

22 18.4.2023
Sc Ct. no.22

WPA 27209 OF 2022

Jagajyoti Biswas

Vs.

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharjee
Mr. Subhendu Bandyopadhyay.

.... For the Petitioner

Mr. Bhaskar Prasad Vaisya
Mr. Ranjan Saha.

... For the Respondent
Nos.1 & 4

Mr. Malay Bhattacharya

..For the Respondent
Nos. 5 & 7

Pursuant to the direction made by this Court on March 29, 2023 Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader appearing for the respondent nos. 1 to 4 has brought the affidavit report affirmed on April 10, 2023 on behalf of the respondent no.4 to Court today, time to file for such report is extended till today and the same is taken on record. Copy has already been served upon the petitioner.

Mr. Kamalesh Bhattacharya, learned counsel has taken instruction from his client, viz. Jagajyoti Biswas, the writ petitioner present in Court and submitted that, the petitioner shall not file any exception to the said report and shall proceed on the basis of the existing record.

Mr. Malay Bhattacharya, learned advocate appearing for the respondent nos. 5 and 7 has submitted

that, the stand of his client had already been recorded in the letter dated August 8, 2022, **Annexure-P-12, At page 61** to the writ petition and this submission was also recorded in the order dated March 29, 2023.

A chequered history of writ litigations.

In the instant writ petition the petitioner had challenged the impugned order dated **September 19, 2022, Annexure-P10 at page 57 to the writ petition** passed by the respondent no.4. The said impugned order was passed pursuant to the direction made by this Court on **July 11, 2022** in the previous writ petition, **WPA 1673 of 2019** filed by the petitioner.

The petitioner at the relevant point of time was working as an **Assistant Teacher at Chandernagore Kanailal Vidyamandir (English Section), Chandannagar, District – Hooghly**. The petitioner along with the respondent no.14 had appeared in the selection process for the post of **Assistant Head Master** for the said school. There were three other candidates. A panel for the said post for **Assistant Head Master** was prepared by the relevant school authority comprising of these candidates. The **petitioner** secured the **first position** and the **respondent no.14** had secured the **third position** in the said panel.

The respondent no.4, challenging his result in the said panel, filed a writ petition being **WPA 18921 (W) of 2018**. The same was **disposed of** by an order passed by

a coordinate Bench dated **September 28, 2018**. The other three candidates did not question the said panel in any manner. As such, they were not in the vicinity of these litigations.

The core grievance of the petitioner in the instant writ petition is that, despite a valid panel having been prepared by the relevant school authority on **August 18, 2018** and despite the same having been submitted before the respondent no.4 on **August 29, 2018**, the respondent no.4 denied to approve the said panel principally on two counts, **firstly**, though the panel was prepared and made ready on **August 18, 2018**, the same was not submitted with the respondent no.4 on the same day and **secondly**, when the panel was submitted on **August 29, 2018** before the respondent no.4, the Chandernagore Municipal Corporation (for short the Corporation) stood dissolved by virtue of the executive decision and notification dated **August 24, 2018** and an order was passed on the same day for dissolution by the appropriate **State Executive Authority** on **August 24, 2018, Annexures - R3 and R4 at pages 9 and 10 respectively to the affidavit report** (for short the said report) affirmed on behalf of the respondent no.4.

Mr. Kamallesh Bhattacharya, learned counsel appearing for the petitioner drawing attention of this Court to **pages 68 to 72** of the writ petition submitted that, the panel was duly prepared and made ready for

appointment for the post of **Assistant Head Master on August 18, 2018** and was duly signed by each and every member of the selection committee. Mr. Bhattacharya also submitted that, from the panel prepared by the selection committee it would appear that, the petitioner secured the **first position**. He then drew attention of this Court to **page 73 to the writ petition** and submitted that, by virtue of the said resolution adopted by the each and every member of the Selection Committee in a joint meeting, the panel was agreed to be sent before the **Education Committee of the said Corporation** with a recommendation for onward forwarding the same for approval of the panel. It appeared that, the President of the Selection Committee had also signed the said resolution on **August 18, 2018**. Mr. Bhattacharya then drew attention of this Court to **Page 74 to the writ petition** which was a **note-sheet dated August 24, 2018**, wherefrom it appeared that, the Selection Committee had unanimously decided to send the panel before the Education Committee of the Corporation and to obtain necessary approval thereupon from the relevant State authority, i.e., the respondent no.4 herein.

