

WPA 14283 of 2021

**Om Prakash Yadav & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Sunit Kumar Roy.

... for the Petitioner.

Ms. Koyeli Bhattacharyya,
Mr. Bibek Dutta,
..... for the W.B.B.S.E.

Mr. Partha Sarathi Bhattacharyya,
Ld. Sr. Adv.

Mr. Raju Bhattacharyya.
... for the respondent No. 6 to 8.

1. The Schedule of Special Rules came into force vide Notification No. 404-Edn(s) dated 19th March, 1973, which is known as Special Rules for Management of Secondary Schools [hereinafter referred to as the "*Special Rules of 1973*" or "*Rules of 1973*"]. These Rules of 1973 govern the Secondary Schools established and run by Arya Samaj and/or Gurukul Vidyalaya Trust under the aegis of Arya Pratinidhi Sabha of the State (Representative Body of Arya Samaj in the State). According to the said Rules of 1973, the School Managing Committee has the power to determine the staff strength of the school, undertake the process of appointment and appoint teachers, in the school.
2. Matter relates to the school namely Titagarh Arya Vidyalaya, a Government aided school. The petitioners have been appointed there as Assistant Teachers of

various subjects, vide appointment letter dated 17th January, 2017. Before that, the school published an advertisement to notify the vacancies, that is on 29th February, 2016. The writ petitioners had applied and took part in the interview process. Finally, a panel of successful candidates were prepared, comprising names of all the writ petitioners. This panel was forwarded by the school authority, to the District Inspector of Schools (Secondary Education), 24 Parganas (North)/respondent No.3, for approval.

- 3.** However, subsequently the petitioners had joined in their posts on 25 January 2017 and 27 January 2017 respectively. The writ petitioners are aggrieved that since after their appointment and joining in the respective posts in the said school, they have been deprived of their legitimate rights as to the salary and other emoluments, due to the inaction on the part of the respondent No. 3, in granting approval to the panel of successful candidates, earlier forwarded to the same, by the school managing committee.
- 4.** Hence, this writ petition.
- 5.** Mr. Roy, appearing for the petitioners have pointed out to the said Rules of 1973. He would submit that in accordance with Rule 11 thereunder, the school managing committee shall have the power to determine the number of teaching and non-teaching employees required to be employed in the said school. It shall also have the power to approve appointment of teachers therein. He would further say that in accordance with Rule 12 of the said Rules of 1973,

the school managing committee shall also have the power to issue appointment letters, specifying all terms and conditions governing such appointment of a teaching and non-teaching employee in the school. He would further indicate that in terms of Rule 7 of the said Special Rules of 1973 the school managing committee of an institution run by Arya Pratinidhi Sabha of the State, through its local unit of Arya Samaj and/or Gurukul Vidyalyaya Trust, as the case may be and receiving financial assistance in any form, from the State Government shall, subject to any general or special order of State Government, exercise their powers in respect of appointment of employees, both permanent and temporary, salaried or honorary. That, under the said Rules of 1973, the school managing committee shall also have the power and authority to impose punishment with respect to its employees, in the form of suspension or dismissal or otherwise termination of their services.

6. Hence Mr. Roy, would submit that so far as appointment of the present petitioners is concerned, the school managing committee has done the same in accordance with the governing rules and regulations. The writ petitioners have been successful in the process of recruitment and thus have been appointed. Under such circumstances, according to Mr. Roy, the inaction on the part of the said concerned respondent, to grant approval as to the panel prepared by the school managing committee at the end of the recruitment process, would be jeopardising the rights

of the writ petitioner as an employee of the said school.

