

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA 7202 of 2020

Pulak Tung & Ors.

....Petitioners

-Vs-

The State of West Bengal & Ors.

..... Respondents

- - - - -

Mr. Ekramul Bari, Adv.
Ms. Tanuja Basak, Adv.

..... for the Petitioners

Mr. Supriya Chattopadhyay, Adv.
Mr. Biswarup Biswas, Adv.

..... for the Respondent Nos. 1
to 3

Mr. Sardar Amjad Ali, Adv.
Ms. Masum Ali Sardar, Adv.

.....for the Respondent No. 6

Heard On : 21.12.2022

Judgment on : 03.02.2023

Rabindranath Samanta, J:-

1. The petitioners by filing this writ petition challenge a Memo dated 01.01.2020 issued by the Director of Mass Education Extension, Government of West Bengal, the respondent No.2 and an another Memo dated 10.12.2021 issued by the O.S.D & Ex-Officio Director of Mass Education Extension, Government of West Bengal and pray for direction upon the respondents to approve the panels prepared by the

Selection Committee of the respondent No.4 School and appoint the petitioners as teaching and non-teaching staff of the school.

2. Be it noted that during the pendency of the writ application the name of the petitioner No.3 Avijit Mandal was struck out from the cause title of the application vide order dated 19.12.2022 on his prayer.
3. The facts which led to the filing of the writ petition may be summarised as under:

Ananda Bhawan Deaf & Blind School at Brindabanpur, Howrah is a recognised school under the Government of West Bengal and financial assistance including Government sponsorship have been extended to this school. By a Memo dated 3rd December, 2018 the Joint Secretary to the Government of West Bengal asked the Director of Mass Education Extension to fill up six posts of Ananda Bhawan Deaf & Blind School along with other educational institutions. By a circular dated 24.04.2017 procedure of appointment of teaching and non-teaching staff in a sponsored school has been prescribed. In terms of this circular a selection committee was constituted consisting of four members and the concerned Sub-Divisional Officer was the Chairman of the Committee.

4. In response to an advertisement published in a State level Bengali Daily newspaper namely “Ei somoy” and the Daily English newspaper namely “Times of India” at the behest of the school authority to fill up six posts viz Assistant Teacher (UR), Assistant Teacher (ST), Librarian (UR), Clerk-cum-Cashier (UR), Peon (UR) and Night Guard (UR) the petitioners made applications to the aforesaid school for appointment of the said posts. By issuing letters the selection committee called the petitioners on 15.06.2019 to appear in the Interview. After completion of the interview, the selection committee prepared six panels. Each of the petitioners topped the panel in respect of different category of posts. The panels so prepared by the selection committee was

approved by the managing committee of the school. Thereafter, the panels were submitted to the respondent No.2, the Director of Mass Education Extension through the District Mass Education Extension Officer, Howrah, the respondent No.3 herein. The petitioners state that the panels prepared by the selection committee and approved by the managing committee of the school were not approved by the Director of Mass Education Extension, Government of West Bengal. The petitioners complain that the respondent No.2 while disapproving the panels did not assign any reason. The petitioners submit that the decision of the respondent No.2 is absolutely non-speaking without any prudent reason and without disclosure of any fault detected in the panels. The panels were prepared by the Sub-Divisional Officer, District Mass Education Extension Officer, Teacher-in-Charge and the expert appointed by the District Magistrate, Howrah. In such factual position, there cannot be any violation of the provisions as to preparation of the panels.

5. While the respondent No.3, the District Mass Education Extension Officer submitted the panels to the Director of Mass Education Extension he advocated before him for approval of the panels giving sufficient reasons therein.
6. Though the Memo dated 07.01.2020 of the respondent No.2 did not spell any reason of violation of the existing rules, the petitioners on verbal discussion with the authority concerned came to learn that the concerned authority raised objection that the Sub-Divisional Officer who was the Chairman of the Selection Committee was not present when the interview was conducted on 15.06.2020, the advertisement was published by the Selection Committee before nomination of expert member from the District Magistrate, Howrah and before starting of the recruitment process roster register was not authenticated.

