

04.10.2023
Item No. 72
Crt.No.22
b.r.

WPA 23877 of 2017

Abdur Rashid
-vs-
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. S.M. Ali
Ms. Tanuja Basak
Mr. Sk. Imtiaj Uddin
..... for the petitioner.

Mr. Pinaki Dhole
Mr. Avishek Prosad
... for the State.

This is a hearing matter.

The office report dated April 6, 2021 shows that despite there being a direction on January 20, 2021, no affidavit-in-opposition was filed.

Pursuant to the direction made by this Court on September 22, 2023 time to file report in the form affidavit by the respondent no.3 affirmed on September 29, 2023 stands extended till today. The report is filed in Court and is taken on record.

A copy of the report has already been served upon the petitioner.

The writ petitioner is an aspirant for the post of **Group-D** at **Belur Dhanyakuria Madhyamik Vidyalaya (H.S.), District- North 24-Parganas** (for short, the School). The selection process was held pursuant to the prior permission dated **June 26, 2007, annexure p-1**

at **page-25** to the writ petition issued by the **respondent no.5**. The petitioner became a successful candidate in the selection process. The averments made in **paragraph-6** to the writ petition shows that the relevant interview was held on **August 6, 2008**. The panel was then sent for approval before the **respondent no.5**.

Upon receiving the records for approval of the panel, the respondent no.5 by a communication dated **January 15, 2010** declined to approve the panel and thereby rejected the panel principally on the strength of the provision laid down under a **Government Order No. 333-SE (apptt) dated June 8, 2007** as would be evident from **annexure p-3 at page-30** to the writ petition.

Challenging the said decision dated **January 15, 2010** of the respondent no.5, the petitioner moved this Court in the first round of writ litigation being **WP No. 13442 (W) of 2010**. A co-ordinate Bench by its order dated **January 5, 2011 annexure p-4 at page 31** to the writ petition has **quashed** the said impugned decision dated **January 15, 2010** and allowed the writ petition with the following observation:-

“ In the order dated 15th January, 2010, the then Additional District Inspector of Schools has observed that he is not inclined to allow third Group D

*as the School Authority had failed to show the Memo sanctioning the post third Group D which is according to him is necessary as per the **Government Order being No. 333-SE (apptt) dated 8th June, 2007**, which is, in my opinion is not sustainable in the eye of law in view of the fact that once prior permission was given and process was completed, the Additional District Inspector of Schools (SE) has no jurisdiction to review its own decision. Furthermore, the Additional District Inspector of Schools (SE) did not raise any question with regard to the process of selection at any point of time even after the submission of panel which was pending for consideration before it for about one year. It was only after the order passed on 1st July, 2009 by a learned Single Judge of this Court, the Additional District Inspector of Schools passed the impugned order.*

For the reasons aforesaid, the order dated 15th January 2010 is hereby quashed.

The writ petition is allowed.”

There was no challenge to the said order dated January 5, 2011 passed by the co-ordinate Bench in the previous writ petition.

Mr. Pinaki Dhole, learned State counsel has also confirmed that, no appeal was carried out from the said order dated January 5, 2011.

After the previous writ petition was allowed, the issue then travelled at the desk of the **respondent no.3**, when the respondent no.3 once again rejected the panel by its impugned decision dated **November 4, 2016, annexure p-8 at page 37** to the writ petition. On the sole basis of the said Government Order dated **June 8, 2007** referred to above, the panel was rejected. The observation of the respondent no.3 is quoted below:-

“ With reference to the subject mentioned above, the undersigned is directed to inform him/her that there is no provision to allow 3rd, Group-‘D’ post in favour of Beler Dhanyakuria Vidyalyaya (H.S.), North 24-Pgs. in terms of G.O. No. 333-SE (Apptt.) dated 8-6-2007. Hence, the prayer is regretted.”

Assailing the said impugned decision of the respondent no.3 dated **November 4, 2016**, the instant writ petition has been filed.

Mr. Ekramul Bari, learned counsel for the petitioner first drew attention of this Court to the previous decision of rejection of panel dated January 15, 2010 and submits that the sole ground for rejection was the said Government Order dated June 8, 2007. He then

drew attention to the previous order of the co-ordinate Bench dated January 5, 2011 and submits that the co-ordinate Bench after considering the provisions under the said Government Memo dated June 8, 2007 came to a specific finding whereunder the said impugned decision dated **January 15, 2010** was quashed and the writ petition was allowed.

