

15.05.2024
Item No. ml.68
Crt.No.02
b.r.

WPA 4477 of 2010

IA no. CAN 1 of 2010 (Old No. CAN 2978 of 2010)
IA no. CAN 2 of 2014 (Old No. CAN 11771 of 2014)
IA no. CAN 3 of 2015 (Old No. CAN 6878 of 2015)
IA no. CAN 4 of 2015 (Old No. CAN 6881 of 2015)

Mohima Khatun (Begum)

-vs-

The State of West Bengal & Ors.

Md. Salahuddin

Md. Ahsanuzzaman

Md. Raziuddin

.... For the petitioner.

Mr. Avishek Prasad

... for the State. (Resp. nos. 1 to 3).

This is a hearing matter upon affidavits.

Affidavit of service filed in Court today, is taken on record. The same shows that due notice has been served upon respondent nos. 4 and 5, the School Authority.

The petitioner was an aspirant for the **post of un-reserved Group-D** at one **Chak Sahadat High School, District- Howrah (for short, the School).**

The petitioner participated in the selection process **in the year, 2008**. The interview was held on **November 10, 2008**.

A panel was prepared where the petitioner was empanelled for the post. The School Authority did not send the panel for approval before the jurisdictional District Inspector of School (for short, the D.I.). The petitioner further claims that during existence of this

panel, a second selection process for the same post was initiated by the School by making a wide publication in the newspaper on **February 18, 2010**.

At this juncture, the petitioner has filed the instant writ petition when a co-ordinate Bench on **March 9, 2010** passed an interim order to the effect that the School Authority and the State Authority were restrained from proceeding in any manner whatsoever with the said second advertisement dated **February 18, 2010** and the writ petition was directed to be heard on affidavits. The petitioner claims that the said interim order is still subsisting.

Md. Salahuddin, learned counsel appearing for the petitioner submits that a panel was prepared by the school, *inter alia*, empanelling the petitioner. It was the contention of the school that there was a severe disturbance and commotion created by the local mob on the date of the interview, when all the relevant papers and records were removed by the mob from the school premises. The relevant panel prepared by the Selection Committee was also removed by the said mob from the school premises. As a result, the panel could not be sent for approval by the School Authority. He submits that since the said first selection process was not decided and did not achieve its fate, the selection process sought to be initiated through the said paper

publication dated February 18, 2010 was bad in law and cannot sustain. He further submits that by virtue of being empanelled a right has been vested in favour of the petitioner to receive the appointment.

In the facts and circumstance, the instant writ petition has been filed by the petitioner claiming approval of the panel prepared by the Selection Committee of the School on the basis of the interview dated **November 10, 2008** by quashing the said second advertisement for second selection process dated **February 18, 2010**. The petitioner claims appointment.

None appears for the respondent nos. 4 and 5, the School Authority.

Mr. Avishek Prasad, learned State Counsel appearing for respondent nos. 1 to 3 referring to the affidavit in opposition filed on behalf of the respondent no.3 affirmed on December 19, 2019 submits that no panel was sent for approval before the jurisdictional District Inspector by the School Authority. Referring to the documents dated November 11, 2008 and November 20, 2008, **at pages-17 and 18 to the affidavit in opposition**, written on behalf of the School Authority, learned State Counsel submits that a contemporaneous complaint was lodged by the School Authority before the jurisdictional Police Station informing the said disturbance and commotion created by the local mob at

the school premises and the loss of the relevant records with regard to the selection process. The School Authority further informed the jurisdictional District Inspector that commotion created by the local mob was very severe and resulted loss of all school records from the school premises by the local mob, *inter alia*, including the records relating to the subject selection process. Referring to the document at **page-14** to the affidavit in opposition learned State counsel submits that by a communication dated April 1, 2019, the jurisdictional District Inspector sought for several clarifications and informations from the School Authority but no such clarification or information was furnished by the School Authority.

Learned State counsel then submits that even if the petitioner's contentions are taken to be correct that the petitioner was empanelled, though not admitted by the learned State Counsel, even then such empanelment cannot create any vested right to receive an employment until the panel is approved by the jurisdictional District Inspector in accordance with law and an appointment letter is issued in favour of the petitioner. He submits that in the instant case since no panel was submitted before the jurisdictional District Inspector by the School Authority, as would also be evident from the said contemporaneous documents disclosed in the affidavit

in opposition, the question of approving the same did not arise and as a result the petitioner cannot claim any right in the facts and circumstances of this case. In support, he relied upon a decision of this Court, ***In the matter of : Mirza Abdul Alim –versus- The State of West Bengal & Ors. rendered in WPA 13385 of 2011, dated February 08, 2024.***

Learned counsel for the State further submits that after the promulgation of the **West Bengal School Service Commission Act, 1997**, the entire selection process for non-teaching staff of a school is governed under the provisions of the said **1997 Act** read with the **West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 (for short, the said 2009 Rule)**. Since no panel is available, if the school proceeds further for the selection process, the same has to be governed under the said prevalent law.

Per contra, Md. Salahuddin, learned counsel appearing for the petitioner in reply, referring to the affidavit in reply affirmed on **January 28, 2020** denies and disputes the submissions made on behalf of the State. He reiterates that the panel was very much prepared and the petitioner was empanelled for the post. He further raises a question with regard to the authenticity of the documents relied upon by the

learned State Counsel which are part of the affidavit in opposition. He further submits that the selection process in which the petitioner was empanelled was of 2008 when neither the West Bengal School Service Commission Act, 1997 nor the said 2009 Rules was promulgated, hence, those law would have no application in the facts of this case and the petitioner is eligible to receive the employment for the post, he was empanelled.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, save and except make the statements pleaded in the writ petition not an iota of evidence has been disclosed on record by the parties that a panel was prepared and the petitioner was empanelled for the **post of Group-D (unreserved)** at the relevant school in the said first selection process for which the interview was held on November 10, 2008.

On the contrary, the contemporaneous documents disclosed by the jurisdictional District Inspector through its affidavit in opposition show that due to the disturbance and commotion created by the local mob at the school premises all the records relating to the subject premises were lost from the school premises. The School Authority has also not contended that the panel was prepared or sent for approval before the

jurisdictional District Inspector. The records do not establish that any panel was prepared at all, as claimed by the petitioner. The petitioner has not denied the validity, veracity, authenticity, legality or existence of the documents annexed to the affidavit in opposition.

Even if for argument sake, it is considered that a panel was prepared as contended by the petitioner by the School Authority, it is now well settled in law that, mere empanelment of a candidate would not give any right far to speak of a vested right in favour of the candidate to claim and secure employment.

Inasmuch as it is not established before this Court from the record that any panel was prepared as claimed by the petitioner.

If any further selection process takes place for the post, the same shall be strictly in accordance with the present prevailing law in force.

However, if the school proceeds for any further selection process for the same post, i.e., **Group-D (Unreserved)**, for which the petitioner was an aspirant, if the petitioner fulfills all the criteria within the four corners of law, she shall be at liberty to participate in such selection process and her participation shall be considered strictly on merit and in accordance with law.

With the above observations, this Court finds no merit in this writ petition and accordingly this writ

petition, **WPA 4477 of 2010** stands **dismissed**, without any order as to costs.

Accordingly, all the **connected applications** stand **disposed of**.

(Aniruddha Roy, J.)