7. The petitioners allege that the entire action on the part of the respondents is illegal and mala fide and accordingly the Memo dated 07.01.2020 is liable to be set aside. Under such circumstances, the petitioners pray that the Memo dated 07.01.2020 issued by the respondent No.2 be rescinded and the respondents be directed to approve the panels and give appointment to the petitioners.
8. The respondent No.2, the District Mass Education and Extension Officer, Howrah in his affidavit-in-opposition states that the selection committee was not constituted properly as there was no expert in the Committee as mandated vide G.O. No. 337-MEE/Sectt dated 24.04.2017. The School authority has failed to submit any document to evince that it posted the detailed job requirement in the portal <https://employmentbankwb.gov.in>. On scrutiny of register of application it was found that the school authority received some applications from the aspiring candidates even after expiry of the stipulated time. Before initiating the process of recruitment the school authority without authentication of the roster of register from the Department of Backward Classes Welfare published the advertisement. On such grounds and denying and disputing the averments as made in the writ application this answering respondent submits that the writ application is liable to be dismissed.
9. On the other hand, the respondent No.6, the teacher-in-charge of the said school, in his affidavit-in-opposition challenges the advertisement on the reason that the advertisement was published without getting the register of roster authenticated from the concerned department. This respondent states that reservation status for two teaching posts as per register of appointment authenticated by the Backward Classes Welfare Department was reserved for one ST and another SC candidate. Dibyendu Sahoo, son of Manas Kumar Sahoo who was selected for the post of Night Guard (Un-reserved) is the sister's son of Alpana Munian, then teacher-in-charge and secretary of the school.

10. Tandrashree Das Adhikary who was selected for the post of Clerk-cum-Cashier (UR) is the daughter of Sri Jayanta Das, a retired clerk-cum-cashier of the same school. As to Avijit Mandal who was selected for the post of Librarian, this answering respondent states that he was introduced by the then District Mass Education Officer, Howrah to the school authority as his cousin. Avijit Mandal used to supply garments, shoes, school bags etc to the school authority for disabled children as supplier. On such grounds and denying the averments this answering respondent also submits that the writ application is liable to be dismissed.
11. However, the petitioners in their affidavits-in-reply to the affidavits-in-opposition of the said respondents flatly deny the allegations as made in the opposition. By a supplementary affidavit filed on 16th November, 2022 the petitioners state that the teacher-in-charge of the school and the District Mass Education Officer who favoured the panels on selection of the candidates in their official course of business cannot take different stand by filing affidavits raising objection to the panels as prepared by the selection committee. By annexing a copy of order dated 5th August, 2019 issued by the Joint Commissioner for Reservation and Ex-Officio Joint Secretary of the Backward Classes Welfare Department and a copy of the Memo dated 28.08.2019 issued by the Assistant Commissioner for Reservation and Ex-Officio Joint Secretary of the Backward Classes Welfare Department the petitioners submit that the post of Assistant Teacher which was reserved for SC candidate, but filled up by the Un-reserved candidate can be carried forward to the nearest Un-reserved vacancy namely the fifth vacancy for filling up by SC candidate.
12. It may be mentioned here that the petitioners by affirming a supplementary affidavit in December 2021 challenge a Memo dated 10.12.2021 issued by the O.S.D & Ex-Officio Director of Mass Education Extension, West Bengal by which the school authority was

asked to initiate the process of recruitment afresh subject to the result of the instant writ petition.

