

Court No. 22

08.8.2023

(Item No. 105)

(AB)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 19266 of 2010

+

CAN 1 of 2011 (old No. CAN 5207 of 2011)

Samar Chandra Samanta

VS

The State of West Bengal & Ors.

Mr. Anil Kumar Chattopadhyay

Mr. Dinesh Pani

.... For the petitioner

Mr. Supriyo Chattopadhyay

Mr. Arindam Ghosh

.... For the State

The relevant selection process was held way back in 1995 for the post for **Assistant Teacher in Social Science Group** at **Sundarban Janakalyan Sangha Vidyaniketan, District – 24 Parganas (South)**. The selection process was held pursuant to the **prior permission** issued by the jurisdictional District Inspect of Schools (for short, the D.I.) dated **June 21, 1995, Annexure P-2 at page 37** to the writ petition. The mandatory criteria fixed for the post was that the aspirant must have the qualification M.A./M.Sc (Geography) and B.Ed was decided to be given preference, as would be evident from the said prior permission issued by the D.I. The petitioner was admittedly qualified M.A. (Geography) but **without B.Ed** at the relevant point of time when he participated in the selection process. However, the petitioner had the qualification **B.P.Ed (Physical Education)** on such relevant date. The petitioner

contended that, the said B.P.Ed was equivalent to B.Ed and as such the said qualification of the petitioner B.P.Ed should have been counted for and the petitioner should be given preference in the light of the said prior permission issued by the D.I. for the selection process. However, the petitioner **subsequently** has acquired the qualification B.Ed.

There was also a prior permission issued by the D.I. on **June 24, 1994** as pleaded in **paragraph 4** in the writ petition. The petitioner travelled to this Court through a previous writ petition, when a co-ordinate Bench by its order dated **September 26, 1997, Annexure P-4** at **page 41** to the writ petition allowed the claim of the petitioner and directed the relevant authority to consider his qualification and to grant appointment.

Being aggrieved by the said order of the co-ordinate bench the School Authority carried out an appeal being **MAT No. 4253 of 1997** and the Hon'ble Division Bench by its order dated **March 5, 1998, Annexure P-5 at page 45** to the writ petition allowed the appeal and was pleased to set aside the order of the co-ordinate bench as referred to above. The relevant observation made by the Hon'ble Division Bench is quoted below:

“The impugned order cannot be sustained on more than one ground. It is not within the province of the Court to direct the D.I. of Schools (SE) to approve a particular panel or to appoint

some persons. The District Inspector of Schools (S.E.) is a statutory functionary under the provision of the Recruitment Rules. There cannot be any doubt that a statutory functionary if does not perform his statutory function within a reasonable time, a writ of Mandamus can be issued directing him to perform such statutory function within the time stipulated by this Court but this Court while exercising its power cannot usurp the statutory power of the statutory functionary directing him to do something and particularly to appoint the writ petitioner. The said order is ex-facie bad in law. However it appears that by letter dated 4th June, 1997 the District Inspector of Schools (S.E.) has already passed an order although the impugned order was passed on 26.9.97. It appears that the said order had been questioned by the petitioner.

The learned counsel appearing on behalf of the respondent No. 6, Headmaster, however submits that the District Inspector of Schools (S.E.) has passed an order directing the School authority to recast the panel.

If the School authority or the writ petitioner is aggrieved by any action taken by the District Inspector of Schools (SE), they may take recourse to law but keeping in the view the facts and circumstances of this case, the impugned order cannot be sustained and the same is set aside.

This appeal is allowed with the aforementioned observations.”

The petitioner then travelled this Court once again in the second round of writ litigation being **W.P. No. 9496(W) of 1998**. A co-ordinate bench by its order dated **June 25, 2001** directed the D.I. to

consider the case of the petitioner once again. The D.I. then passed its order dated **August 13, 2002, Annexure P-7 at page 52** to the writ petition. Through the instant writ petition the petitioner sought to enforce and execute the said direction of the D.I. made in the said reasoned order dated **August 13, 2002** for recasting of the panel. The relevant observation from the impugned order is quoted below:

“I find that the petitioner obtained B.P.Ed. degree in the year 1991 from Amarabati University vide page 29 of the writ petition. He obtained B.Ed. degree from the University of Calcutta in the year 1996 vide page 30 of the writ petition. On the date of interview i.e. on 28.8.1995 the petitioner did not have the B.Ed. degree. His B.P.Ed. or Bachelor of Physical Education degree is not equivalent to B.Ed. or B.T. or P.G.B.T. and for that matter the B.P.Ed. degree cannot be treated as training qualification, this is clearly mentioned in item (viii) and item (xii) of clause (c) of para 6 of the directions contained in the recruitment procedure notified by the Director of School Education, West Bengal in his Memo No. 2066-GA dated 27.10.95 B.P.Ed. degree is required only for appointment as a teacher in Physical Education as clarified also in Govt order in No. 523-Edn(S) dated 4.6.93.

In the circumstances the marks allotted to the petitioner for B.P.Ed. degree should be excluded and the panel should be recast by the School authorities and thereafter forwarded the same to the D.I. of Schools (SE) by 31.10.2002 for necessary approval.”