Learned counsel for the petitioner then drew attention of this Court to **Page 75 to the writ petition** and submitted that, the **Sub-Divisional Officer**, the respondent no.6 being the **President of the Education Committee of the Corporation** had also endorsed his

approval by putting his signature on the approval-sheet on **August 28, 2018**.

Learned counsel for the petitioner then drew attention of this Court to the stand taken by the respondent no.4 in the report. He submitted that, from the averments made in the report on oath by the respondent no.4 it appeared that, the interview had taken place on **August 18, 2018** but the **score-sheet** was prepared finally on **August 23, 2018** which allegedly, according to the respondent no.4, was in violation of **para 3. (E) of the Government Order No.1628 – GA/OM-18/2001** dated **July 10, 2002** (for short the said Government Order). The statements from the report demonstrated that, the panel was finally submitted at the office of the respondent no.4 on **August 29, 2018**. On the basis of the said stand taken by the respondent no.4, Mr. Kamallesh Bhattacharya, learned counsel submitted that, it was an admitted position that, the panel was made ready and finally prepared on **August 18, 2018** and even if the statements of the respondent no.4 to be taken, that the panel was finally prepared on August 23, 2018, then also the event for preparation of panel had happened before dissolution of the Corporation.

Mr. Bhattacharya submitted that, the impugned decision therefore in rejecting the approval of the panel was illegal, wrongful and is liable to be set aside and

necessary direction may be made for approval of the panel.

Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader appeared for the respondent nos. 1 to 4. He submitted that, the rejection was on two counts **firstly**, in terms of **paragraph 3.(E)** it was the **bounden obligation of the Selection Committee after preparing the panel on the date of interview to submit the same to the Managing Committee/Ad-Hoc Committee/Administrator** of the relevant Corporation, which was not done in the instant case as the final panel, according to him, was prepared on **August 23, 2018** and was submitted before the respondent no.4 on **August 29, 2018** which was post-dissolution event and as such, there was no question of sanction by the relevant Corporation authority of a dissolved Corporation and, therefore, the **Additional District Inspector of Schools (S.E.), Chandannagar** had no authority to approve the same. He further submitted that, the respondent no.6 had approved the panel finally on **August 28, 2018**, which was also a post-dissolution event. He submitted that, the impugned order of rejection for approval of the panel dated **September 19, 2022** is lawful, valid and should not be interfered with.

Mr. Malay Bhattacharya, learned counsel for the respondent nos. 5 and 7 referring to **Annexure – P12 at page 61 to the writ petition** submitted that, the stand

of the Corporation had been narrated there and the Corporation had adopted the said stand even today. The relevant portion from the said document dated August 8, 2022, disclosing the stand of the Corporation, is quoted below :

“In the said order the Education Committee has been empowered to serve the function of managing Committee for all purposes.

5) Thus under the above mentioned facts and circumstances, the provision of 3A of the said guideline dated 10.07.2002 shall be applicable in case of formation of selection Committee for the post of AHM of the present situation wherein the petitioner participated in the process of personality test and when the school Authority i.e. Education Committee constituted such selection Committee for selection to the said post of Asstt. Headmaster as per provision of para 3A of the said guidelines dated 10.07.2002 is valid and legal one.

6) The findings and observation by the Addl. D.I. of schools (SE) Chandernagore in the order dated 12/12/18 regarding preparation of the panel in the present matter are not correct, in view of the facts that all the members of the selection Committee put their signature on the individual score sheet on the date of interview (i.e.18.08.2018) and thereafter few of them refused to sign the final panel prepared on the same day for the reasons best known to them.

However, on the day of interview the panel was prepared by the majority members i.e. 3 members and as such the panel is valid as per para 3D of the said guideline.

7) Hon’ble Court order dt.11.07.2022 passed by Hon’ble Justice Aniruddha Roy in the W.P. 1673 of 2019 clearly states that “After hearing the learned counsel appearing for the parties and on perusal of materials on record, it appears to this Court that, justice will be sub served to the parties if the said impugned decision dated December 12, 2018 which had not taken into account of the said Government order dated June 23, 2014, Annexure P-8 to the writ petition is set aside with a direction upon the fourth respondent to consider the case in terms of the earlier order dated September 28,

2018 passed in the previous writ petition taking into account of the said Government order dated June 23, 2014, Annexure P-8 to the writ petition .