13. Admittedly, Ananda Bhawan Deaf & Blind School is a recognised sponsored school and financial assistance is extended to this School from the Government. Procedure for appointment of teaching and non-teaching staff in a sponsored institution for the handicapped students under the Directorate of Mass Education, West Bengal is guided by Memo No. 337-MEE/Sectt/EM/O/3'S'-54/2017 dated 24.04.2017 issued by the Department of Mass Education Extension & Library Service, Government of West Bengal. For the purpose of selection of teaching and non-teaching staff of such institution, a selection committee requires to be constituted with the following members:

- i) President of the Managing Committee of the School-Chairman
- ii) Secretary of the Managing Committee of the School-Member Convenor
- iii) District Mass Education Extension Officer of the concerned District-Member
- iv) An expert to be nominated by the District Magistrate of the concerned District-Member

14. In terms of the aforesaid circular dated 24.04.2017 a selection committee was constituted for selection of the aforesaid teaching and non-teaching staff of the school which comprises the following members:

- i) Sub-Divisional Officer, Chairman
- ii) Secretary of the Managing Committee of the School/Teacher-in-charge- Member Convenor
- iii) District Mass Education Extension Officer-Member
- iv) An expert nominated by the District Magistrate, Howrah-Member

15. As resolved by the selection Committee, an advertisement was published in one State Level Bengali Daily and One State Level

English Daily inviting applications for filling up six different posts namely Assistant Teacher (UR), Assistant Teacher (ST), Librarian (UR), Clerk-cum-cashier (UR), Peon (U.R) and Night Guard (UR).

16. Undisputedly, the Teacher-in-Charge/Secretary of Ananda Bhawan Deaf & Blind School, Howrah as a convenor of the selection committee issued letters dated 03.06.2019 to all the petitioners including the petitioner Avijit Mandal inviting them to appear before the selection committee for interview on 15.06.2019 at 10:00 A.M at the school premises. They were also asked to bring all testimonials in original with the call letters for verification before the commencement of the Interview.

17. Admittedly, the list of panels for 6(six) different posts as mentioned above for the said school was prepared as under:

A) Panel of Assistant Teacher (Unreserved) **B) Panel of Clerk cum Cashier (Unreserved)**

- | | |
|---|--|
| 1. Sri Pulak Tung....1 st . | 1. Tandrashree Das Adhikery....1 st |
| 2. Arpita Pramanick....2 nd | 2. Montu Purkait....2 nd |
| 3. Sangeet Sundar Mondal....3 rd | 3. Peulin Basu....3 rd |

C) Panel of Assistant Teacher (S.T).

1. Biswajit Tudu....1st.
2. Bikash Ch. Murmu....2nd
3. Sukdeb Soren.... 3rd

D) Panel of Peon (UR)

1. Debangsu Das.... 1st
2. Maruf Rahaman Moll....2nd.
3. Arijit Singha Ray....3rd

E) Panel of Librarian (UR).

1. Avijit Mandal....1st.
2. Anup Kr. Paul....2nd
3. Somenath Halder....3rd

F) Panel of Night Guard (UR).

1. Dibyendu Sahoo....1st.
2. Abhisekh Ray....2nd
3. Dibeyendu Das.... 3rd

18. After the aforesaid panels were received by the District Mass Education Officer, Howrah from the school authority, the District Mass Education Extension Officer vide Memo No. 147/DMEEO/HOW/A-4 dated 26.06.2019 made prayer to the Director of Mass Education Extension & Ex-Officio Additional

Secretary, M.E.E & LS Department, Government of West Bengal for approval of recruitment of 06(Six) different posts of Ananda Bhawan Deaf & Blind School. In such context, the contents of the Memo may be reproduced as under:

“ Respected Madam,

In reference to the subject cited above, I am submitting & as well as recommending herewith the 02(two) sets of Complete Recruitment Procedure Matter towards final Panel list of Ananda Bhawan Deaf and Blind School (Govt. Sponsored Special School) along with the relevant enclosures as submitted by the TIC/Member Secretary & the Member Convener of Selection Committee, ABD&B School Howrah, vide Memo No. AB/40-314 Dated 26/06/2019 for prior Approval in an early date accordingly. (Copy Enclosed).

