

06 22.03.2023
rkd Ct.15

W.P.A. 18642 of 2009

Jakir Hosen Khan

-vs-

The State of West Bengal & Ors.

Md. Mokarram Hossain,
Sk. Md. Anwarullah

....for the petitioner.

Mr. Swapan Kumar Dutta,
Mr. Dipankar Dasgupta

.... For the State.

The writ petition is presented, *inter alia*, challenging the selection of respondent no.6, namely, Gita Rani Raul @ Hati for the post of Group-D staff in Negua Balika Vidyalaya (High), District-Purba Medinipur (hereinafter referred to as the "said school"). In spite of service of notice upon the respondent no.6 the said respondent is not represented today.

Affidavit-of-service filed on behalf of the petitioner is taken on record.

However, during course of hearing learned advocate representing the petitioner and the State respondents have placed before this Court copy of the affidavit-in-opposition filed by the respondent no.6 affirmed on 13th August, 2010 which is also taken on record and is treated as original affidavit-in-opposition of the said respondent no.6 unless the original affidavit-in-opposition is traced out.

It has been contended on behalf of the petitioner that the selection of the respondent no.6 as Group-D staff of the said school is vitiated on the following grounds:-

- (a) as per advertisement published by the said school authority the candidate was required to possess Class-VIII pass certificate but in the present case according to the petitioner respondent no.6 was not having qualification of Class-VIII pass on the last date of making application for being considered for the post of Group-D staff in the said school;
- (b) it has also been alleged that the respondent no.6 was one of the members of the Managing Committee of the said school when the selection process was conducted by the said school authority therefore the said respondent no. 6 ought not to offer her candidature for the post in question and the selection committee should not have allowed the respondent no.6 to

participate in the selection process.

On behalf of the State respondents no affidavit has been filed. However, it has been submitted by Mr. Dutta, learned Additional Government Pleader that the issue involved in this writ petition requires factual consideration and the writ court is not the appropriate forum to adjudicate the issue on factual aspects.

It appears pursuant to an advertisement made by the said school authority an interview was held on 19th October, 2008 where the petitioner and the respondent no.6 along with other candidates participated for appointment in the post of Group-D. Subsequently, a panel was prepared where respondent no.6 stood first and the petitioner stood third. It has been informed by the learned advocate for the petitioner that the candidate who stood second in the panel has died in the meantime. According to the petitioner respondent no.6 was not having requisite educational qualification of Class-VIII pass at the material point of time. Therefore she should not have been placed in the panel as first candidate and her candidature was required to be cancelled.

In view of such submissions made on behalf of the petitioner, this Court finds it apt to

relegate the issue to the Commissioner of School Education, West Bengal, for taking decision on the validity of panel based on which respondent no.6 has been appointed in the post of Group-D in the said school. It appears from page 51 of the affidavit-in-opposition used by the respondent no.6 that she was appointed as Group-D staff on 15th September, 2009 in the said school therefore it is presumed that such appointment was made in favour of the respondent no.6 pursuant to the panel approved by the concerned District Inspector of Schools wherein respondent no.6 stood first and the petitioner herein stood third.

It has been contended on behalf of the State respondents also that respondent no.6 has been working as Group-D staff of the said school from 15th September, 2009 till date.

In view of aforesaid facts the Commissioner of School Education, West Bengal is directed to take decision on validity of approval accorded by the concerned District Inspector of Schools to the panel in question within a period of twelve weeks from the date of communication of this order after granting opportunity of hearing to the petitioner, the respondent no.6 and the said school authority or their representatives.

The reasoned decision to be passed by the Commissioner of School Education and the same shall be communicated to the parties within two weeks from the date of taking such decision.

However, it is made clear if the Commissioner of School Education decides that the panel is required to be cancelled in that event the vacancy of Group-D shall be forwarded to the concerned District Inspector of Schools for filling-up in terms of the present recruitment rules. In this regard reliance is placed on the judgment of three Judge Bench reported in (2011) 2 CHN (Cal) 1021 (Tulsi Roy –vs- Krishanu Roy & Ors.) wherein it was decided by the three Judge Bench since appointment is made on completing selection process and such appointment is set aside the resultant vacancy would be filled up in terms of new recruitment rules. Similarly in present case if Director decides in terms of this order that selection process is vitiated then on cancellation of appointment of respondent no.6 such resultant vacancy needs to be filled up in terms of the recruitment rules prevalent today.

The learned advocate for the petitioner is granted leave to amend the cause title of the writ petition and add Commissioner of School

Education, West Bengal, as additional respondent in course of this day.

With the aforesaid direction and observation, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)