But, the scenario as projected by the school authority depicts otherwise. The panel prepared by the Managing Committee of the school on 7th July, 2009 and renewed by a resolution dated 13th August, 2013 shows that only 06 (six) candidates made application and out of the 06 (six) candidates, 03 (three), namely, Hanif Sk., Sabor Ali Sahana and Nasirul Alam Sk. were empanelled as first, second and third candidate in order of merit. As it is evident from the panel submitted by the school authority, Hanif Sk. obtained 15.053 marks, Sabor Ali Sahana obtained 13.727 marks and Nasirul Slam Sk. obtained 13.529 marks. If this panel is compared to the score-sheet prepared by the Managing Committee, it shows in no uncertain terms that amongst all the candidates, the petitioner secured the highest marks, i.e., 17.717 marks. The acts on the part of the Managing Committee of the school in preparing the panel of three (03) unqualified candidates in suppression of the deserving candidates smack of allegations of criminal offence.
17. Now, the question which falls for determination is whether the petitioner being the best candidate amongst the aforesaid 21 (twenty-one) candidates can be engaged as a para-teacher for the said school.
18. True, by memo dated 27th March, 2010 issued by the Project Director, Paschim Banga Samagra Shiksha Mission, the District Project Officers were directed that the Paschim Banga Sarva Shiksha Mission decided that no further para-teachers should be engaged in Primary and

Upper Primary Schools. If any para-teacher engaged previously in any school left the job or had already left the job or his position fell vacant due to any other reason, the vacant position should not be filled by engagement of para-teachers and the position should lie *sine die* till it was filled up through regular recruited teachers.

19. It is also true that by memorandum dated 20th April, 2010, the Paschim Banga Sarva Shiksha Mission informed the District Project Officers that engagement of para-teachers for which permission of District Sub-Committee/DPO, SSM was granted prior to the issue of the order dated 27th March, 2010, was to be completed as usual. However, all such ongoing process for engagement of para-teacher/s should be completed within 31st May, 2010. No new process of initiating any engagement of para-teachers must be indulged post 27th March, 2010.
20. Citing the aforesaid two memorandums, it is submitted on behalf of the answering respondent Paschim Banga Samagra Siksha Mission that though the petitioner topped the panel, there is a legal impediment on its part to engage her as a para-teacher in the said school.
21. Undisputedly, the process of selection and engagement of para-teacher for Akabpur Junior High School was initiated after the advertisement was published on 4th February, 2009, i.e., long before the memorandums dated 27th March, 2010 and 20th April, 2010 saw the light of the day. As the chain of events indicate, due to illegal acts on the part of the Managing Committee of the school and due to its resorting to nepotism and favouritism, no lawful panel could be prepared and submitted to the authority concerned in time. However, as the real picture has come out to the front, it is the petitioner who infact topped the panel in comparison with the marks obtained by the other candidates.

22. While the petitioner had acquired a right to be engaged as a para-teacher by securing the highest marks, her legal entitlement cannot be curtailed by citing delay and procedural technicalities.
23. This Court, in exercise of its plenary power and to do complete justice, may ignore the procedural impediments created vide memos dated 27th March, 2010 and 20th April, 2010, and direct the concerned authorities to engage the petitioner, the deserving candidate, as a para-teacher in the subject Bengali in the said school. By exercising such power this court may direct the law enforcing agency to initiate appropriate legal proceeding against the concerned members of the then managing committee of the school for their alleged involvement in preparation of a forged panel with an intent to cheat the petitioner and the concerned state authority and use the panel as a genuine one.
24. In view of the above, the writ petition may be disposed of by passing the following order:

The concerned respondents are directed to engage the petitioner as a para-teacher in Bengali in Akabpur Junior High School by issuing engagement letter in her favour within 04 (four) weeks from the communication of this judgement and order. The concerned respondents are directed to pay salary / honorarium to the petitioner at the same rate as is admissible to other para-teachers. The petitioner shall continue her service as a para-teacher till the age as admissible to other para-teachers.

As to the alleged criminal acts perpetrated by the Managing Committee of the school, the Superintendent of Police, Purba Bardhaman is directed to direct the Officer-in-Charge of the concerned Police Station to register an FIR *suo motu* against the persons involved in allegedly preparing a forged panel with an intent to cheat the petitioner as well as the concerned state

authority and using the same as genuine one immediately after receiving a copy of this judgement and order. The delay, if any, made in registering the FIR, shall stand condoned.

25. With the aforesaid directions, the writ petition stands disposed of.
26. Let a copy of this judgment and order be communicated to the Superintendent of Police, Purba Bardhaman for his information and compliance immediately.
27. Parties may act on the Server Copy of this judgment and order duly downloaded from the Official Website of this Court.
28. Urgent Photostat/ certified copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)