It has been Brought to kind notice that, the Selection Committee has been conducting of only Personality Test/ Via-Va Test basis for the Recruitment of 06(Six) No. Of Posts of ABD&B School, Howrah as like as AT(UR), AT(ST), Librarian (UR), Clerk-Cum-Cashier(UR), Peon (UR) & Night Guard (UR) respectively. Total 147 No's of Applicants have been applied thorough the concerned two Daily News Papers [i.e Ei-Samay & Times of India] & also from Employment Bank, Govt. Of W.B. for 06(six) No's of different Posts- where as 78 No's of Eligible candidates were called for Personality Test/ Via-Va Test on the basis of Essential Qualification with preferably Experience of similar nature also Desirable Qualification and Specific Extra Curriculum etc. Thereafter, 06(Six) No's of Eligible Merit Candidates have been finally Selected for each different Posts [i.e 1) Sri Pulak Tung, AT(UR)-1st, 2) Biswajit Tudu, AT(ST)-1st, 3) Avijit Mandal,

Librarian (UR) -1st, 4) Tandrashree Das (Adhikary), Clerk-cum-Cashier(UR)-1st, 5) Debangsu Das, Peon (UR)-1st, 6) Dibyendu Sahoo, Night Guard (UR)-1st] on the basis of Academic Score with preferably Experience of similar nature also Desirable Qualification and Specific Extra Curriculum & also scoring of Personality Test/ Via-Va Test respectively apart from the Concerned Selection Committee. The Said Committee has been follows regarding Recruitment Matter of Departmental Circular, vide No. 337-MEE/Sectt, Dt. 24/04/2017 & No. 681/MEE/Sectt, Dt. 03/12/18 respectively and also maintaining of Govt. Norms including raising of AGE Limit criteria accordingly (Copy Enclosed). All kind of Recruitment Procedure has been done by the concerned committee in smoothly.

Considering the above, I would fervently request you to please give in a accord Prior Approval for 06(Six) No's of different Posts for smooth functioning of the said institution at the earliest & obliged.

Thanking You,

Yours faithfully,

District Mass Education Extension Officer, Howrah”

19. In response to the aforesaid Memo dated 26.06.2019 the Director of Mass Education Extension by the Memo dated 07.01.2020 which is under challenge observed as under:

“ In inviting a reference to the subject cited above the undersigned is to state that due to gross violation of Govt. rules during the entire recruitment procedure followed in the process of filling up of the 6 vacant posts (Assistant Teacher, UR-1, Assistant Teacher, ST-1, Librarian, UR-1, Clerk-cum-Cashier, UR-

1, Peon, UR-1, Night Guard, UR-1) of Ananda Bhawan Deaf & Blind School, Jagatpur, Uluberia, the School authority should be instructed to start the entire recruitment procedure afresh for bringing the matter to its logical conclusion.

He is requested to instruct the school authority accordingly.”

20. After the aforesaid Memo dated 07.01.2020 was issued by the Director of Mass Education Extension Officer and after the writ petitioners by filing the writ petition challenged the Memo, the O.S.D & Ex-Officio Director of Mass Education Extension, West Bengal, during the pendency of the writ application, vide Memo dated 10.12.2021 requested the teacher-in-charge/Secretary of the school to start the recruitment procedure afresh and the recruitment will be made subject to the writ application being W.P.A No. 7202 of 2020 (***Pulak Tung & Ors. -Vs- State of West Bengal & Ors.***) Be it noted that the petitioners by a supplementary affidavit challenge the Memo dated 10.12.2021.