Mr. Anil Kumar Chattopadhyay, learned counsel appearing for the petitioner submitted that, the direction was made in 2002 to take into consideration the petitioner by excluding the B.P.Ed degree and then to recast the panel but till today no step was taken.

Mr. Supriyo Chattopadhyay, learned Additional Government Pleader appeared for respondent Nos. 1 to 3 referred to the said **prior permission** of D.I. dated **June 21, 1995, Annexure P-2** at **page 37** to the writ petition which is a later one and submitted that, the aspirant must **have M.A./M.Sc. (Geography) and B.Ed was decided to be given preference.** He submitted that, admittedly the petitioner did not possess with the qualification B.Ed at the relevant point of time when he participated in the selection process pursuant to the said prior permission issued by D.I. However, the petitioner had the qualification of M.A. in Geography and he participated in the selection process but could not come within the consideration zone and accordingly the merit list and the panel was finalized by the Managing Committee of the relevant school authority.

Learned Additional Government Pleader then submitted that, the order which sought to be enforced through this writ petition was passed by the respondent No. 2 on **August 13, 2002** and the writ petition was filed in **2010**, after **around eight years.**

The petitioner cannot seek equitable relief after such an inordinate delay.

Mr. Chattopadhyay then submitted that, since **November 22, 1997** the **West Bengal School Service Commission Act, 1997** (for short, **the 1997 Act**) came into force. The method and mode of selection process for the post for which the petitioner was an aspirant had undergone sea change with the promulgation of the said 1997 Act. The Managing Committee of the School Authority had no role to play for holding the selection process or for causing any appointment therein after promulgation of the said Act. The respective authorities mentioned in the 1997 Act are now empowered to conduct a selection process and for appointment of the selected candidates. The **West Bengal Board of Secondary Education** is the **appointing authority** and the **West Bengal School Service Commission** is the **recommending authority**. Since the panel was not approved despite direction made by the respondent No. 2 in its said order dated **August 13, 2002** and in the meantime the 1997 Act came into force, the relevant panel prepared by the School Authority cannot be considered for recasting any further. The **rule of the game** has changed with the promulgation of 1997 Act.

Mr. Anil Kumar Chattopadhyay, leaned counsel appeared for the petitioner in reply submitted that, since 2002 the petitioner was pursuing his case

before the State Authorities for recasting of the panel and on repeated occasions the petitioner was assured by the State Authority that the panel would be recast but ultimately the panel was not recast. The petitioner filed the instant writ petition in 2010. Hence the delay, if any, caused was not attributable to the petitioner. He further submitted that, despite there being order passed by this Court from time to time and despite the direction of the respondent No. 2 in 2002 and despite the direction of the D.I. to recast and submit the panel on June 14, 1997, due to negligence on the part of the School Authority the panel was not recast and the petitioner lost his opportunity of employment.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court is convinced that, under the mandatory requirement for selection for the post where the petitioner was an aspirant in terms of the **prior permission** issued by the D.I., **Annexure P-2** at **page 37** to the writ petition, the petitioner admittedly did not possess the qualification **B.Ed** at the relevant point of time when he participated in the selection process but the petitioner possessed the qualification B.P.Ed which was not at all relevant or material for participating in the selection process in terms of **rule of the game** framed by the D.I. in his said prior permission. The petitioner, therefore, primarily did not

qualify the criteria of the selection process which was **rule of the game** to get a preference in the selection process. The petitioner participated in the selection process only on the basis of his qualification **M.A.(Geography)** which was relevant for consideration of the petitioner's candidature in the given facts and circumstance under which the petitioner participated in the selection process.

The previous order of the co-ordinate bench was set aside by the Hon'ble Division Bench by its order dated **March 5, 1998** passed in **MAT 4253 of 1997, Annexure P-5** at **page 45** to the writ petition. In the light of the observation made by the Hon'ble Division Bench, as quoted above, the respondent No. 2 proceeded and passed the order dated **August 13, 2002** directing to recast the panel by not taking into consideration the B.P.Ed degree of the petitioner. The School Authority sat idle on the matter since 2002 and the petitioner only in 2010 after a period of about eight years filed the instant writ petition for enforcement of the said direction dated **August 13, 2002**. Meanwhile, the 1997 Act came into force. The law relating to selection process had undergone a sea change as already discussed above. It is an admitted position that, the panel was not recast, until the panel was recast no right was created in favour of the petitioner. Since July 2009 the law of selection process has undergone a sea change with the

promulgation of 1997 Act, even if any, direction is made for recasting of the panel by giving effect to the said direction of the respondent No. 2 dated August 13, 2002 for considering the candidature of the petitioner today in 2023, the same would amount to be in violation of the statutory provisions under the said 1997 Act, which is not permissible in law.

In view of the foregoing reasons and discussions, this Court is of the firm view that, the writ petition filed in 2010 after the promulgation of the 1997 Act is devoid of any merit.

Accordingly, this writ petition being **W.P.A. 19266 of 2010** along with application being **CAN 1 of 2011 (old No. CAN 5207 of 2011)** stand dismissed, without any order as to costs.

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.)