

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 11808 of 2014

Gopal Chandra Biswas

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Debabrata Roy
Mr. Gazi Faruque Hossain
Ms. Sarbani Mukhopadhyay
Mr. Soumik Mondal.

For the State : Mr. Anirban Roy, Ld. G.P.
Mr. Bhaskar Prasad Vaisya
Mr. Mrinal Kanti Ghosh
Mr. Gourav Das.

Heard on : May 06, 2024

Judgment on : May 06, 2024

Aniruddha Roy, J. :

Facts:

1. This is the fourth round of writ litigation by the aspiring candidate for **Group "C (CLERK)"** post at **Jagannathpur Arabinda Palli Bharati Vidyalaya, District – 24 Parganas (North)** (for short, the said school).

2. Pursuant to and in terms of the prior permission issued by the respondent No. 3 a selection process was held following the and only on the basis of the sponsored candidates by the jurisdictional Employment Exchange.

3. In the first writ petition **W.P. No. 21732 (W) of 2008** the petitioner challenged the selection process on the ground that in absence of wide publication by way of newspaper advertisement, the said selection process was illegal. By an order dated **September 8, 2008, Annexure P-1** at **page 24** to the writ petition, a co-ordinate bench disposed of the first writ petition with the following direction:

“As such, the writ petition is disposed of with the direction upon the respondent authorities not to hold the recruitment test from amongst the candidates only sponsored by the employment exchange. They are at liberty to make such recruitment after giving wide publication regarding the vacancy in question through different media. If such publication is made and if the petitioner applies for the post, having requisite qualification, then he will also be allowed to appear for the test.”

4. Pursuant to and in terms of the said direction of the co-ordinate bench a wide newspaper publication was caused by the school authority on **September 13, 2008, Annexure P-1** at **page 31** to the writ petition. In terms of the said newspaper publication the petitioner applied and participated in the selection process.

5. In the said selection process an interview was held on **September 24, 2008** and the panel was prepared by the selection committee. The said panel along with other requisite papers were forwarded by the Headmaster of

the school to the respondent No. 4 for taking his ultimate decision with regard to grant of approval to the said panel.

6. Since the respondent No. 4 did not take any decision on the panel regarding the grant of its approval, the petitioner filed the second writ petition **W.P. No. 9392 (W) of 2010**. When the said second writ petition was taken up none appeared on behalf of the respondents to oppose the petitioner's prayer at the time of hearing. A co-ordinate bench by its order dated **March 23, 2011, Annexure P-2** at **page 32** to the writ petition, disposed of the second writ petition with the following direction:

"After hearing the learned advocate for the petitioner and after considering the materials on record, this Court disposes of this writ petition by directing the concerned Additional District Inspector of Schools (S.E.), the respondent No. 4 herein, to consider the said panel and take the ultimate decision on the issue regarding grant of approval thereto in the light of the Recruitment Rules of 2005 positively within a period of eight weeks from the date of communication of this order."

7. The record shows that until the time mentioned hereinafter the respondent State authorities did not consider the panel in terms of the said order of the co-ordinate bench dated **March 23, 2011**. The respondent No. 2 then by one of its impugned memo dated **November 2, 2012, Annexure P-3** at **page 37** to the writ petition, had observed as under:

"With reference to the subject noted above the undersigned has to request him to cancel the panel for Group – 'C' staff in favour of Jagannathpur Arabinda Palli Bharati Vidyalyaya, North 24-Parganas and proceed with fresh procedure of recruitment of this vacancy."

8. The petitioner being aggrieved by the said memo issued by the respondent No. 2 dated **November 2, 2012** filed the third writ petition **W.P. No. 81 (W) of 2013**. The third writ petition was disposed of by a co-ordinate bench by its order dated **June 13, 2013, Annexure P-4** at **page 38** to the writ petition, with the following direction:

“In view of the above, the impugned order is quashed and set aside directing the respondent authority to act strictly in terms of the aforesaid order dated March 23, 2011 passed in W.P. No. 9392 (W) of 2010 by passing a reasoned order within a period of two months from the date of communication of this order and to communicate the same to the petitioner within a week thereafter. This writ application is disposed of.”