21. Mr. Ekramul Bari, learned counsel appearing for the petitioners submits that the selection committee which was constituted following the guidelines of the relevant Government order prepared the panels after conducting interview/personality test as per the prescribed procedure. Learned Counsel points out that the Memo dated 07.01.2020 which is under challenge does not spell any reason of violation of the Government Rules and on such score the Memo is liable to be rescinded. Learned Counsel further submits that the formation of the selection committee which prepared the panels comprised at least 50 percent of the committee members and as such the panels cannot be vitiated with illegality. Learned Counsel argues that the respondent No.6 has affirmed affidavit-in-opposition in his personal capacity without being authorised by any resolution of the managing committee of the school and as such the defence raised by

the respondent No.6 should not be taken into consideration. According to learned counsel the concerned respondents should honour their official actions relating to the process of appointment of the aforesaid posts starting from publishing the advertisement of the recruitment notice up to the preparation of the panels upon which the petitioners fostered expectation and as such the doctrine of “legitimate expectations” should be extended in favour of the petitioner. By referring to a Memo dated 5th August, 2019 issued by the Joint Commissioner for reservation & Ex-Officio Joint Secretary to the Backward Classes Welfare Department learned counsel argues that if by any mistake the fifth vacancy reserved for SC candidate was filled up by the school authority, such vacancy shall be carried forward to the nearest unreserved vacancy for filling up the same by SC candidate. On such score learned counsel vehemently submits that the Memo dated 07.01.2020 and the Memo dated 10.12.2021 issued by the Office of the respondent No.2 should be quashed. In support of his submission learned counsel places reliance on the following authorities:

- i) ***The District Inspector of Schools, Murshidabad & Ors-Vs- Sansul Huda and Ors*** reported in ***1987 (2) CLJ 144***
- ii) ***Pankaj Kumar Sahu –Vs-State of West Bengal & Ors*** reported in ***2014 SCC Online CAL 6812***
- iii) ***Pradeep Kumar Puranik-Vs-Director, Public Instructions, Madhya Pradesh, Bhopal and Ors*** reported in ***1994 SCC Online MP 281***
- iv) ***State of West Bengal & Ors-Vs- Abdul Kudus & Ors*** reported in ***AIR 2000 Cal 73***
- v) ***National Buildings Construction Corporation-Vs- S Raghunathan & Ors*** reported in ***(1998) 7 SCC 66***

22. Mr. Sardar Amzad Ali, learned counsel appearing for the respondent No.6 submits that the selection committee while

advertised the recruitment notice did not mention in the notice that the fifth vacancy was reserved for Scheduled Caste candidate and on such score alone the recruitment process being vitiated with gross illegality should be quashed. Drawing the attention of the Court to the allegations made by the respondent No.6 in his affidavit –in-opposition learned counsel submits that the panels for recruitment of the aforesaid posts as prepared by the selection committee are tainted with favouritism and nepotism. Learned counsel points out that while the interview was taken by the selection committee the Sub-Divisional Officer who was the chairman of the selection committee was absent and in his place one Deputy Magistrate was there which is not permissible as per the guidelines. The presence of the teacher-in-charge whose relative was a candidate and who has been empanelled vitiates the entire selection process. Learned Counsel further submits that since all the members of the selection committee were not present while interview was conducted, the panels as prepared suffering from illegalities are liable to be set aside. On such score, learned counsel emphasises that the selection process should be conducted afresh as advised by the respondent No.2, the Director of Mass Education Extension.

23. The Government Circular No. 237-MEE/Sectt./EM/O/3'S'-54/2017 dated 24.04.2017 issued by the Department of Mass Education Extension and Library Service, Government of West Bengal, inter alia, enjoins that the selection committee for the purpose of selection shall take written test and/or interview (practical, if the selection committee feels it necessary), as the selection committee finds it suitable and prepare the panel of three candidates in order of merit and prepare the proceeding of the meeting of the committee detailing the procedure, they have adopted while awarding credits to the applicants/candidates. As indicated above, the selection committee proceeded to conduct the selection process by taking

interview/ personality test of the eligible candidates. Therefore, the selection process as resorted to by the selection committee was in accordance with law. It is averred in the writ application at paragraph 8 that though the respondent No.2 declined to approve the panels prepared by the selection committee conducting lawful tests, the same respondent No.2 approved the appointment of four staff members of Vivekananda Lok Sikha Niketan, Purba Medinipur who were selected without adopting any selection process. As to such averments there is no specific denial on the part of the answering respondents. This, on cursory look, demonstrates that there was no impediment on the part of the respondent No.2 to accord approval to the panels prepared for the aforesaid posts.

