

WPA 21651 of 2007

**Sujit Biswas
Vs.
The State of West Bengal & Ors.**

Mr. Shyamal Kumar Das
Mr. Pronojit Roy
Ms. Krishna Yadav
..for the Petitioner

Mr. Tapan Kumar Mukherjee
Ms. Saheli Mukherjee
...for the State

Petitioner having requisite educational qualification being not sponsored by the Employment Exchange for being appointed as Group-D staff (peon) in Auldanga Amulyadhan Roy Vidyapith (High School), District-North 24 Parganas (hereinafter referred to as “said school”) approached the Court by presenting this writ petition, *inter alia*, praying for direction upon the said school authority to permit the petitioner to appear in the interview to be conducted for selection in the post of Group-D. In addition thereto challenge was thrown to vires of Rule 8 (5) (a) of the West Bengal Schools (Recruitment of Non-Teaching Staff) Rules, 2005. The coordinate Bench by passing an order dated 4th October, 2007 directed the said school authority to permit the petitioner to appear in the interview in respect of post of Group-D and at the same time the writ petition was kept

pending by giving direction upon the parties to exchange affidavits. It was also recorded in the said order dated 4th October, 2007 that such permission granted in favour of the petitioner to appear before the interview Board shall not create any equity in his favour in getting employment and same shall abide by the result of this writ petition.

Pursuant to such order dated 4th October, 2007 petitioner participated in the interview held on 29th October, 2007 along with other sponsored candidates and being selected he was offered appointment for the post of Group-D vide appointment letter dated 17th March, 2008. Pursuant to such appointment letter the petitioner joined the post on 20th March, 2008 and the concerned District Inspector of Schools (SE), 24 Parganas (North), Barasat granted approval of appointment in favour of the petitioner vide memo dated 22nd April, 2008 with effect from 20th March, 2008. However, the approval of appointment granted in favour of the petitioner by the concerned District Inspector of Schools is conditional since it has been stipulated in the said approval memo that grant of approval of appointment in favour of the petitioner shall abide by the result of the present writ petition.

Today, Mr. Syamal Kumar Das, learned advocate representing the petitioner submits for disposal of the writ petition on declaring the grant of approval as accorded vide memo dated 22nd April, 2008 as final.

It has also been contended on behalf of the petitioner that selection of the petitioner for the post of Group-D in terms of the order dated 4th October, 2007 passed by a coordinate Bench on this writ petition has not been questioned in any other legal proceeding by other candidates. According to the petitioner since no challenge being thrown to the order of the coordinate Bench dated 4th October, 2007 permitting the petitioner to participate in the interview there is no impediment in confirming the approval of appointment granted in favour of the petitioner.

In support of such submission reliance has been placed on the judgment of the Hon'ble Division Bench reported in **(2011) 2 WBLR (Cal) 562, Shri Sushil Kumar Biswas Vs. The State of West Bengal & Ors.** It is contended that in **Sushil Kumar Biswas** (supra) the Hon'ble Division in similar set of facts upheld the appointment of the appellant upon setting aside the order of the learned single Judge by which the appointment of the appellant was quashed.

The said school authority is not represented. However, State-respondents are represented by Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader.

In spite of giving opportunity to the State-respondents to file affidavit in opposition till date no affidavit has been filed by the State-respondents.

However, Mr. Mukherjee has opposed the prayer of the petitioner and has submitted that in absence of newspaper advertisement for filling up the post of Group-D in the said school the decision of the Apex Court rendered in *Excise Superintendent, Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao* reported in (1996) 6 SCC 216 is not attracted. In this regard reliance has also been placed by Mr. Mukherjee on the decisions of the Hon'ble Division Bench of this Court reported in **(2007) 2 CLJ (Cal) 105, Gaya Nath Rajbanshi Vs. State of West Bengal & Ors.** and **(2008) 1 CLJ (Cal) 912, Debendra Nath Mondal Vs. Ratan Kumar Das & Ors.** On placing reliance on the aforesaid judgments it is contended on behalf of the State-respondents that in absence of newspaper advertisement no right accrues in favour of the petitioner to appear before the interview Board.