9. Pursuant to and in terms of the said direction dated **June 13, 2013** made in the said third writ petition, the respondent No. 4 passed its impugned reasoned order dated **November 28, 2013, Annexure P-5** at **page 40** to the writ petition. The respondent No. 4 rejected the case of the petitioner for approval of the panel with the following observation:

*“Heard and learnt the parties. It is learnt that the P.P. was issued by the D.I./S.(S.E), North 24 Parganas on 10.11.1999 for recruitment of a Clerk through **Second Stage** of appointment rule. The office was not informed about the cancellation of the interview dated 23.09.2000. Then after a long period of 8 years **without intimation to the appropriate authority**, the school authority on the basis of the same P.P. took the interview on 24.09.2008, applying recruitment rule of **Third Stage**. Also the Recruitment Rule vide no. 1594 SE(S), dated 26.12.2005 was followed for interview **process and markings** instead of no. 1736 GA, dated 01.11.1999 which are different.”*

10. Assailing the said rejection dated **November 28, 2013**, the petitioner filed the instant fourth writ petition. The prayers are quoted below:

- “a) To issue a writ of or in the nature of Mandamus*
- i) Commanding the respondents, their agents, servants, subordinates, employees and/or assignees particularly the Respondent No. 4 not to give effect or further effect to the Memo bearing no. 18(3)/Law, dated 28.11.2013, Annexure – “P-5” to this petition.*
 - ii) Commanding the respondents, particularly the Respondent No. 4 To rescind, cancel and withdraw the Memo bearing no. 18(3)/Law, dated 28.11.2013, Annexure – “P-5” to this petition;*
 - iii) To quash and/or set-aside the impugned Memo bearing no. 18(3)/Law, dated 28.11.2013, Annexure – “P-5” to this petition forthwith;*
 - iv) To issue a writ of mandamus commanding the respondents to approve the panel in question sent by the school authority in connection with the interview held on 24.09.08 for the post of Clerk at Jagannathpur Arabinda Palli Bharati Vidyalaya forthwith;*
- b) To issue a writ of prohibition by which the respondents be prohibited from giving effect or further effect to the impugned memo bearing no. 18(3)/Law dated 28.11.2013, Annexure P-6 to this petition;*
- c) A writ of or in the nature of Certiorari do issue calling upon the respondents and each of them to certify and transmit to this Court the original records of the case before this Hon’ble Court and upon perusal of the impugned memo bearing no. 18(3)/Law dated 28.11.2013, Annexure P-6 to this petition to quash and/or set-aside the same;*
- d) Rule of N I S I in terms of prayers above;*
- e) An interim order of injunction restraining the respondent from filing up the post of Clerk at Jagannathpur Arabindapally Bharati Vidyalaya till the disposal of the instant application;*
- f) And/or to pass such other further order or orders as to Your Lordship may seem fit and proper.”*

11. Pursuant to the direction made by this Court the respondent No. 3 filed **two reports** in the form of affidavit, one was affirmed on **October 3, 2023** and other one was affirmed on **April 12, 2024**.

Submissions :

12. Mr. Debabrata Roy, learned counsel appearing for the petitioner referring to the orders passed by the coordinate Bench in the first writ petition dated **September 8, 2008** submits that, by virtue of the said order a wide paper publication was caused by the school authority for holding the selection process and pursuant to the leave granted by the coordinate Bench the petitioner participated therein. He then refers to the order of the coordinate Bench dated **March 23, 2011** passed in the second writ petition and submits that, the respondent no.4 was directed to consider the said panel and take the ultimate decision thereupon regarding grant of approval **in the light of the Recruitment Rules, 2005** within the timeframe mentioned therein. However, no step was taken contemporaneously by the respondent no.4.