24. As it appears from the resolution annexed to the supplementary affidavit filed by the petitioner, while the interview was conducted by the selection committee one Deputy Magistrate representing the SDO, District Mass Education Extension Officer and the Teacher-in-charge were present. As the relevant Government Circular shows, the Sub-Divisional Officer who is the chairman of the Selection Committee should remain present. The Sub-Divisional Officer is not designated by any name, but the post itself. Ordinarily while the Sub-Divisional Officer is on leave or out of station or busy with any urgent official work, he may delegate his authority to a Deputy Magistrate/Executive Magistrate of the Sub-Division to represent him. In the absence of any document to the contrary, I am of the view that the presence of a Deputy Magistrate in place of the Sub-Divisional Officer himself should not vitiate the selection process. As quoted above, out of four members of the selection committee three members were present while the interview was conducted. In the decision in the case of ***The District Inspector of Schools, Murshidabad and Ors-Vs- Samshur Huda & Ors*** a Division Bench of this High Court has held that while at least 50% of the members of a selection committee conducted a

selection process by putting their collective wisdom, the selection made by the Committee should not be held invalid, otherwise the selection will be delayed causing hardship to the candidates appearing in the interview from outside stations. Similar view has been expressed in a decision in the case of **Pankaj Kumar Sahoo-Vs- State of West Bengal & Ors.** reported in **2014 SCC Online Cal 6812.**

25. I find that the respondent No.6, the teacher-in-charge as well as the Secretary of the Managing Committee of the school contests the writ application by filing affidavit-in-opposition in his personal capacity without any authority from the Managing Committee of the School. In the decision in the case of **Pradeep Kumar Puranik-Vs-Director, Public Instructions , Madhya Pradesh, Bhopal & Ors** reported in **(1994) SCC Online MP 281** it has been held at paragraph 6 as under:

“It is settled law that a corporate body has to express its will through a resolution. This was so stated by the Supreme Court in the case of Vice-Chancellor, Utkal University V. S.K. Ghosh, AIR 1954 SC 217. It was held that a legal entity has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolution properly considered, carried and duly recorded in the manner laid down by its constitution. The record of the present petition does not indicate that any resolution was passed by the Managing Committee of the petitioner society and as such, the present petition filed by its Secretary is not maintainable.”

26. In an unreported order dated 04.09.2003 passed by a learned Single Bench of this Court in WP No. 12261 (W) of 2003 it has been held by this Court that without any resolution and/or decision of the

whole body by majority decision the secretary and/or any office bearer has no locus standi to prefer any legal proceeding .

27. In view of the decisions as above, the respondent No.2 who has filed the affidavit-in-opposition in personal capacity has no locus standi to file the same. That being so, the affidavit-in-opposition ordinarily should not be taken into consideration. However, a bare perusal of the affidavit-in-opposition shows that the respondent No.6 has made allegations of favouritism and nepotism as to preparation of the panels. But the affidavit-in-opposition does not disclose necessary documents to substantiate the allegations.
28. In this regard a question crops up whether the respondent No.6 who in official course of business forwarded the panels to the Director Mass Education Extension through the District Mass Education Extension Officer for approval can take a contrary stand in the affidavit-in-opposition. Similarly, the same question crops up whether the District Mass Education and Extension Officer who affirmed the affidavit on behalf of the respondent No.2 and who recommended for approval of the panels to the Director, Mass Education Extension can take a contrary stand in the affidavit –in-opposition. The official acts or action on the part of the respondent No. 6 and the District Mass Education and Extension Officer as to preparation of the panels and recommending the panel for approval should be honoured by them and they cannot take a contrary stand in their affidavit-in-opposition.
29. As regards the preparation of the panels of Assistant Teacher (Scheduled Tribe), Librarian (Un-reserved), Clerk-cum-Cashier (Un-reserved), Peon (Un-reserved) and Night Guard (Un-reserved) there is no substantial objection on the part of the answering respondents. The contention of the respondents centres round the selection of an Assistant Teacher(Un-reserved) instead of selection of an Assistant Teacher reserved for Scheduled Caste. As the relevant official correspondence placed on record reveal, the dispute as to selection of

