

Ashim Ghosh

Vs.

The State of West Bengal & Ors.

Md. Manuwar Ali
Ms. Moumita Karmakar.

.... For the Petitioner

Mr. Suman Dey

...For the Respondent
No.8

The petitioner claimed to have been appointed as a **Group –D staff at Bahara Adarsha Vidyapith, District – Murshidabad**. The petitioner claimed to have joined at the said school at the said post on March 1, 2005 as would be evident from the **Appointment Letter** relied upon by the petitioner, **Annexure P-1 at page 14 to the writ petition**. The petitioner claimed that he was appointed by the Managing Committee of the said school after adopting the necessary resolution for appointment of the petitioner. The petitioner was working with an unblemished career. The Managing Committee of the relevant school recommended the petitioner before the respondent no.3 for granting approval of the appointment of the petitioner. The petitioner also claimed that the respondent no.3 did not take any step on such recommendation made by the school authority.

The petitioner filed a previous writ petition being **WP 12078 (W) of 2008** which was disposed of by a coordinate Bench by its order dated July 9, 2014 when

the coordinate Bench directed the respondent no.3 to approve the appointment of the petitioners subject to verification of qualification and other formalities, ***Annexure P-2 to the writ petition.***

Pursuant to the said direction, the respondent no.3 decided the issue and passed its reasoned order dated September 12, 2017, ***Annexure-P4 at page 22 to the writ petition.*** Through the said reasoned order, the respondent no.3 rejected the case of the petitioner.

Being aggrieved thereby the petitioner filed the instant writ petition.

Md. Manuwar Ali, learned advocate appearing for the petitioner submitted that the petitioner was duly selected through the duly constituted recruitment process held by the Managing Committee of the said school in the year 2005 and since then he had been working as such with an unblemished career. The petitioner has a right to get an approval for his appointment at the said school for the post of Group – D.

He submitted that, while deciding the issue the respondent no.3 in its impugned order had failed to appreciate the correct legal proposition which made the petitioner eligible to get an approval for his appointment. The respondent no.3 also did not grant any opportunity of hearing to the petitioner and wrongly appreciated the facts and circumstances for the appointment of the petitioner. The said impugned order should not sustain

in the eye of law and the petitioner must receive an appointment.

In support of his contention that since the appointment of the petitioner was not illegal and wrongful and the petitioner had been working since 2005 a valid right had accrued in favour of the petitioner to get an approval for appointment at the school, learned advocate for the petitioner had relied upon a decision of the Hon'ble Supreme Court ***in the matter of : Sheo Narain Nagar and Ors. -vs.- State of Uttar Pradesh and Anr. (2018) 13 SCC 432.***

Mr. Suman Dey, learned advocate appears for the respondent nos. 1 to 4.

After considering the submissions made on behalf of the appearing parties and on perusal of the materials on record, this Court at the outset, thinks it fit to reproduce the finding and observation of the respondent no.3 made in the said impugned order dated **September 12, 2017**. The same is quoted below :

“ That the writ petitioners’ initial engagement w.e.f. 28.02.2005 not having been made in terms of the statutory provisions contained in the recruitment rules i.e. as per G.O.No.1738(21)-GA dt. 01.11.1999 which was prevalent at that point of time to govern such case is void ab initio and non-est in the eye of law. The alleged services rendered by the writ petitioners’ in the said school as an unapproved non-teaching staff is also not maintainable as per rules.

Moreover no process of selection as to how the writ petitioner was selected. There is no legally acceptable mode of engaging any staff as non-teaching staff in a recognized

institution by its Managing Committee by resorting to a fair, transparent and reasonable mode of selection save and except following the statutory provisions, governing such recruitment which were admittedly not done in the instant case.

Hence no relief can be extended to the petitioners in compliance with the order dt.09.07.2014 passed by the Hon'ble Justice Arindam Sinha in W.P. No.12078 (W) of 2008."

From the order dated July 9, 2014 passed by the coordinate Bench in the previous writ petition it appears to this Court that no mandatory direction was there upon the respondent no.3 to grant an opportunity of hearing to the petitioner while deciding the issue.

This Court while exercising its authority in high prerogative writ jurisdiction under Article 226 of the Constitution in judicial review has a limited authority and jurisdiction to assess the said impugned order. This Court will principally look into the decision making process as would be reflected from the impugned order. It is to be borne in mind that the respondent no.3 is the authority and expert to cause the necessary fact finding inquiry on the issue and then to come to its logical conclusion with reasons.

On a close scrutiny of the impugned order dated **September 12, 2017, Annexure-P4 to the writ petition**, this Court is of the firm view that, while deciding the issue the respondent no.3 had duly considered all the relevant materials and facts and ultimately came to a reasoned conclusion that **the**

appointment of the petitioner was not made in terms of the statutory provisions contained in the recruitment rule which was prevalent at the relevant point of time and as such the appointment of the petitioner was void ab initio and non est in the eye of law. It was also found by the respondent no.3 that the alleged services rendered by the writ petitioner at the school as an unapproved non-teaching staff was not maintainable as per rules. Moreover, there was no selection process under which the petitioner was allegedly selected. There was no legal mode of engagement of the petitioner by the Managing Committee of the school. The manner and mode in which the petitioner was allegedly engaged was totally lack of transparency and devoid of the statutory provisions.

The finding and observation of the respondent no.4 were all based on materials available before it and even if an opportunity of hearing was granted to the petitioner, those materials could not be altered or improved in his favour to arrive at a finding in his favour.

In the matter of **Sheo Narain Nagar and Ors. (supra)** the fact of the case was that there was no illegal or wrongful entry in the employment. It was not a case of back door entry. In such factual backdrop the Hon'ble Supreme Court directed the appointment.

In the instant case, the fact-finding inquiry revealed through the said impugned order that, it was a clear case of a back door and illegal entry in the employment which was not curable at all.

The settled principle of law on the issue stares at the case of the petitioner.

In view of the foregoing reasons and discussions, this Court finds ***no infirmity*** at all in the said impugned order dated ***September 12, 2017, Annexure-P4 to the writ petition*** and as such the ***same is not interfered with*** and consequentially ***stands affirmed***.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

In view of the above, this writ petition, ***WPA 25074 of 2022*** being devoid of any merit stands dismissed, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)