Lastly, he refers to the decision of the respondent no.3 dated **November 4, 2016** impugned in the instant writ petition and submits that the plea for rejection is the same being the said Government Order dated June 6, 2007.

Mr. Bari then submits that since the order of the previous co-ordinate Bench dated January 5, 2011 has attained finality and is binding between the parties and since the respondents consciously acted thereupon by passing the said impugned decision dated November 4, 2016, the plea for rejection on the basis of the said Government Order dated June 8, 2007 is not tenable in law and accordingly the said impugned decision dated November 4, 2016 is liable to be **quashed**.

Learned counsel for the petitioner further submits that consequently the respondent no.5 shall be directed to approve the panel forthwith without any further delay as the issue is hanging since 2007 or immediately thereafter.

Mr. Pinaki Dhole, learned State Counsel, appears for the **respondent nos. 1 to 5** has relied upon heavily on the stand taken by the respondent no.3 in its affidavit report affirmed on **September 29, 2023**. Drawing attention to the report prepared under the seal and signature of the **respondent no.2** dated **September 27, 2023, annexure R-1 at page 3** to the affidavit and specifically referring to **Clause-ix** thereunder, he submits that in view of the operation of the said Government Order dated June 8, 2007 as referred to above, the panel cannot be approved.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court is convinced that the facts as narrated above are admitted by and between the parties. It is equally admitted that, all along from time to time the panel was rejected on the sole plea of the said Government Order dated **June 8, 2007**. The relevant portion from the said report filed by the **respondent no.2** is extracted below:-

“ ix. It reveals from enquiry report as sent by the Additional District Inspector of Schools (SE), Basirhat vide his office memo no. No.BHT/24/H dated 20/02/2015, that Biswanath Mondal and Dipali Halder were serving as approved Group D staff in the School. Thereafter the vacancy caused due to death of Hatem Ali, Ex Group D in 1972

*against whose vacancy prior permission dated 26/06/2007 for Group D was accorded, was treated as 3rd Group 'D' post. On scrutiny of papers sent by the Additional District Inspector of Schools (SE), Basirhat as well as replies of the query, the Directorate of School Education, West Bengal observed that in terms of **G.O. no. 333-SE (Apptt.) dated 08/06/2007**, the school was entitled for two group 'D' staff. Therefore the Directorate of School Education, West Bengal informed the Additional District Inspector of Schools (SE), Basirhat regretting his prayer for approval of panel of Group 'D' under office memo no. 1347-GA dated 04/11/2016."*

From the said **Clause-ix** of the report it appears to this Court that the sole ground for rejection of the panel was in fact, the said **Government Order dated June 8, 2007**.

The co-ordinate Bench while allowing the writ petition by its order dated **January 5, 2011** has taken note of the said Government Order dated June 8, 2007 and came to a specific finding that, in view of that Government Order the decision of the respondent authority in rejecting the panel was bad and unlawful and accordingly the decision of the respondent authority dated January 15, 2010 was quashed and the writ

petition was allowed. There was no challenge to the said order of co-ordinate Bench. The said order still is operative and binds the parties. The moment the said Government Order dated June 8, 2007 has received the judicial consideration of the co-ordinate Bench and on the basis of that the co-ordinate Bench came to a specific finding that the decision for rejection of panel was bad and accordingly was set aside, there was no scope for rejecting the panel again and again on the plea of the said Government Order dated June 8, 2007, as referred to above.

The stand taken by the respondent no.2 in its report dated September 27, 2023, as referred to above, being appended to the affidavit affirmed by respondent no.3 on September 29, **2023 cannot sustain in law and accordingly stands rejected and overruled.**

Consequently, the impugned decision in this writ petition dated **November 4, 2016, annexure p-8 at page 37** to the writ petition **stands set aside and quashed.**

The **respondent no.5** is directed to approve the relevant panel strictly in accordance with law upon compliance of all formalities positively within a period of **four weeks** from the date of communication of this order.

The **respondent no.6** is directed to render all necessary co-operation to the respondent no.5, if asked for.

Immediately after approval of the panel, the **respondent no.6** shall cause all the necessary formalities to give effect to the said panel in accordance with law but positively within a period of **two weeks** from the date of approval of the panel by the respondent no.5.

With the above observations and directions, this writ petition, **WPA 23877 of 2017** stands **allowed**, without any order as to costs.

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

(Aniruddha Roy, J.)