an Assistant Teacher reserved for Scheduled Caste of the aforesaid school has been resolved by the Backward Classes Welfare Department vide its Memo dated 5th August, 2019. The Memo dated 05.08.2019 reads as under:

“ WHEREAS there was 01(one) vacancy available for being filled up in the post of Assistant Teacher in Ananda Bhawan Deaf & Blind School, Vill- Jagatpur, Dist- Howrah-711316 under the Sponsor of the Government of West Bengal;

WHEREAS the aforesaid vacancy was reserved for SC candidate being the 01(SC) vacancy in the 100-point roster of vacancies as prescribed in the Notification No. 6316-BCW/MR-84/10, dt. 24.09.10 issued by the Backward Classes Welfare Department, Government of West Bengal;

WHEREAS the aforesaid vacancy was not filled up by the School by the candidate of right community due to bonafide mistake arising out of order;

WHEREAS the authority concerned has now undertaken to ensure due observance of reservation norms in future and has offered to carry forward these reservation in these case to the subsequent unreserved vacancies and approached the Government for regularization;

AND WHEREAS the Govt. in the Backward Classes Welfare Department is of the view that in the interest of public service and due observance of rules of reservation hereafter, it is necessary to regularize this case as fait accompli;

NOW, THEREFORE, in terms of provisions contained in the first proviso to sub-section (2) of section (6) of the West Bengal Scheduled Caste & Scheduled Tribe (Reservation of vacancies in

Services and Posts) ct, 1976 and in the first proviso to sub-section (2) of section (7) of the West Bengal Backward Classes (Other than Scheduled Castes and Scheduled Tribes) (Reservation of Vacancies in Services and Posts) act, 2012 (West Ben Act. XXXIX of 2012) as amended from time to time, the Governor is pleased to regularize the aforesaid irregularity subject to condition that the reservation against the reserved vacancy already filled up otherwise than by candidate for whom the vacancy was originally reserved as aforesaid, shall be carried forward to the nearest unreserved vacancy namely 05th vacancy for filling up by SC candidate and be filled up accordingly.”

30. It transpires from the documents on record that due to mistake on the part of the school authority as well as the selection committee the post of Assistant Teacher reserved for Scheduled Caste has been selected to be filled up by a candidate belonging to Un-reserved category. The Memo dated 05.08.2019 clearly spells that the Governor has been pleased to regularise the irregularity subject to condition that the vacancy against the reserved vacancy already filled up otherwise than by candidate for whom the vacancy was originally reserved as aforesaid, shall be carried forward to the nearest Un-reserved vacancy namely fifth vacancy for filling up by SC candidate and be filled up accordingly.
31. As it transpires, the selection committee in its official course of business advertised the notice of recruitment to fill up the vacancies as above in state level newspapers, the Secretary of the Managing Committee forwarded the panels prepared by the Selection Committee to the Director, Mass Education Extension through the District Mass Education and Extension Officer for approval and the District Mass Education and Extension Officer advocated the recommendation for approval with sufficient reasons. Ordinarily, such officials, should

honour their official actions/promises as depicted above. In such context a decision in the case of ***National Buildings Construction Corporation –Vs- S. Raghunathan and Ors*** reported in **(1998) 7 SCC 66** may be quoted. In this authority the Hon'ble Apex Court at paragraphs 18, 19, 20 and 21 has propounded as under:

