

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

<u>WPA 22307 of 2018</u>	
<u>Amar Chandra Mandal</u>	...Petitioner
<u>Vs</u>	
<u>The State of West Bengal and Others</u>	... Respondents

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Mr. Raghunath Adhikary, Adv.

..... for the Petitioner

Mr. Susanta Pal, Adv.

Mr. Subhenu Sengupta, Adv.

..... for the State

Heard On : 22.03.2023

Judgment on : 27.04.2023

Rabindranath Samanta, J:-

1. Aggrieved by the non-approval of a panel dated 02.05.2014 selecting him to be appointed as a librarian of a Girls High School, the petitioner has approached this Court by preferring this writ petition.
2. Background facts which are necessary for adjudication of the matter may be summarised as under:
3. The petitioner passed secondary examination in the year 1987 and higher secondary examination in the year 1990. Thereafter, he completed B.A. Part-I (Honours) Examination, 1992 from the University of North Bengal. He passed Bachelor of Library Science Examination, 1997 from the University of North Bengal.

4. As an unemployed youth the petitioner registered his name with the District Employment Exchange, Jalpaiguri vide registration No. WB 10620073811.
5. A post of Librarian was sanctioned in Dhupguri Girls' High School, Jalpaiguri vide Memo dated 3rd October, 2007 issued by the Commissioner of School Education, Government of West Bengal, the respondent No.2 herein. To fill up the post of Librarian, the school authority sought permission from the District Inspector of Schools (SE), Jalpaiguri vide Memo dated 6th December, 2007. By a Memo dated 2nd April, 2008, the District Inspector of Schools, the respondent No.4, accorded permission to the school authority to fill up the post of librarian. Thereafter, the school authority requisitioned the names of eligible candidates from the District Employment Exchange and in response thereto the Employment Officer, District Employment Exchange, Jalpaiguri sponsored the names of eligible candidates.
6. After the names of eligible candidates were obtained from the employment exchange, the school authority vide a Memo dated 5th January, 2009 asked the petitioner to appear before the selection committee for interview at the school premises on 16th January, 2009 at 11:30 A.M. In response thereto he appeared before the selection committee.
7. After the interview was over, the selection committee prepared a panel on the same date i.e. on 16.01.2009 on the basis of the performance and academic qualifications of the candidates. In the panel prepared by the selection committee, the petitioner was empanelled as the second candidate. The petitioner submits that while the selection committee prepared the panel it erroneously took into account ten marks instead of 20 marks for the degree in Library Science. However, the panel so prepared erroneously was forwarded to the District Inspector of Schools (SE) Jalpaiguri by the school authority. The

aforesaid panel which was received by the District Inspector of Schools in time, but he forwarded the panel to the respondent No.3, the Deputy Director of School Education vide memo dated 3rd September, 2013. After the panel was forwarded to the respondent No.3, the school authority after realising that marks were awarded erroneously relating to degree in library science, the school authority prepared a fresh panel taking into account 20 marks instead of 10 marks for the degree in library science. The panel dated 2nd May, 2014 prepared afresh was forwarded to the District Inspector of Schools vide Memo dated 9th June, 2014. While both the panels – one dated 16.01.2009 and the another dated 02.05.2014 were pending for approval before the concerned authorities, the District Inspector of Schools vide Memo dated 7th January, 2015 communicated the decision of the Deputy Director of School Education whereby the first panel prepared by the selection committee was rejected on the reason that the panel was prepared in violation of the recruitment rules. Accordingly, the respondent No.3 instructed the District Inspector of Schools to advice the school authority to follow the recruitment rules which were in force at that time if the concerned post was duly sanctioned and lying vacant. The petitioner states that the corrected/recast fresh panel dated 02.05.2014 prepared by the school authority wherein he has been empanelled as the first candidate is still pending for approval. The first erroneous panel which was rejected by the respondent No.3 and which was modified by the school authority by the recast panel has now no legal force. The petitioner complains that the concerned authorities are sitting tight over the panel dated 02.05.2014.

8. Under the aforesaid circumstances, the petitioner seeks direction upon the concerned respondents authorities to approve the panel dated 02.05.2014 after withdrawing the second part of the Memo

dated 28.11.2014 by which the school authority was asked to fill up the post of librarian as per the existing rules.

