

Court No.
18.8.2023

(Item No. 4)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 21069 of 2017

Mudassar Rahaman
VS
The State of West Bengal & Ors.

Mr. Golam Mostafa
Mr. T. S. Samanta
..... for the petitioner
Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey
..... for the State

The petitioner claimed to have been working as a **Group – D staff** at one **Salaidanga High School, District – Malda (for short, the school)**. The school at present is a Higher Secondary School. Two vacancies were cropped up for the post as would be evident from the facts discussed in the impugned order dated **July 5, 2017, Annexure P-6** at **page 36** to the writ petition passed by the respondent No. 3. Such fact is not disputed by the parties. The petitioner was appointed as a **Group – D staff** pursuant to a letter of appointment issued by the school dated **June 30, 2003, Annexure P-2** at **page 19** to the writ petition with effect from **May 1, 2000** on a temporary basis in the General category. The terms of appointment, *inter alia*, specified that, the service of the petitioner would be temporary till formal regularization and approval is granted by the respondent No. 3 and upon such approval and regularization being granted, the pay scale and salary

of the petitioner would be fixed as per the **Grant-in-Aid Rules (for short G.A. Rules)**. The petitioner joined as would be evident from **page 20** to the writ petition. The petitioner then on **January 28, 2016** made a representation and applied before the respondent No. 3 seeking approval of his employment, **Annexure P-3** at **page 21** to the writ petition. Such representation was pending.

The petitioner applied before this Court through **W.P. No. 3379 (W) of 2016**. The writ petition was disposed of by a co-ordinate bench by its order dated **December 7, 2016, Annexure P-4** at **page 25** to the writ petition, *inter alia*, directing the respondent No. 3 to consider and decide the said representation of the petitioner in the manner and mode as stated therein.

Pursuant to the said direction of the co-ordinate bench the respondent No. 3 decided the issue by passing its impugned order dated **July 5, 2017, Annexure P-6** at **page 36** to the writ petition. The same has been assailed through the instant second round of writ litigation initiated by the petitioner.

Mr. Golam Mostafa, learned counsel for the petitioner submitted that, on a perusal of the said impugned order dated **July 5, 2017**, it would be evident that, the respondent No. 3 had failed to appreciate the petitioner has been working in his employment since 2003, about fourteen years as on

the date of the said impugned order against a meager contractual wage. He submitted that, at the relevant point of time when the petitioner was appointed, the vacancy was cropped up due to the up gradation of the school to class-X and the school was in dire crises of Group-D staff. The Managing Committee of the school by way of adopting a resolution dated **June 21, 2003** engaged the petitioner and appointed him as a **contractual Group-D staff** on the terms and conditions mentioned in the appointment letter already referred to above. He submitted that, the petitioner has been carrying out his employment with an unblemished career and has been rendering service to the school. The Managing Committee at the relevant point of time thought it fit to appoint the petitioner to meet the immediate dire necessity of a **Group -D staff** at the school. He submitted that, the Managing Committee sought for permission from the jurisdictional District Inspector of Schools but the D.I. since has not accorded his permission and kept the request of the school pending. The Managing Committee was compelled to appoint the petitioner to meet the dire crisis in the school. The petitioner had no role to play in it. The petitioner had received employment, which is otherwise valid in law, and has been working. With the passage of time a legitimate expectation had accrued in favour of the petitioner to receive approval of his employment. He submitted

that, the appointment of the petitioner was valid and legal as the Managing Committee being the appropriate authority had appointed the petitioner and in the similar circumstance for the similarly placed employees, their employment were approved and regularized by the appropriate State authority. In support, he has placed reliance upon the following judgments of the Hon'ble Supreme Court:

(a) In the matter of: Sheo Narain Nagar and others V. State of Uttar Pradesh and others reported at AIR 2018 Supreme Court 233;

(b) In the matter of: Food Corporation of India V. Gen. Secy, FCI India Employees Union and others reported at AIR 2018 Supreme Court 3902;

(c) In the matter of: Narendra Kumar Tiwari and others. Etc. V. State of Jharkhand and others Etc. reported at AIR 2018 Supreme Court 3589;

Mr. Golam Mostafa, learned counsel for the petitioner submitted that, the impugned order cannot sustain both on fact and law and should be set aside and necessary direction should be passed for approval and regularization of the employment of the petitioner.