“18. The doctrine of "Legitimate Expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "Legitimate Expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "Legitimate Expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

19. Lord Scarman in R. v. Inland Revenue Commissioners ex p. Preston, (1985) AC 835 laid down emphatically that unfairness in the purported exercise of power can amount to an abuse or excess of power. Thus the doctrine of "Legitimate Expectation" has been developed, both in the context of reasonableness and in the context of natural justice.

20. Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (1985) AC 374 laid down that doctrine of "Legitimate Expectation" can be invoked if the decision which is challenged in the Court has some person aggrieved either (a) by

altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn. (Emphasis supplied).

21. The Indian scenario in the field of "Legitimate Expectation" is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms.

32. As the factual matrix of the instant matter demonstrate, the doctrine of 'legitimate expectation' neatly applies in the matter on hand and obviously it goes in favour of the petitioners.

33. As stated above, the petitioner No.3 Avijit Mandal has withdrawn himself from the writ application. But, since his selection as Librarian (Un-reserved) is under consideration for adjudication, this Court may in his absence may pass necessary order pertaining to his selection.

34. As discussed above, the Memo dated 07.01.2020 issued by the Director of Mass Education Extension does not speak of any reason of violation of Government Rules during the entire recruitment process/procedure. Reason is the heart and soul of an order. If an order is passed without assigning any reason the order itself is bad in law. As I perceive, the order passed by the Director of Mass Education Extension is not authenticated in the name of the Hon'ble Governor. Therefore, in terms of Article 166 (3) of the Constitution of India and

in view of the decision in the case of ***State of West Bengal and Others-Vs- Abdul Kudus and Others***, the order of the respondent No.2 as impugned is bad in law and no importance should be attached to this order.

35. During the course of hearing it is brought to the notice of this Bench that due to dearth of Teaching and Non-teaching staff of the school the functioning of the school gets adversely affected. For proper functioning of the school filling up the vacancies is the need of the hour.

36. In view of the above, the submission as advanced on behalf of the answering respondents challenging the panels prepared by the selection committee is not acceptable.

37. In the result, the writ petition merits success and accordingly the writ petition is allowed on contest.

38. The Memo no. 7A-1PH-01(Pt-1) dated 07.01.2020 issued by the respondent No.2, the Director of Mass Education Extension, Government of West Bengal and the Memo no. DMEE/G-433

OM-19/AD/MEEL/2020

dated 10.12.2021 issued by the O.S.D & Ex-Officio Director of Mass Education Extension, Government of West Bengal are hereby quashed. The respondent No.2, the Director of Mass Education Extension is directed to approve the panels for 06(six) different posts namely i) Assistant Teacher(UR), ii) Assistant Teacher (ST), iii) Librarian (UR), iv) Clerk-cum-Cashier (UR), v) Peon (UR) and Night Guard (UR) as submitted by the Teacher-in-Charge & Secretary of Ananda Bhawan Deaf & Blind School through the District Mass Education and Extension Officer within 30(thirty) days from date. After the panels are approved the school authority shall issue the

appointment letters to the selected candidates immediately thereafter so that they can join their duties without any delay .

39. However, it is made clear the school authority as well as the selection committee shall carry forward the vacancy of an Assistant Teacher reserved for SC candidate, but has been selected to be filled up by a candidate belonging to Un-reserved category to the nearest Un-reserved vacancy and the vacancy shall be filled up by a SC candidate.

40. With the aforesaid directions the writ petition stands disposed of. Connected application, if any, consequently stands disposed of. Interim order, if any, stands vacated.

41. No order as to costs.

42. Parties may act on Server copy of this judgment and order duly downloaded from the Official Website of this Court.

43. Urgent Photostat/Website Copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)