9. The respondent No. 2, the commissioner of school education, in affidavit-in-opposition admits that prior permission for the post of librarian was accorded by the District Inspector of Schools (SE) Jalpaiguri vide Memo dated 2nd April, 2008 as per recruitment rules vide No. 1594 SE(S) dated 26th December, 2005. This answering respondent also admits that the school authority approached the District Employment Exchange for sponsoring the names of eligible candidates for the said post and accordingly the District Employment Exchange sponsored the names of the eligible candidates. This respondent also admits that the selection committee after taking interview of the eligible candidates prepared a panel of three candidates on 16th January, 2009 i.e. on the same date when the interview was taken. But, the managing committee of the school accepted the panel three months twenty six days after the interview was taken in violation of relevant recruitment rules. This respondent further states that the marks for interview allotted by the members of the selection committee were five, but it should have been only three full marks in terms of the Government order dated 18th July, 2007. The District Inspector of Schools accorded prior permission on 2nd April, 2008. The school authority was required to approach the concerned District Employment Exchange within forty five days from 2nd April, 2008 as per Sub-rule 5 (a) of Rule 8 of the West Bengal Schools (Recruitment of Non-Teaching Staffs) Rules, 2005. But, it was made on 15th July, 2008 i.e. after expiry of forty five days. In terms of Notification No. 1594 –SE(S) dated 26th December, 2005 read with Memorandum No. 904-SE(S) dated 18th July, 2007 , the selection committee for the post of Librarian should consist of I) Headmaster, II) Secretary, III) Headmaster of school situated in the same Sub-Division, iv) an expert who is a Librarian or teacher of Library Science

- having requisite diploma/degree and at least five years' experience, v) Nominee of the Panchayat Samity or Municipal Corporation or any notified authority. But the school authority did not follow the amended Rule 2005. The school authority kept a member of the school in the selection committee instead of nominee of the Municipality. This answering respondent states that the school authority did not submit the panel along with all the relevant papers to the District Inspector of Schools in time. This respondent submits that after the West Bengal School Service Commission (Amendment) Act, 2008 came into force on 1st January, 2009 the power to fill up the post of Non-teaching staff including librarian was vested with the School Service Commission. On such grounds and denying and disputing the averments as made in the writ petition this answering respondent submits that the writ petition is liable to be dismissed.
10. However, the petitioner in his affidavit-in-reply submits that as a candidate he properly followed every directions of the selection committee. He submits that since the selection process was initiated before the West Bengal School Service Commission (Amendment) Act, 2008 came into force on 1st January, 2009 and the panel was prepared in terms of the selection process, the West Bengal School Service Commission (Amendment) Act, 2008 is not applicable to the case of the petitioner.
11. It is evident from a document i.e. Annexure P2 that in response to a Memo dated 06.12.2007 of the Secretary, Dhupguri Girls' High School, the District Inspector of Schools (SE), Jalpaiguri vide Memo dated 2nd April, 2008 accorded permission to the school authority to recruit a librarian. Annexure P3 i.e. a communication issued by the Employment Officer, District Employment Exchange, Jalpaiguri shows that the District Employment Exchange sponsored names of ten eligible candidates to the school authority for the purpose of recruitment of a librarian. In the list of candidates as sponsored by

the Employment Exchange, the name of the petitioner Amar Chandra Mandal figures at Serial No. 9. Admittedly, the school authority by issuing letters dated 05.01.2009 asked all the candidates including the petitioner to appear before the Selection Committee for interview on 16th January, 2009 at 11:30 A.M at the school premises. The petitioner appeared at the interview board on the scheduled date and time.