In view of the above, the said impugned decision dated December 12, 2018 Annexure P-7 to the writ petition, **stands set aside and quashed.** The fourth respondent is directed to consider the issue afresh in terms of the said direction of the co-ordinate Bench dated September 28, 2018 passed in W.P. No.18921 (W) of 2018 taking into consideration of the said Government order dated June 23, 2014, Annexure P-8 to the petitioner, after giving hearing to the parties concerned and to pass a reasoned order thereupon”

8) The then Additional District Inspector of Schools (S.E), Chandernagore failed to understand the locus standi of the Govt. order dt. 23rd June 2014 of school Education Department. The order clearly purports the view that Education Committee of Chandernagore Municipal Corporation is the Managing Committee of the school.

9) Moreover, the DSE's memo vide No.1628-GA/OM-18/2001 dt.10.07.2002 there is a provision 'In case of Municipality/Corporation managed non-Govt. recognized school having no individual Managing Committee and managed by the Corporation/Municipality centrally will form a selection committee with the following members

- a) Headmaster of the school.
- b) Subject Expert**
- c) One of the representatives from the teachers to be selected by the teachers
- d) One of the nominee of the D.I.S.(SE)
- e) One nominee of the Corporation/Municipality

10) Actually, for the post of Assistant Headmaster 5 (five) candidates appeared having different subjects eg. English, Bengali, Commerce, French, Work Education etc.

For selection and recruitment to the post of Assistant Headmaster many aspiring assistant teachers having qualification in different subjects may apply. Thus incorporating one '**subject Expert**' in the selection committee of the selection of Assistant Headmaster seems inappropriate. Hence the exception of 3A of 1628 is itself is defective and

not tenable for the selection of an Assistant Headmaster in the above said guideline.

11) In the impugned order dt. 12.12.2018 of the Addl. District Inspector of School (SE), Chandernagore it was alleged that "the panel was prepared on 23.08.2018 but as per para 3E of the Guideline panel should have been prepared by the selection Committee on the date of interview" which is not correct.

D) **Facts for consideration :**

Actually, the panel was prepared on 18.08.2018 i.e. on the date of interview. All members of the selection committee put their signatures in the individual score sheet on the date of interview i.e. 18.08.2018.

The panel was prepared by the majority of the members i.e. 3 (three) members on the day of interview i.e. 18.08.2018 and such a panel is valid as per para 3D of the said guideline.

Thus, I submit the fact the most eligible candidate secured the first position in the panel prepared by the selection committee and the selection committee was duly constituted in strict compliance with the relevant rules and Regulations as laid down by the Education department of the Govt. of West Bengal.

Moreover, the entire process of personality test (viva) was videographed under the instruction of the competent authority of Chandernagore Municipal Corporation, for the sake of transparency of the selection process..

Hon'ble Justice Aniruddha Roy of Calcutta High Court mentioned in the order "The 14th respondent (Chandra Sekhar Pal) chose not to file any affidavit-in-opposition in this writ petition despite instructions".

Under the above circumstances, I request you to approve the panel prepared by the selection committee on 18.08.2018."

In the light of the above stand, taken by the respondent nos. 5 and 7, Mr. Malay Bhattacharya, learned counsel submitted that, there was no illegality *per se* in the relevant selection process and the subject panel was finalised and prepared on **August 18, 2018** was perfect and lawful. He submitted that, there was no

reason on the part of the respondent no.4 for not approving the said panel on the ground of any illegality.

Mr. Bhattacharya had also added a rider that, the concerned school had been suffering for last more than five years in absence of Assistant Head Master. In effect, the interests of the students are being prejudiced every day.

After considering the rival contentions of the parties and upon perusal of the materials on record, for proper appraisal of the issue in this writ petition, this court thinks it fit to reproduce the relevant provisions from the said **Government Order dated July 10, 2022** appearing **at page 42A to the writ petition** as follows :

“3.D) A panel shall be prepared with average of marks awarded by each of the Members of the Selection Committee in his/her individual score-sheet with signature. If any of the members wants to keep his/her opinion reserved, he/she shall submit a blank sheet containing names etc. of the candidates and duly signed by him/her and average shall be calculated on the marks awarded by other members. The Panel shall be prepared in presence of at least 3 (three) Members out of 5 (five) Members of the Selection Committee and the panel should be signed by all these Members.

