

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon’ble Justice Harish Tandon
And
The Hon’ble Justice Shampa Dutt (Paul)

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MAT 745 of 2024
with
CAN 1 of 2024

The Chairman, District Primary School Council,
Purba Medinipur & Anr.
Vs.
The State of West Bengal & Ors.

For the Appellant	:	Mr. Samiran Giri, Advocate
For the State	:	Mr. Bhsakar Prasad Vaisya, Advocate Mr. Sagnik Chatterjee, Advocate
For the Writ-Petitioner -Respondent No. 5	:	Mr. Dinesh Pani, Advocate Ms. Mitali Mondal, Advocate
Heard on	:	July 23, 2024
Judgment on	:	July 23, 2024

The Court:

1. Interestingly, the writ-petitioner/respondent no. 5 approached the Court raising a grievance that the person, who does not find a place in the original panel, is appointed as a Head Teacher in Goraghata Primary School where the writ-petitioner/respondent no. 5 is discharging his duties as a Primary School Teacher for a considerable period of time.
2. In the course of hearing of the writ-petition, a point was taken that the District Primary School Council, Purba Medinipur permitted all the candidates to indicate the

preferred School in which they intend to be appointed as a Head Teacher and despite such preference having been given, no counseling was conducted and the appointments have been done in whimsical manner, not permissible in law.

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3. The Writ Court disposed of the writ-petition directing the District Primary School Council, Purba Medinipur to undertake the counseling process of all candidates within Contai (East) Circle and a panel shall be published upon due notice to all parties and with the expressed formation of the Board. However, the appointment of the added respondent was kept in abeyance till the aforesaid exercise is complete in all respect.
4. The District Primary School Council, Purba Medinipur assailed the said order before the Division Bench. This Court on 25.06.2024 recorded the submission of the writ-petitioner/respondent no. 5 that the panel uploaded on the official website of the Council does not feature the name of the added respondent but subsequently he has been shown in such panel of the Head Teachers and appointed in a School where the writ-petitioner is serving as Assistant Teacher.
5. Since the Single Bench observed that uncanalized powers appears to have been adopted by the Council, the Division Bench directed the Council to disclose in the form of an affidavit as to whether the documents so relied upon by the writ-petitioner/respondent no. 5 is genuine and authentic and uploaded on the official website.
6. The affidavit of compliance would reveal that there is no such panel uploaded in the official website and, therefore,

the genuinity and authenticity of the said panel is highly doubted.

7. On the other hand, the Counsel for the writ-petitioner/ respondent no. 5 submits that the said panel was circulated in the 'Whatsapp' Group which comprises of the officials of the Council as well and, therefore, the genuinity could not be doubted.
8. However, in the affidavit of compliance, the applications submitted by the respective teachers to be considered for the post of a Head Teacher are annexed and on being asked the Counsel submits that the said applications were invited in terms of the Notification issued under Memo No. 365/HT dated 01.03.2023 by the Chairman, District Primary School Council, Purba Medinipur.
9. It is submitted that in a resolution taken by the Council, a mechanism was adopted to call for the applications containing the particulars of service in order to ascertain the seniority on the basis of the date of joining in the feeder post. Though the aforesaid Notification evince inviting an application from the aspirants to the post of Head Teacher but our attention was drawn to the Rules containing an exhaustive provision relating to the appointment procedure and the preparation of the panel and the posting to the post of Head Teacher.
10. In exercise of power under Sub-Section (1) of Section 106 of the West Bengal Primary Education Act, 1973, the Rule was framed by the State Government namely West Bengal Primary School Teachers Recruitment Rules, 2016 (hereinafter referred to as 'the said Rules'), obviously, by virtue of a rule-making power provided in the parent statute. The State Government thus framed the Rules which

undoubtedly partakes the statutory character. The authority cannot act whimsically nor can do a thing in derogation with the statutory provisions or forbidden by law. The statutory authority has to travel within the circumference of the statutory provisions and cannot transgress the same without any such power having conferred in the statute.