12. As the uncontroverted averments in the writ application demonstrate, the selection committee, after the interview was over, prepared a panel on the same date i.e. on 16.01.2009.
13. It is the contention of the petitioner that though the school authority forwarded the panel to the District Inspector of Schools (SE), the respondent No.4, in time, the respondent No.4 forwarded the panel to the respondent No.3, the Deputy Director of School Education vide Memo dated 3rd September, 2013. Ultimately, the Deputy Director of School Education vide Memo dated 28.11.2014 instructed the District Inspector of Schools (SE), Jalpaiguri to reject the panel since the panel was prepared in violation of the recruitment rules. By this Memo the D.I of Schools was asked to follow the recruitment rules which were in force at that time if the concerned post was duly sanctioned and was lying vacant.
14. However, it is the case of the petitioner that after the selection committee detected that the panel was prepared erroneously by awarding ten marks instead of twenty marks for the degree in Library Science, the Managing committee by holding a meeting on 02.05.2014 prepared a fresh panel. In terms of the resolution of the Managing Committee the school authority vide Memo dated 9th June, 2014 forwarded the fresh panel to the District Inspector of Schools rectifying the errors committed by the Selection Committee on awarding marks for degree in Library Science. It is the assertion of the petitioner that in the panel prepared afresh on rectification of errors,

his name figures as the first empanelled candidate. It is his contention that though the fresh panel dated 2nd May, 2014 is pending, no action has been taken by the concerned authorities in this regard as yet.

15. Learned Counsel appearing for the petitioner submits that since the selection process was initiated in the year 2008 when the school authority approached the District Employment Exchange for sponsoring names of eligible candidates to fill up the post of a librarian of the school in terms of the permission granted by the District Inspector of Schools vide Memo dated 02.04.2008, the recruitment should be guided by the previous rules in force and not in terms of the West Bengal School Service Commission (Amendment) Act, 2008 which came into force on 1st January, 2009. Learned Counsel argues that since the first panel prepared by the selection committee was erroneous, the first panel in fact lost its legal force in terms of the communication dated 20th November, 2014 issued by the Deputy Director of School Education to the District Inspector of Schools (SE), Jalpaiguri. But the panel prepared afresh rectifying the errors as to awarding marks for the degree in Library Science is still pending for approval from the authority concerned. Learned counsel submits that since his client has been empanelled as the first candidate in the fresh panel he deserves to be appointed as a Librarian in the school.
16. On the other hand, learned counsel appearing for the State respondents submits that the panels as prepared by the selection committee of the school are not lawful since the selection committee did not comprise such members as mentioned under Rule 6 of the West Bengal Schools (Recruitment of Non-teaching Staff) Rules, 2005. Besides, learned counsel submits that all the follow up actions on the part of the school authority relating to selection process were not within the time frame as specified in the relevant rules/government

order. According to learned counsel, after the West Bengal School Service Commission (Amendment) Act, 2008 came into force on 1st January, 2009, a librarian should be selected by the West Bengal School Service Commission. On 16.01.2009 when the selection committee took the interview and prepared the panel, the school authority was not within the lawful domain to prepare such panel.

17. As stated above, the school authority initiated the selection process in the year 2008 after the District Inspector of Schools (SE), Jalpaiguri accorded permission to the school authority to fill up a post of librarian for the school vide Memo dated 02.04.2008. As it is found from the relevant document on record, the District Employment Exchange in response to the communication of the school authority sponsored the names of ten eligible candidates for the post in the year 2008. In continuation of such selection process, the school authority, admittedly, by issuing letters asked the candidates including the petitioner to appear before the selection board for interview on 16.01.2009 at 11:30 A.M. As admitted, the selection committee prepared the panel on the same date i.e. 16.01.2009 after the interview was over. This panel so prepared on 16.01.2009 was forwarded to the District Inspector of Schools by the school authority. But the District Inspector of Schools who sat over the matter for a considerable length of time ultimately forwarded the panel to the Deputy Director of School Education on 3rd September, 2013. As regards such communication the respondent No.3, the Deputy Director of School Education, vide memo dated 28.11.2014 directed the District Inspector of Schools to reject the panel and asked the school authority to follow the recruitment rules which were then in force for the purpose of filling up the post of librarian if it was sanctioned and lying vacant. The operative part of the Memo dated 28.11.2014 rejecting the first panel has not been challenged either by the petitioner or any of the empanelled candidates. Therefore, the first

panel which was forwarded by the school authority has now no legal force.