13. Meanwhile, referring to the memo dated November 2, 2012 learned counsel for the petitioner submits that, the respondent no.2 requested the respondent no.4 to cancel the panel for Group-C in respect of the school and to proceed with fresh procedure of recruitment for the vacancy. He submits that, ignoring the direction of the said coordinate Bench dated **March 23,**

2011 the respondent no.2 issued the said memo. The petitioner challenged the same, when the said memo was quashed by the coordinate Bench in the order dated **June 13, 2013** and the respondents authorities were directed to act strictly in terms of the said order dated **March 23, 2011** by passing a reasoned order within a timeframe. Referring to the impugned reasoned order dated **November 28, 2013, Annexure-P5 at page 40** to the writ petition, Mr. Debabrata Roy, learned counsel for the petitioner submits that, the respondent no.4 while rejecting the case of the petitioner for approval of panel did not follow the **Recruitment Rules of 2005** and proceeded on the basis of one **Government Order dated November 1, 1999** being the **Recruitment Rules of 1999** on the plea that, the prior permission was issued by the respondent no.3 dated November 10, 1999 and the interview was fixed on September 23, 2000 though the same was cancelled later and ultimately held on September 24, 2008.

14. Learned counsel for the petitioner submits that, since the petitioner participated in the interview process in terms of the wide newspaper publication directed by the Court published in 2008 and the interview took place on **September 24, 2008**, the Recruitment Rules of 2005 would have to apply and not any other Rules of 1999 or otherwise. He submits that, the impugned reasoned order dated November 28, 2013 was passed totally on a wrong premise and in erroneous application of the legal principle. Hence, the said impugned order dated November 28, 2013 should be set aside and the case of the petitioner should further be directed to consider strictly in

accordance with the Recruitment Rules, of 2005 as was directed in the second writ petition under the order dated **March 23, 2011**.

15. Learned counsel for the petitioner then referring to a document dated **May 18, 2010, Annexure-P6 at page 41** to the writ petition and its enclosures submits that, following the directive of the State authority the engagement for the Group-D post at the school has already been completed on the basis of the said **Recruitment Rules of 2005**. He then refers to the stand taken by the respondent no.3 in its report in form of affidavit affirmed on October 3, 2023 and specifically placing reliance upon **paragraph 3** to the said report he submits that, while finalising the selection process the marks distribution should be strictly in terms of the said Recruitment Rules of 2005 by taking the full marks as 3 as has been done for the Group-D posts.

16. Mr. Roy further submits that, following the direction under the said order dated March 23, 2011, the respondent authority must conduct the selection process for Group-C category in terms of the Recruitment Rules, 2005 as amended.

17. In the light of the above, learned counsel for the petitioner prays for a fresh consideration of the panel in the light of the Recruitment Rules, 2005 as amended.

18. Mr. Anirban Ray, learned Government Pleader being ably assisted by Mr. Bhaskar Prasad Vaisya and Mr. Mrinal Kanti Ghosh, learned State counsel at the outset submits that, the writ petition is not maintainable. He

submits that simply by virtue of being empanelled no right has accrued in favour of the petitioner to challenge the selection process as no Appointment Letter has been issued in favour of the petitioner. In support, the learned Government Pleader has relied upon a judgment of this Court ***In the matter of : Mirja Abdul Alim -vs. State of West Bengal & Ors., dated February 8, 2024, rendered in WPA 13385 of 2011.***

19. Referring to **prayer (a)(iv) at page 21** to the writ petition he submits that, the writ petition is not maintainable.

20. Immediately after completion of submissions on the point of maintainability, the learned Government Pleader proceeds to submit on merits of the writ petition.

21. Mr. Ray, learned Government Pleader submits that, the entire selection process took place pursuant to the prior approval issued by the respondent no.3 dated **November 10, 1999** as would be evident from the impugned reasoned order dated November 28, 2013. The interview was initially fixed on September 23, 2000 which was cancelled and ultimately around after eight years on September 24, 2008 the interview took place where the petitioner participated. Referring to these facts he submits that the selection process had commenced with the initiation of the issuance of the prior permission by the respondent no.3 on November 10, 1999 when the Recruitment Rules, 1999 was in vogue and not the Recruitment Rules, 2005. The entire selection process, therefore, would have to be considered under

the said **Recruitment Rule, 1999** in terms of the **Government Order bearing No.1736 GA dated November 1, 1999** as mentioned in the impugned reasoned order. Referring to the said impugned reasoned order Mr. Anirban Ray, learned Government Pleader submits that, all the relevant materials were duly taken into consideration by the respondent no.4 while passing the said impugned reasoned order and upon due application of mind and after granting an opportunity of hearing to the petitioner and the school authority the said impugned reasoned order was passed, hence there is no scope for any interference therewith by this Court. Referring to the said order dated March 23, 2011 passed in the second writ petition, he submits that, the said direction was directed to be complied with in accordance with law, which according to him, by applying the Recruitment Rules, 1999 and not the Recruitment Rules, 2005 as at the point of initiation of the selection process, the Recruitment Rules, 1999 was in vogue.

