

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P.A. 23442 of 2012

Pratima Bag (Das)

-vs-

The State of West Bengal & Ors.

For the Petitioners : Mr. Debasish Sarkar, Adv.
Mr. Pappu Adhikari, Adv.

For State : Mr. Supriyo Chattopadhyay, Adv.
Mr. Suman De, Adv.

Hearing concluded on : 26.04.2023

Judgment On : 26.04.2023

Saugata Bhattacharyya, J.:

The writ petition relates to selection for the post of Group-D in a Government aided high school. Petitioner being the first empanelled candidate is claiming appointment in the post of Group-D in Harina High School, District- Paschim Medinipur, (hereinafter referred to as “said school”), upon cancellation of the decision of the Additional District Inspector of Schools (SE), Khargpur, District- Paschim Medinipur, being the respondent no. 4 as contained in memo dated 8th January, 2010 whereby the said respondent no. 4 refused to approve the panel prepared by the said school authority on giving certain reasons; therefore the subject matter of

challenge in this writ petition is the memo dated 8th January, 2010 issued by the respondent no. 4 wherein it has been stated that the panel prepared by the said school authority for appointment in the post of Group-D cannot be approved chiefly on two grounds:

(i) There was inordinate delay in preparation and submission of aforesaid panel.

(ii) Panchayat nominee being one of the members of the selection committee though actively participated in the selection process and allotted marks to the appearing candidates but did not sign at the relevant parts of the panel in question.

Mr. Sarkar, learned advocate representing the petitioner while questioning the said decision of the respondent no. 4 as contained in memo dated 8th January, 2010 has submitted the delay in preparation and submission of panel in question is not fatal in considering the fate of the panel since the provision as contained in West Bengal Schools (Recruitment of Non-teaching Staff) Rules 2005 (hereinafter referred to as “Rules of 2005”) though provides for preparation and submission of panel within certain time but the same is directory in nature. Therefore while taking decision on the fate of the panel the respondent no. 4 ought not to have resorted to such delay caused by the said school authority in submitting the said panel before the respondent no. 4 seeking approval.

While answering the second point raised by the respondent no. 4 that in spite of active participation by the Panchayat nominee being one of the members in the selection committee he did not put the signature in the

panel petitioner has submitted that there were more than 50% members of the selection committee who were present on the date of interview on 17th August, 2008 therefore failure to put signature on the panel should not impede the respondent no. 4 to approve the said panel. In support of such contention reliance has been placed on two judgments (a) **1987(2) CLJ 144 (The District Inspector of Schools, Murshidabad & Ors. -vs- Samsul Huda & Ors.)**; (b) an unreported judgment of the Delhi High Court on a writ petition being **W.P.(C) 8341 of 2017 dated 12th March, 2018 (Talluri Srinivas -vs- Union of India, Ministry of Corporate Affairs and Another)**.

Mr. Chattopadhyay, learned senior Government Advocate representing the State respondents has defended the impugned decision of the respondent no.4 dated 8th January, 2010 and submits that panel was required to be prepared in terms of Rules of 2005. Rule 6(1)(b) provides constitution of the selection committee for appointment of Group-D staff in a government aided high school; four members who will man the selection committee are Head of the said school, Secretary of the said School, Headmaster of a school situated in a same sub-division where the school in question situated and Panchayat nominee.

It has been submitted on behalf of the State respondents that in the present case Panchayat nominee participated in the selection process being one of the members of the selection committee and awarded marks to the candidates who appeared in the interview but subsequently decided not to put signature on the panel. Therefore, according to the State respondents there is no flaw in the decision taken by the respondent no. 4 refusing to approve the panel in question.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on records as well as copies of the records relating to the panel which have been placed before this Court pursuant to the previous order dated 5th April, 2023. On consideration of the entire gamut of the issue it appears that on the date of interview i.e., 17th August, 2008 all the four members of the selection committee namely the Head of the said school, Secretary of the said school, External expert and the Panchayat nominee actively participated in the selection process and awarded marks to all the 33 candidates who appeared before the said selection committee. Based on the individual marks awarded by the four members of the selection committee average marks were calculated against those 33 candidates and a consolidated score sheet was prepared. Therefore, it emanates from the consolidated score sheet produced before this Court today that while reckoning the marks of viva voce average marks based on individual marks awarded by four members of the selection committee were taken into consideration which includes marks awarded by the Panchayat nominee.

In view of participation of the Panchayat nominee in the selection process as discussed above it appears that he is required to put signature on the score sheet and other documents relating to the panel which would authenticate the marks awarded by him which was taken into consideration by the selection committee for preparation of the panel. Therefore, it was incumbent upon the panchayat nominee to put signature on the individual score sheet and consolidated score sheet relating to the said panel as it has been done by other three members of the selection committee. Due to absence of signature of the Panchayat nominee on the relevant parts of the documents relating to panel in question it appears to this Court that the said panel including the selection process was vitiated.

The judgments relied upon by the petitioners are of no help in view of the fact that in **Samsul Huda** (supra) the Hon'ble Division Bench was considering a situation where members of the selection committee did not participate and did not award marks in favour of the candidates who took part in the selection process. In that fact situation the Hon'ble Division Bench held in **Samsul Huda** (supra) that presence of 50% members would constitute quorum of the selection committee which is necessary for giving credence to the panel prepared by the selection committee. The unreported judgment of the Delhi High Court dated 12th March, 2018 in **Talluri Srinivas** (supra) deals with the situation where order of the appellate authority was put under challenge on the score that the appellate authority should have been constituted with 5 members but the order was passed by the four members excluding one member. In the said case fact was completely different since one member of the appellate authority did not participate in the decision making process.

In view of aforesaid scenario this Court does not find merit in the writ petition and accordingly the same stands dismissed thereby confirming the decision taken by the respondent no. 4 as contained in memo dated 8th January, 2010.

In view of cancellation of panel as decided by the respondent no. 4 the said school authority as well as the State respondents shall be at liberty to notify the vacancy to the School Service Commission for filling up the post of Group-D at an early date.

There shall be no order as to costs.

Copies of the documents produced before this Court relating to the impugned panel are taken on record.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)