

Court No.22

06.7.2023

(Item No. 63)

(AB)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 27054 of 2017

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**C.A.N. 1 of 2020
(Old No. CAN 4823 of 2020)**

Masadul Hossain

VS

The State of West Bengal & Ors.

Md. Sarwar Jahan

Mr. Maidul Islam Kayal

Mr. Asif Mehdi

.... For the petitioner

Mr. Gourav Das

.... For the State

Mr. Kanak Kiran Bandyopadhyay

.... For respondent Nos. 3 to 6

This is a hearing matter upon affidavits.

Mr. Sarwar Jahan, learned counsel appeared for the petitioner.

Mr. Kanak Kiran Bandyopadhyay, learned counsel appeared for respondent Nos. 3 to 6.

The petitioner contended that, the petitioner was engaged as a ***Contractual Vocational Teacher Instructor at one Dharmadanga High School (H.S.), District – Murshidabad.*** In support of his contention he had referred to the documents at ***page 48*** onwards from the writ petition. The petitioner was an aspirant and participated in the ***12th Regional Level Selection Test – 2011 (for short, RLST 2011).*** Drawing attention to ***Annexure P-5 and P-6 at pages 35 and 26*** to the writ petition, learned counsel for the petitioner submitted that, he appeared in the examination. Relying upon ***Annexure P-7 at***

page 37 to the writ petition he submitted that, he was called for the Personality Test. Relying upon **Annexure P-8** at **page 38** to the writ petition he submitted that, the petitioner secured a **Combined Merit Position – 416**. The petitioner claimed that, lower rank candidates had received appointments.

Being aggrieved thereby, the petitioner in the first round of writ litigation came before this Court by way of a writ petition **W.P. 32241 (W) of 2013**. By an order dated **October 9, 2013** the writ petition was disposed of by directing the Chairman, **West Bengal Regional School Service Commission (Northern Region)** to consider the case of the petitioner made in his representation dated **September 27, 2013** and then take a reasoned decision thereupon.

Since the respondent No. 6 did not pass the reasoned order as per the direction of the said co-ordinate bench dated **October 9, 2013**, the petitioner moved a contempt application in which a rule was issued in 2017.

However, the respondent No. 6 then by a forwarding letter dated **September 1, 2017**, **Annexure P-11** at **page 46** to the writ petition had communicated the impugned reasoned order dated **October 29, 2013**, **Annexure P-12** at **page 47** to the writ petition.

The said reasoned order dated **October 29, 2013** passed by the respondent No. 6 is impugned in

this writ petition. Under the said impugned order the claim of the petitioner was rejected to give appointment though he had secured a **combined rank of 416** in the said **RLST 2011**.

The plea for rejection of the petitioner's appointment was that the petitioner was not found eligible for consideration under the special category **In Service** Para Teacher in terms of the condition mentioned in the advertisement for recruitment for the said **RLST 2011** published in the news paper on **December 30, 2011** and as per the **Government Order No. 1584-SE(S)/1A-01/09 (Pt) dated December 21, 2011**. The further plea for rejection was that, the petitioner did not produce any document along with his prescribed application form in support of his status as **In Service** Para Teacher.

Mr. Sarwar Jahan, learned counsel for the petitioner submitted that, the petitioner was a **Contractual Vocational Teacher**, his appointing authority was the relevant school itself in terms of the relevant guideline introduced by the **West Bengal State Council of Vocational Education and Training (for short, the said Vocational Council)**. The petitioner had produced all the material documents in support of his appoint at the time when he participated in the said **RLST 2011**. After being satisfied with those materials produced by the petitioner, the authorities allowed the petitioner to

participate in the said **RLST 2011** and ultimately the petitioner secured a higher rank the **Combined Merit List 416**. Despite having secured the higher rank the petitioner was not selected by the authorities in an illegal, wrongful and arbitrary manner and the lower rank holders were appointed.

Hence, this writ petition.