Mr. Suman Dey, learned State counsel led by Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader referring to the impugned order submitted that, the relevant Rule governing the employment of the petitioner being **Rule 28** of the **Management of Recognized Non-Government**

Institutions (Aided and Un-Aided) Rules, 1969 (for short, the 1969 Rules) has duly been discussed by the respondent No. 3 and considered while passing the impugned order. He further submitted that, the relevant Government Memo being **1738 (21)-G.A. dated 01.11.1999 (for short, the State Government Memo)** governing the guidelines for appointment of a **Group -D staff** has also been discussed and considered by the respondent No. 3. Upon consideration of all these relevant provisions, the respondent No. 3 with due application of his mind, passed the reasoned order holding that, the appointment of the petitioner was illegal and without any sanction of law. The question of approval or regularization of his employment cannot arise. Referring to the same he submitted that, the impugned order is well versed and reasoned and there is no scope for any interference with the same. Mr. Dey, learned State counsel further submitted all the judgments referred to by the learned counsel for the petitioner and the ratio decided therein would have no application in the facts of this case. He submitted that, since the appointment in the facts of this case was grossly illegal and in violation of the relevant Rules and process prevailing at the relevant point of time, the ratio in all the judgments would not apply. In all the cases in the said three judgments as referred to by the learned counsel for the petitioner

the appointments were considered to be irregular but not illegal and in this case the appointment is illegal.

Considering the rival contentions of the parties and considering the materials on record, this Court first reiterates the scope of judicial review by this Court in exercise of its power under Article 226 of the Constitution of India. This being a constitutional Court while exercising its power under judicial review has a very limited authority and jurisdiction to assess the impugned order. This Court will only interfere with the impugned order if there is infirmity found in the decision making process and if there exists any glaring perversity on the face of the impugned order.

Keeping in mind the said settled principles of law, this Court proceeds to assess the said impugned order dated **July 5, 2017** passed by the respondent No. 3. On a scrutiny of the said impugned order it appears that, the relevant Rules and the guidelines have duly been considered by the respondent No. 3. **Rule 28 of the said 1969 Rules** starts with the expression that, ***in an aided institution the committee shall, subject to the provisions of any grant-in-aid scheme or pay revision scheme or any order or direction or guidelines issued by the State Government or director in connection therewith and in force for the time being have the power to appoint a non-teaching employee on permanent or temporary basis against the***

permanent or temporary vacancy if and when available. Admittedly there was a vacancy for the general category at the relevant point of time when the petitioner was appointed against a sanctioned post. The respondent No. 3 bestowed with the jurisdiction of fact finding enquiry, has specifically come to its conclusion upon perusal of all the relevant records before it that following the said provisions under the 1969 Rules or the said memo containing the guidelines for appointment, the provisions were not at all followed and the appointment of the petitioner was totally at the whims and will of the Managing Committee of the school. The relevant observations from the impugned order dated **July 5, 2017** passed by the respondent No. 3 is quoted below:

“Now it appears from the school record supplied by the Headmaster of the concerned school that there were 02 (two) sanctioned posts of Gr. D staff at the material point of time as follows:

- i) Vacancy occurred on 17.12.1999 vice Md. Basir, died in harness on 16.12.199. According to Roster of appointment this post is 1st post, reserved for Scheduled Caste.***
- ii) Vacancy occurred on 01.05.2000 due to up-gradation of the School from 4-class Jr. High School to X-class High School. According to Roster of appointment this post is 2nd post, unreserved.***

It also appears that the Rules regarding recruitment of Non-teaching staff prevalent at the material point of time in terms of Rule 28 of Rules for Management of recognized Non-Govt. Institution (Aided & Unaided), 1969 was issued by the Director of School Education, West Bengal vide Memo No. 1738(21)-G.A. dated 01.11.1999. According to this Rule –