Mr. Mukherjee has also relied upon the judgment of a coordinate Bench reported in **(2008) 1 CLJ (Cal) 823, Prabir Kumar Maji Vs. The State of West Bengal & Ors.** wherein Rule 8 (5) (a) and Rule 8 (5) (b) of the West Bengal Schools (Recruitment of Non-Teaching Staff) Rules, 2005 were found to be *ultra vires* and as a sequel thereto the school authority is required to advertise the post in newspaper for wider publication.

In the present case, at my hand interview took place on 29th October, 2007 which was before the judgment was delivered by the coordinate Bench in **Prabir Kumar Maji** (supra) since the date of judgment of **Prabir Kumar Maji** (supra) is 11th April, 2008. Therefore, issue needs to be considered keeping in view of the fact that at the stage when the interview was held for filling up the post of Group-D in the said school judgment of **Prabir Kumar Maji** (supra) was not rendered requiring publication of newspaper advertisement for wider circulation amongst the eligible candidates.

In **Gaya Nath Rajbanshi** (supra) the Hon'ble Division Bench was considering the issue that on applying rotational formula as followed by the Employment Exchange authorities if a candidate though is senior to the sponsored candidate was not considered while sponsoring names to the school authority for holding interview on the ground that the said candidate was earlier sponsored by the Employment Exchange whether the right of the said candidate in connection with interview held in another school subsequently, gets impacted or not. The Hon'ble Division Bench was also considering the right of the candidate to offer his candidature in the context of guidelines relating to the recruitment for filling up the post of non-teaching staff in Government aided recognized school which was issued in terms of Memo No. 1736 (21) GA dated Calcutta, 1st

November, 1999. In the present case, selection process has been initiated in terms of relevant provisions of West Bengal Schools (Recruitment of Non-Teaching Staff) Rules, 2005 that too at a stage when judgment delivered in **Prabir Kumar Maji** (supra) did not see the light of the day. In the judgment of **Debendra Nath Mondal** (supra) the Hon'ble Division Bench considered the issue which cropped up due to fight between the two eligible candidates one was sponsored by the Employment Exchange and another was though not sponsored by the Employment Exchange participated in the interview pursuant to the order passed by this Court. The candidate who was sponsored by the Employment Exchange challenged the participation of another candidate not being sponsored by the Employment Exchange contemporaneously and while deciding the issue it was held by the Hon'ble Division Bench that in absence of newspaper advertisement no right accrues in favour of the candidate who participated in the interview in terms of the order passed by this Court.

In the present case, situation is completely different. In order to find out whether any other legal proceeding is pending at the instance of deserving candidates confined to the selection process for filling up the post of Group-D in the said school this Court directed the learned advocate representing the State-respondents to obtain instruction. It has been submitted

by Mr. Mukherjee representing the State-respondents that apart from the present writ petition no other legal proceeding is pending questioning the selection of the petitioner or the selection process.

While considering validity of decision of the said school authority to permit the petitioner to participate in the interview qua selecting the petitioner for the post of Group-D staff there is no denying fact that the petitioner participated in the interview in terms of the order dated 4th October, 2007 passed by a coordinate Bench on this writ petition. In absence of challenge thrown to such order dated 4th October, 2007 this Court does not find any impediment in putting quietus on the issue which is pending from the year 2007 thereby confirming the order of approval of appointment granted in favour of the petitioner by the concerned District Inspector of Schools vide memo dated 22nd April, 2008.

In this regard reliance is also placed on the judgment delivered by the Hon'ble Division Bench in **Sushil Kumar Biswas** (supra). Almost in similar set of facts the Hon'ble Division Bench decided the issue in favour of the candidate who was appointed in the post of Group-C (clerk) after his participation in the interview pursuant to the order passed by a learned single Judge. It was observed by the Hon'ble Division Bench in paragraph 28 of **Sushil Kumar Biswas** (supra) that there was rider in the approval memo issued by the

respondent no. 3 that the same would be subject to the result of the writ application but it was found to be correct by the Hon'ble Division Bench accepting the submission made on behalf of the appellant since relief as sought for by the appellant was granted by the learned single Judge further direction by the learned single Judge for wider circulation of the post in question was redundant and not appropriate in the factual matrix of the case.

In view of aforesaid discussion, the writ petition stands disposed of confirming the decision of the concerned District Inspector of Schools (SE) 24 Parganas (North), Barasat/ Additional District Inspector of Schools, Bongaon Sub-Division, North 24 Parganas relating to grant of approval of appointment in favour of the petitioner which was accorded vide memo dated 22nd April, 2008.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)