*3.E) The Selection Committee after preparing the Panel on the date of interview **shall** submit the same to the Managing Committee/Ad-Hoc Committee/Administrator. The Managing Committee/Ad-Hoc Committee/Administrator shall examine the panel and forward a panel of 3 (three) candidates according to their positions to the District Inspector of Schools (S.E.) for approval alongwith all relevant papers within 15 days from the date of interview. The Dist. Inspector of Schools (S.E.) shall convey his decision within one (1) month from the date of*

receipt of the panel from the Managing Committee/Ad-Hoc Committee/Administrator.”

The admitted fact is that, the interview was held on **August 18, 2018**. The relevant selection process took place on **August 18, 2018**. The record further revealed that, the panel was prepared by the Selection Committee by putting everybody’s signature on the relevant document appearing at **pages 68 to 72** on **August 18, 2018**. Even if the contention of the respondent nos. 1 to 4 is taken into account that, the panel was finally prepared on **August 23, 2018**, then also the preparation of panel and its finalisation had taken place, admittedly, prior to the dissolution of the Corporation, i. e, dated **August 24, 2018** as would be evident from **Annexures – R3 and R4** to the report. The approval by the respondent no.6 which might have taken place on **August 28, 2018**, being a post-dissolution event, was merely a ministerial and an administrative act.

From a plain reading of **Paragraph 3.(D)** from the said **Government Order at page 42A to the writ petition**, it appeared to this Court that, the documents at **Pages 68 to 72** were prepared in conformity with the provisions laid down thereunder. **Paragraph 3.(D)** further provided that the panel shall be prepared in presence of at least 3 (three) members out of 5 (five) members of the Selection Committee and the panel should be signed by all these members. A scrutiny of the

said document at **pages 68 to 72** revealed to this Court that, those documents were in sync with the provisions laid down under **paragraph 3.(D)** of the said **Government Order**.

On a reading of **Paragraph 3.(E)** of the said **Government Order**, it appeared to this Court that, the **Selection Committee** after preparing the panel on the date of Interview **shall** submit the same to the **Managing Committee/Ad-Hoc Committee/Administrator** and shall examine the panel and forward the panel of three candidates according to their positions to the respondent no.4 for approval along with all relevant papers **within fifteen days** from the date of interview. In the facts of this case, the date of interview was **August 18, 2018** and the panel was sent to respondent no.4 on **August 29, 2018**, which was within the said stipulated period of fifteen days as stipulated under **Paragraph 3.(E)** of the **Government Order**.

On a close perusal of the aforesaid provisions of the Government Order and on a meaningful reading thereof, this Court is of the firm view that, these provisions are the procedural and also merely ministerial and administrative in nature. When a candidate had become successful in a selection process, it is true that, merely being empanelled a right cannot accrue in favour of a candidate but it is equally true that, the candidate should not suffer for the ministerial act of the relevant

administrative authority. The lapses, if at all, as alleged by the learned Government Pleader, in the facts of this case, can be construed and considered as **irregularity** but not an **illegality** *per se*, for which the selected candidates would suffer without any laches on their part. The said Government Order was an Executive directive. The petitioner being a selected candidate had a role to play up to the stage of appearing at the relevant examination or selection process and thereafter he had no role to play whatsoever. The petitioner after being selected in a validly held selection process, then the obligation of the administrative authority begins to take step for approval of the panel, on which no role can be attributed to the petitioner in any manner. The expression “**shall**” used in **Paragraph 3.(E)** of the said Government Order, thus, cannot be construed as mandatory but is directory.

For the reasons discussed above, this Court is of the firm view that ***the order impugned dated September 19, 2022, Annexure – P10 at page 57 to the writ petition should not sustain, and accordingly, stands set aside and quashed.***

The respondent no.4 is directed to approve the panel for the post of **Assistant Head Master** of the relevant school by carrying out all necessary formalities in accordance with law ***positively within a period of six weeks from the date of communication of this order.***

In the event, any cooperation is required by the respondent no.4 from the petitioner or the Chandernagore Municipal Corporation and/or its Managing Authorities and the relevant school, all of them shall render all necessary assistance to the respondent no.4 for compliance of the direction made herein.

In view of the above, this writ petition, **WPA 27209 of 2022** stands allowed.

Accordingly this writ petition stands disposed of, without any order as to costs.

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

(Aniruddha Roy, J.)