22. In the light of the above, learned Government Pleader submits that, the impugned reasoned order is not to be interfered with and the writ petition should be dismissed.

Decisions :

On Maintainability :

23. Insofar as **prayer (a)(iv) at page 21** to the writ petition is concerned, the petitioner claims approval of panel. Admittedly, the petitioner has reached at the stage of empanelment only and the panel was sent for

approval but the panel has not been approved and the petitioner has not yet received any appointment letter.

24. The judgment rendered by this Court ***In the matter of : Mirja Abdul Alim (supra)*** still holds the field, as this Court has been informed by both the parties.

25. The law is well settled. A candidate merely by virtue of being empanelled does not acquire any right or vested right to challenge the selection process or the panel so long the panel is not approved and the candidate does not receive appointment. On the basis of the said **Golden Rule of law**, the prayer of the writ petitioner claiming approval of the panel in this writ petition needs to be looked into. In this case, the petitioner was merely empanelled and the panel was sent for approval and ultimately was rejected. Thus, no right had accrued in favour of the petitioner to claim approval of the panel.

26. In view of the above, this Court is of the firm view that, the petitioner cannot claim issuance of mandamus in terms of **prayer (a)(iv) at page 21** to the writ petition. Such prayer stands **rejected** at the threshold, as the same is not maintainable.

On Merit :

27. Now this Court proceeds to consider the rest of the prayers of the writ petition.

28. Even though prior permission was issued by the District Inspector of Schools on November 10, 1999 as noted in the impugned reasoned order, in absence of any wide newspaper publication inviting candidatures for the selection process, the said prior permission would have no effect in the eye of law and if any selection process would have been proceeded on the basis of such prior permission but without any wide publication for the public at large to participate in the selection process, such selection process would have been defeated, vitiated and would not be permissible in law. Hence, there would have been no selection process in the eye of law at all.

29. When an act is required to be done in a specific manner as specified under the law, such an act has to be done in the same manner as specified under the law or not at all. Any other mode for doing such an act *de hors* the manner in which it is specified under the law, is expressly forbidden under the law. As if such an act has not taken place at all. An act may be cured or made effective and lawful subsequently and the same may be brought within the framework of law by taking remedial measures. In such event, such an act shall be accepted as lawful after the same is remedied in the eye of law and shall take effect after such remedial measure is taken. In the instant case, the prior permission of the District Inspector of Schools became effective in law after the wide publication was directed for holding the selection process by the Coordinate Bench in the first writ petition under its order dated **September 8, 2008** and only thereafter the said prior

permission dated **November 10, 1999** became valid and effective to hold the relevant selection process in the eye of law.

30. After the direction of the coordinate Bench dated September 8, 2008 made in the first writ petition, a wide publication was made announcing the selection process. Only in terms of such direction when the wide publication was made and the selection process was held in terms of the said prior permission of the respondent no.3 dated November 10, 1999, the initiation of the selection process and continuance thereof became lawful, effective and valid in the eye of law. Following the said direction dated September 8, 2008 the petitioner participated in the selection process for **Group-C (Clerk)** post and got empanelled. The panel was then sent by the school authority for approval before the respondent no.4. At this juncture, the statutory obligation of the respondent no.4 began when he had to convey his decision upon the panel within one month from the date of receipt of the panel in terms of **Rule 9(7)(C) of The West Bengal Schools (Recruitment of Non-Teaching Staff) Rules, 2005** [for short the said 2005 Rules]. Since the State authority did not do so, the direction was made by the coordinate Bench on June 13, 2013 in the third writ petition and in pursuance of such direction, the impugned reasoned order dated **November 28, 2013** was passed.