18. It is submitted on behalf of the petitioner that though a subsequent panel prepared afresh rectifying the first panel is pending for approval, the concerned authorities are sitting tight over the matter.
19. In the affidavit-in-reply the petitioner has annexed the fresh panel which was signed by three members of the selection committee in June 2014.
20. Despite service of notice and a copy of the writ application upon the school authority, no affidavit has been used on the part of the school authority challenging the averments as made by the state authority in its affidavit-in-opposition.
21. What this Court finds, the fresh panel was signed by the Secretary, Headmistress and a teaching staff of Dhupguri Girls' High School. The state authority has challenged the selection committee as constituted by the school authority by referring to Rule 6 of the West Bengal Schools (Recruitment of Non-teaching Staff) Rules, 2005. The rules of 2005 which was in force prior to 01.01.2009 provides that the selection committee for selection of a Librarian shall consist of the following:
 - i) Headmaster;
 - ii) Secretary of the school authority;
Provided that if the Headmaster and the Secretary of the school authority are one and same person, the President of the School authority shall be the member of the selection committee;
Provided further that nothing in the last preceding proviso shall be applicable in case there is an Administrator of the school;
 - iii) Headmaster of a school situated in the same sub-division as the school for which the Librarian is to be selected is situated;
 - iv) An expert who is a Librarian or Teacher of Library Science of a Government or Government sponsored institute or recognised

institution or University situated in the same sub-division or, if a suitable expert as such is not so available, in the same district as the school for which the Librarian is to be selected is situated;

Provided that no Librarian or Teacher of Library Science shall be called in as the expert unless he has a Diploma or Degree from a recognised institute or University and five years' experience as such, and

v) A nominee of the Panchayat Samiti or, in absence of the Panchayat Samiti, a member of the school authority.

Provided that no person who is a staff of a school shall be nominated as the nominee.

22. As the fresh panel as produced by the petitioner evinces, the panel was prepared by only three members. As a consequent thereof the fresh panel as prepared by the school authority was in gross violation of Rule 6 of the West Bengal Schools (Recruitment of Non-teaching Staffs) Rules, 2005.
23. As it is learnt during hearing, the state authority has not yet taken any decision on the fresh panel forwarded by the school authority. However, since the fresh panel has also been prepared in violation of Rule 6 of the West Bengal Schools (Recruitment of Non-teaching Staffs) Rules, 2005, this panel is vitiated with illegality and it is liable to be quashed.
24. Now, the question is whether the state authority as well as the school authority be directed to initiate a fresh selection process after the West Bengal School Service Commission (Amendment Act), 2008 came in force.
25. Since the selection process was initiated in the first part of the year 2008 while the school authority approached the District Employment Exchange to sponsor names of eligible candidates, the right of all the candidates appearing in the list of employment exchange to be

considered for selection of the post of librarian of the school cannot be taken away or curtailed by the advent of the West Bengal School Service Commission (Amendment Act), 2008.

26. Since the right of the eligible candidates to be considered for selection accrued by virtue of the previous rules/government order then in force, they would be guided by those Rules/ relevant Government order.
27. It appears from the list prepared by the Employment Officer, District Employment Exchange, Jalpaiguri that as to sponsoring the names of eligible candidates all the candidates as included therein are within the age of sixty years.
28. Having heard learned counsels appearing for the parties and in view of the observations as above the writ petition may be disposed of by passing the following order.
29. The fresh second panel prepared by the school authority in June, 2014 is hereby quashed.
30. The authority of Dhupguri Girls' High School is directed to constitute a selection committee in terms of Rule 6 of the West Bengal Schools (Recruitment of Non-teaching Staff) Rules, 2005 within three weeks from the date of communication of this judgment and order. After the selection committee is constituted, the selection committee after taking interview of the candidates as included in the list of District Employment Exchange and on consideration of their academic score shall prepare a panel of three candidates according to merit for the purpose of filling up the post of Librarian of the school within four weeks thereafter. After the panel is prepared, the school authority shall forward the panel to the District Inspector of Schools within fifteen days thereafter and in turn the District Inspector of Schools shall transmit the panel to the Director of School Education, Government of West Bengal within fifteen days thereafter for approval. The Director of School Education shall approve the panel immediately

thereafter so that the selected candidate may join the school as Librarian in the school immediately.

31. With the aforesaid directions the writ petition stands disposed of.
32. No order as to costs.
33. All parties may act on the Server Copy of this judgment and order duly downloaded from the Official Website of this Court.
34. Urgent certified/Website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)