

31 13.10.2023

Ct-08

ar

FMA 1393 of 2022

with

I.A No. CAN 1 of 2023

Kankinara Arya Vidyalaya & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Saptangshu Basu, Sr. Adv
Mr. Sankar Biswas
Ms. Ananya Adhikary
... For the Appellants

Mr. K.M. Hossain
... For the Respondent no. 5

Mr. Supriyo Chattopadhyay
Mr. Sabyasachi Mondal
... For the State

1. We have heard the learned counsel appearing for the parties.

2. The appellant no. 1 is the school and the appellant nos. 2 & 3 are the Secretary of the Managing Committee and Teacher-in-Charge of the appellant no. 1.

3. The appellants are aggrieved by the order passed by the learned Single Judge directing the appellants to pay arrears on account of monetary benefits that had accrued in favour of the petitioner since August 2021 with a further direction that such benefits would be reflected in the service book of the petitioner.

4. Mr. Saptangshu Basu, learned counsel representing the appellants, has submitted that the appellant no. 1 is a government aided school and

the appellants are no way responsible for the delay in preparation of the panel. Moreover, the appellants have filed a writ petition being WPA 20564 of 2022 questioning the approval of the panel by the D.I in view of lapse of the panel in terms of sub-Rule(n) to Rule 6 of the Recruitment Rules which came into force on 1st December, 1995 by virtue of Government Memo dated 27th October, 1995 (in short Recruitment Rules).

5. The District Inspector of Schools (S.E), Barrackpore, North 24 Parganas, has filed a report in the form of an affidavit in which he has stated that D.I. had no record of submission of the panel of Headmaster by the school authority on 8.9.2016. The present Headmaster was unable to produce any record regarding submission of papers for approval of such panel of Headmaster to the District Inspector of Schools. The District Inspector of Schools (S.E), Barrackpore, sent a letter dated 25.3.2021 to the Teacher-in-Charge of the school to submit panel copy with relevant papers in respect of Headmaster panel of his institution. The then District Inspector of Schools (S.E), Barrackpore sent a letter dated 31.03.2021 to the Teacher-in-Charge of the school to submit some relevant papers in respect of panel of the Headmaster. The School authority submitted

papers regarding approval of panel of Headmaster to the D.I on 26.3.2021 and 28.6.2021 respectively without "No Litigation Certificate". The D.I on 28th July, 2021 directed the Teacher-in-Charge of the school to submit the said No Litigation Certificate. Upon receiving such certificate the District Inspector of Schools (S.E), Barrackpore, approved the panel of Headmaster on 19.8.2021.

6. On 24th September, 2022 the School issued appointment letter requesting the petitioner to join the school. The said letter reads as follows:-

To
Mr. Ashok Prasad,
1) 36/1, L.N. Kabiraj Road,
P.O Garifa, P.S Naihati,
24 Pgs (N), Pin-743166.
2) 106, A.T. Ghosh Road,
P.O Garifa, P.S Naihati,
24 Pgs (N), Pin-743166.

Dear Sir,

I am directed by the Managing Committee desire to inform that you are hereby appointed as Headmaster of the Kankinara Arya Vidyalaya, P.O Kankinara, Dist. North 24 Parganas. You are requested to join with effect immediately between 9 am to 3 p.m except Sunday. This has approval of D.I of School (SE) Memo No. 654/LS dated 19/08/2021 and Memo No. 678/LS dated 02/11/2021 which are enclosed here with. Please confirm your acceptance, date & time by signing on the duplicate copy of this letter.

Thanking You,

Sincerely Yours,

Kankinara Arya Vidyalaya

Encl: As stated above

7. Curiously, the approved panel was not accepted by the school and the school decided to file a writ petition on 5th September, 2022 challenging the said panel on the ground that it had lapsed after it had received approval from the D.I. Surprisingly, during the pendency of the writ application on 24th September, 2022 the letter of appointment was issued. It has been strenuously argued that the school authorities proceeded on a bona fide belief that the panel had lapsed in terms of sub-Rule(n) to Rule 6 of the Recruitment Rules. Such sub-Rule(n) clearly shows that *“the panel shall be sent to the District Inspector of Schools (SE) for approval with all relevant papers within 15 days from the date of interview. The District Inspector of Schools (SE) shall convey his decision within one month from the date of receipt of the panel.*

On getting approval of the panel, the Managing Committee of the school shall issue appointment letter to the 1st empanelled candidate within 15 days. The panel shall remain valid for one year from the date of approval of the panel by the District Inspector of Schools (SE).”

In the instant case, the entire set of papers were received by the D.I after September 8, 2016 and before 19th August, 2021. All the required papers were not sent by the school immediately. On consideration of all required papers, the D.I approved the panel subject to the result of the writ petition.

8. We do not find any justification for not giving the appointment immediately after the D.I has approved the panel. The letter of appointment was issued on 24th September, 2022. There is no explanation offered for the said delay. Moreover, it appears that the panel prepared by the D.I was not accepted and challenged by filing a writ petition on 5th September, 2022. However, the appellants decided to appoint the writ petitioner to the post without disclosing the fact of pendency of the said writ petition. In fact they could not have filed the writ petition after they have accepted the approval order. If they were of the opinion that the panel had lapsed because of its initiation in 2016 they should instead of furnishing information and documents bring it immediately to the notice of D.I concerned of such facts and could have proceeded with the preparation of new panel. In absence of any reasonable explanation offered for not giving

the letter of appointment, the learned Single Judge was justified in directing the present appellants to compensate him with monetary benefits that had accrued in favour of the petitioner since August 2021. The D.I was no way responsible for the said delay. The writ petition filed by the appellants was completely unmeritorious and mischievous.

10. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

11. The appeal fails.

12. In view of the aforesaid, the appeal being FMA 1393 of 2022 stands dismissed.

13. In view of the dismissal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2022 and the same is accordingly dismissed.

14. However, there shall be no order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