31. After the selection process became lawful under the said order dated September 8, 2008 passed in the first writ petition, the order dated March 23, 2011 was passed in the second writ petition. The said order shows none appeared on behalf of the respondents to oppose the petitioner's prayer at

the time of hearing of the writ petition. The observation of the coordinate Bench in the said order dated March 23, 2011 shows that, pursuant to the permission granted by the concerned District Inspector of Schools, the school authority **initiated** a selection process for the purpose of filling up the vacancy for the post of Clerk (Group – C) in **2008**. The said panel along with other requisite papers were then forwarded by the Head Master of the school to the respondent no.4 for taking his ultimate decision with regard to the grant of approval of the said panel. The said order dated March 23, 2011 was not appealed from. The observations of the coordinate Bench, thus, achieved its finality.

32. In the next order dated June 13, 2013 the other coordinate Bench in the third writ petition had confirmed the said observation and direction of the coordinate Bench dated March 23, 2011 and directed the State authority to carry out the same in the manner and mode as directed therein. The said direction of the coordinate Bench dated March 23, 2011 was acted upon by the respondent no.4 by passing the said impugned reasoned order.

33. In the light of the above, the State cannot contend any further that, the selection process had commenced on November 10, 1999 when the prior permission was issued by the respondent no.3. As already discussed above, the said prior permission would have been a futile exercise and without any sanction of law unless the curative measure would have been taken by the coordinate Bench under its direction dated September 8, 2008 passed in the first writ petition. Inasmuch as, the State has accepted the observation of

the coordinate Bench in the order dated March 23, 2011 that the selection process was initiated by the school authority in 2008, when 2005 Recruitment Rules was in vogue and the Recruitment Rules, 1999 was given a go by and was not in existence.

34. In exercise of its power under judicial review, this Constitutional Court under Article 226 has a limited jurisdiction while assessing the said impugned reasoned order dated **November 28, 2013**. This constitutional Court can only interfere with the same when there is a glaring illegality and perversity on the face of the impugned order.

35. In view of the discussions narrated above, this Court is of the firm view that, the Recruitment Rules, 2005 would have to apply in the facts of the instant case and not the Recruitment Rule of 1999 under the Government Order dated November 1, 1999. The respondent no.4 while passing the said impugned reasoned order had failed to appreciate the law prevailing on the issue as discussed above and thereby has committed an erroneous exercise of its jurisdiction while passing the said impugned reasoned order by not applying the said Recruitment Rule of 2005 in its strict sense and spirit, as directed by the previous coordinate Bench in its order dated March 23, 2011 read with the order of the coordinate Bench dated June 13, 2013.

36. In view of the foregoing discussions and reasons the impugned reasoned **order dated November 28, 2013 stands set aside and quashed.**

37. A higher authority of the Education Department, the **respondent no.2** shall decide the issue on the basis of the existing records and materials whereupon the said impugned reasoned order dated November 28, 2013 was passed by the respondent no.4 after issuing a prior hearing notice of at least seven days to the petitioner and the respondent nos. 5 and 6 and after giving them an opportunity of hearing and by passing a reasoned order in strict compliance of the **Recruitment Rules, 2005** as amended from time to time following the direction of the previous coordinate Benches dated **March 23, 2011** and **June 13, 2013**.

38. The entire exercise, as directed above, shall be carried out and completed by the respondent no.2 positively within a period of **eight weeks** from the date of communication of this order.

39. The respondent no.2 shall then communicate its reasoned order to the petitioner and the respondent nos. 5 and 6 positively within a **further** period of **two weeks** from the date of the said reasoned order to be passed.

40. It is made clear that, while deciding the issue, the respondent no.2 shall be free to apply its independent mind and pass the reasoned order without being influenced by observation, if any, made by this Court save and except the **Recruitment Rule, 2005** shall apply.

41. It is further made clear that, this order shall not create any right or equity in favour of the petitioner.

42. Once again it is clarified that, **prayer (a)(iv)** to the writ petition stands **rejected** and rest of the prayers stand allowed on the above terms.

43. Accordingly, this writ petition **WPA 11808 of 2014** stands **disposed of**, without any order as to costs.

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

(Aniruddha Roy, J.)