- (1) All appointment of non-teaching staff (Librarian, Clerk, Group D Staff) shall be made with the prior permission of the District Inspector of Schools (S.E.) of the respective District against sanctioned post.*
- (2) On receipt of permission from the District Inspector of Schools (S.E.) the School authority shall approach the Local Employment Exchange for sponsoring names of the Employment Exchange candidates.*
- (3) In case of non-receipt of names from the Employment Exchange the School may advertise in any State Level Daily Newspaper under intimation to the District Inspector of Schools (S.E.)*
- (4) There will be a Selection Committee to be formed with the Headmaster, Secretary, one Headmaster of other school and one nominee of the local Panchayat Samity.*
- (5) An interview of the candidates to be done as per guideline mentioned therein, etc.*

Regarding procedure of selection of the petitioner, the Headmaster informed that a 'Notice' dated 07.06.2003 was published by

the Secretary of the then Managing Committee seeking application for appointment of a Gr. D Peon post and the said Notice was circulated in the locality. The petitioner is a local boy and he was the only applicant and accordingly the Managing Committee of the School by a resolution dated 21.06.2003 decided to appoint the petitioner on temporary basis. It is also informed that –

- 1) Prior permission from the District Inspector of Schools (S.E.), Malda was not obtained.*
- 2) Local Employment Exchange was not requested to send names or advertisement in the Newspaper was not done.*
- 3) No Selection Committee was formed.*
- 4) No interview was held.*

So, it is evident that though there was sanctioned vacant post but the petitioner was not appointed after following due selection process in terms of Rules prevalent at the material point of time.

In view of the above, in strict compliance with the order of the Hon'ble High Court, the representation dated January 28, 2016 of the petitioner regarding regularization of service is hereby rejected in accordance with law.”

The fact finding enquiry by and the observation of the respondent No. 3 as quoted above from the impugned order would clearly demonstrate that the appointment of the petitioner was illegal and

wrongful and totally in contravention with the established procedure of law.

In the matter of: Sheo Narain Nagar and other (supra) there was no rule of law existing governing the appointment of the employees. In such situation since the employees have been working since long were directed for being regularized, such is not the case here. In the instant case, admittedly, the relevant recruitment rules and procedure/guidelines were there and the same were not followed in any manner while giving appointment to the petitioner.

In the matter of: Food Corporation of India (Supra) the employer failed to establish its claim against the employees as to why the employees shall not be regularized before the jurisdictional Tribunal. Such is not the case here. In the instant case, admittedly, the appointment of the petitioner at the threshold was illegal. Hence the question of granting any approval for his employment did not arise.

In the matter of: Narendra Kumar Tiwari (Supra) it was held that, a liberal interpretation should be given to prevailing regularization Rules to regularize the employment of the employees. Such is not the case here. In the instant case the recruitment Rules were not at all followed and the appointment of the petitioner was in contravention thereto and without following the due process of law.

When a Rule having a statutory flavor and force prescribes an act to be done in a specific manner specified therein, such an act has to be done in strict compliance thereof or not at all and any act done in any other mode without following the established procedure of law shall be considered to be forbidden.

In view of the foregoing reasons and discussions, this Court is of the firm view that, the impugned order dated **July 5, 2017, Annexure P-6** at **page 36** to the writ petition **does not warrant any interference** by this Court.

The order dated **July 5, 2017, Annexure P-6** at **page 36** to the writ petition **stands affirmed**.

On the above terms, this writ petition being **W.P.A. 21069 of 2017** being devoid of any merit stands dismissed, without any order as to costs.

The office report dated October 23, 2017 shows that, despite direction made by a co-ordinate bench dated August 18, 2017 no affidavit-in-opposition was filed. Considering the age of pendency of this writ petition and considering the issue involved therein, this Court proceeded to dispose of the writ petition and accordingly the same is decided.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)