11. Rule 14 of the said Rules relates to an appointment of the Head Teacher in every Primary School situated within the territorial jurisdiction of the said Council on the basis of a panel of senior-most primary teachers having requisite educational qualifications and/or the professional qualifications as specified in the Notification issued by the National Council for Teachers Education. However, a proviso was inserted to the said provision in order to give succor to the Primary School Teachers who were appointed before 03.09.2001 as a Head Teacher with Madhyamik pass qualification or equivalent and 1 year Junior Basic Training Certificate or Primary Teacher's Training Certificate or equivalent. The said Rule is quoted as under:-

14. Appointment of Head Teachers – The Council shall appoint head teachers in every primary school with the jurisdiction of the Council, from a panel of senior-most primary teachers possessing requisite minimum educational qualifications and professional qualifications as specified in the Notification dated 25.08.2010 issued by the National Council for Teacher Education:

Provided that primary school teachers appointed before 03.09.2001, may be appointed Head Teacher with Madhyamik Pass qualification or equivalent and 1 year Junior Basic Training Certificate Primary Teacher's Training Certificate or equivalent.

12. It is manifest from the aforesaid provision that it is an obligation on the part of the Council to prepare a panel of the senior-most primary teachers having requisite educational qualifications or professional qualifications in

terms of the aforesaid Notification and does not, in our opinion, confers any right on the Council to invite an application from the aspiring Assistant Teachers even by way of a Notification. The moment the statutory provisions obligated the Council to make a panel in terms thereof, adaptation of a particular mechanism, as in this case, by inviting an application, runs counter to the spirit of the aforesaid provision and to some extent in derogation therewith.

13. Rule 15 of the said Rules is concerned with the preparation of a panel in circle-wise manner between January and April of every year for the purpose of filling up of the vacancy existed or anticipated within the same gregarine year. The safeguard can further be seen in the form of a proviso appended thereto which indicates that the moment the panel is not exhausted or the appointment could not be made during the said year for the reasons beyond the conceivable control of the Council such appointment shall be made from the said panel in the following year.
14. Rule 16 relates to posting which does not create any brindle nor convey any intention of the choice to be solicited from the Primary School Teachers. The cumulative effect of the aforesaid provision leaves no ambiguity in our mind that the appointment to the post of a Head Teacher shall be done on the basis of a panel prepared by the Council in a circle-wise manner by seniority amongst the primary teachers having requisite educational qualifications and the professional qualifications in terms of the Notification dated 25.08.2010 issued by the National Council for Teachers Education and the posting shall be done in accordance with the said panel in seriatim. It does not convey any intention that the choice

of a primary teacher whose name has been included in the panel is required to be obtained and the choice has to be given primacy and the Council does not have any freedom of choosing a person to be appointed to the post of Head Teacher in any particular School.

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15. The Council is a statutory authority, not only for the purpose of conducting the recruitment, preparing the panel and above all recommending the candidates to be appointed in a particular School which cannot be said to be illegal or arbitrary for the reason that the Council should adhere to the choice given by the aspiring candidates.
16. It is no longer *res integra* that the writ of mandamus cannot be issued upon the statutory authority to act contrary to law. The concept of counseling to fill up the post of a Head Teacher is conspicuously absent in the statutory provision and, therefore, it is inconceivable that the Writ Court would issue a mandamus upon the authority to adopt a procedure not provided in the statutory Rules.
17. Though we do not approve the stand of the Council in inviting an application on the basis of the said purported Notification dated 01.03.2023 as it runs counter to the spirit and the soul of Rule 14 of the said Rules yet we do not find any justification in the stand of the writ-petitioner/respondent no. 5 that counseling is required to be conducted and the choice of School as preferred is to be strictly adhered to.
18. We thus could not persuade ourselves to concur with the judgment of the trial Court. The order impugned is set aside.
19. The Council is directed to complete the entire exercise of appointment of the Head Teachers in the vacancies strictly

in terms of Rules 14, 15 and 16 of the aforesaid Rules within four weeks from the date of communication of this order.

20. The appeal being **MAT 745 of 2024** is thus **allowed**. The connected application being **CAN 1 of 2024** is **disposed of**.
No order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J)