In course of the argument Mr. Jahan, learned counsel for the petitioner had relied upon a judgment of a co-ordinate bench dated **April 9, 2021 In the matter of: Sri Dibya Jyoti Paul Vs. the State of West Bengal and Ors.** in **W.P.A. 3780 of 2015**. Relying upon the said judgment Mr. Jahan submitted that, the persons who were similarly placed as **Vocational Contractual Teachers** their appointment was considered by the co-ordinate bench in detail after considering all the relevant Rules, Regulations and Government Orders and thereafter the authorities were directed to consider the case of such **Contractual Vocational Teachers** as to whether they would fall within the meaning and expression **“In Service Contractual Teachers”**. Mr. Jahan prayed for identical reliefs in this writ petition.

Mr. Kanak Kiron Bandyopadhyay, learned counsel for the respondent Nos. 3 to 6 referring to **Annexure R-3 at page 31** from his client's affidavit-in-opposition affirmed on August 12, 2020 submitted that, by way of a clarificatory communication dated

December 1, 2014 the Joint Secretary, School Education department had clarified that, **for the approval of the service of the contractual teacher the competent authority should be District Inspector of Schools/Additional District Inspector of Schools, Assistant Inspector of Schools and Sub-inspector of Schools.** Mr. Bandyopadhyay submitted that, the petitioner had failed to produce an iota of evidence in support of his approval of appointment from any such authorities. Accordingly, the appointment of the petitioner was rejected by the impugned order. He further submitted that, the petitioner all along applied as a **Contractual Teacher** simplicitor and not as a **Contractual Vocational Teacher.**

Learned counsel for the petitioner disputed the contention of the learned counsel for the respondents and he further referred to the documents at **page 48 onwards** to the writ petition in support of his contention that, the petitioner was all along pleaded to be a **Contractual Vocational Teacher.**

After considering the rival contentions of the parties and after considering the materials on record, it appeared to this Court that, the said judgment of the co-ordinate bench **In the matter of: Sri Dibya Jyoti Paul (supra)** holds the field.

Mr. Bandyopadhyay has confirmed that no appeal had been carried out there from.

On a reading of the said judgment of the co-ordinate bench, this Court is also in respectful agreement with the same.

In view of the above, the respondent No. 4 shall consider the case of the petitioner in the light of the said judgment of the co-ordinate bench in the matter of: ***Sri Dibya Jyoti Paul (supra)*** as to whether the petitioner shall be considered as an ***In Service Contractual Vocational Teacher*** and is eligible to receive benefit of the ratio laid down by the co-ordinate bench ***In the matter of: Sri Dibya Jyoti Paul (supra)***.

The entire exercise as directed above, shall be carried out and completed by the respondent No. 4 positively within a period of ***four weeks*** from the dated of communication of this order. The case of the petitioner shall be considered on the basis of the materials available before the selection authority in respect of the said ***RLST 2011*** as on the date of submission of documents by the petitioner while seeking to participate in the said ***RLST 2011***. The respondent No. 4 after considering all materials as directed above shall pass its reasoned order in detail. The respondent No. 4 shall communicate its reasoned order to the petitioner within a further period of ***two weeks*** from the date of the said reasoned order to be passed.

In the event, the petitioner succeeds and the reasoned order goes in favour of the petitioner, then all further and consequential steps shall be taken by respondent No. 6 and/or any other authority positively within a period of ***four weeks*** from the date of communication of the said reasoned order.

In the event, the reasoned order to be passed by the respondent No. 4 goes in favour of the petitioner, it will automatically have an ***overriding effect*** on the ***impugned order dated October 29, 2013, Annexure P-12 at page 47*** to the writ petition passed by the respondent No. 6 and the ***same shall lose its force forthwith.***

It is made clear that this order shall not create any equity or right in favour of the petitioner, if the petitioner is not eligible to succeed to his claim strictly in accordance with law.

On the above terms, this writ petition being **WPA 27054 of 2017** along with the application being **CAN 1 of 2020** stand disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)