7. Mr. Roy has also relied on a judgment of this Court reported in **(2008) 1 Calcutta Law Journal 167 [Kushsdhwaj Mondal & Others vs State of West Bengal and Others]**, to submit that in the same the court has already held application of the provisions under the Special Rules of 1973 to be unfettered, absolute and sacrosanct, so far as the type of institutions are concerned, to which these Special Rules of 1973, would be applicable.
8. Respondent No. 3/D.I. has submitted a report in the form of an affidavit, pursuant to the directions of the Court. Though the said respondent has not denied the fact of submission of a panel for approval by the school managing committee, dated 7 December 2016, however, has raised objections as to the contentions and prayer of the writ petitioners, for some other reasons. Firstly, that the school managing committee in spite of resolving in one of its meetings regarding obtaining prior permission to start the process of recruitment in the said school, has not finally taken any prior permission of the D.I. Secondly, the said respondent has put forth its objection as to the panel, so sent to its office by the school managing committee, insofar as, according to the said respondent, the panel as said to have been finalised, has never been adopted by a resolution before sending the same to the said respondent for approval. Hence, the panel has been addressed as a suspicious and

frivolous document. Finally, the said respondent would put forth its objection that joining in service of the respective writ petitioners have not been approved by the school managing committee or the head of the institution, by way of any resolution or order. Therefore, the claim of the writ petitioners of having joined the school and working there from 25th and 27th October 2016, has been denied and disputed. In this regard, he would say in his other report, that the school managing committee has not supplied the attendance register of the writ petitioners for due consideration by the authorities.

9. The school /respondents No.6 to 8 and the West Bengal Board of Secondary Education (hereinafter referred to as the “Board”)/respondent No.5 are also represented.
10. Mr. Bhattacharyya, Ld. Senior Advocate for the school authorities, would virtually support the stand of the petitioners. He would reiterate about the authority and power of the school managing committee for recruiting teaching and non-teaching staff, in terms of the Special Rules 1973. He would also refer to an order of the Hon’ble Division Bench of this Court (in ***MAT 757 of 2022 and other analogous appeals***), to substantiate his submission that the entire records in possession of the school managing committee has once been handed over to the respondent D.I., which has been subsequently returned by the said respondent to the school managing committee,

pursuant to the direction of the court, after retaining the photocopy of the entire records.

11. Ms. Bhattacharyya has appeared for the Board.
12. It is pertinent to note in this case that the concerned school/respondent Nos. 6 to 8, is governed by the Special Rules of 1973. To the said fact, there is no dispute and denial by any of the respondents in the case. The relevant provisions of the said Rules of 1973 have already been mentioned earlier, by dint of which the school managing committee has been bestowed with ample power to determine the required manpower for the school as well as to undertake a process in accordance with law for appointment in the said school. The writ petitioners are such appointees, who emerged as successful candidates in the recruitment process initiated by the school by dint of a vacancy notification. According to the petitioners, they have been permitted to join in the said school and has been continuously serving there since the date of their joining respectively.
13. To this abundant power of the school managing committee in terms of the said Rules of 1973, the only fetter would have been any general or special order of the State Government. Admittedly, not any general or special order by the State Government has been in force, at the relevant point of time. This aspect was taken into consideration by this Court in the case of ***Kushsdhwaj Mondal (supra)***. The Court has found that in absence thereof, there would not be any impediment for the school managing committee to act

accordingly in terms of the Special Rules of 1973, in the process of recruitment of teachers in the said school.

- 14.** As discussed earlier, the concerned respondent, in its report has pointed out regarding its dissatisfaction as to certain aspects in the process of recruitment and appointment of the writ petitioners. However, admittedly the said respondent has not taken any decision as yet as to the proposal of the school managing committee duly received by it, for approval of the panel of teachers that is writ petitioners. It is required that the concerned respondent takes a decision as regards the same. It is also required that the same concerned respondent has to satisfy itself regarding due compliance with all the formalities and requirements under the law, in order to grant approval of service of the writ petitioners from the date of their joining and working continuously in the said school. Let the respondent No. 3/D.I. take an early decision as regards this.
- 15.** Hence, this writ petition is disposed of directing the District Inspector of Schools (Secondary Education), 24 Parganas (North)/respondent No.3, to dispose of the proposal/recommendation of the school managing committee, for approval of the panel of the writ petitioners, by dint of a reasoned order.
- 16.** In doing so, the said respondent shall afford opportunity of hearing to the writ petitioners, the school authorities and any other person/persons, as it may deem fit and proper. The said respondent shall

also call for and examine the documents/registers, as it may think fit and proper, to reach to a decision, just and fair.

17. Needless to say, that in case the said respondent finds it proper to grant approval to the panel, as proposed, shall immediately take steps for grant of approval to the said panel with effect from the appropriate date.
18. The entire exercise as above, shall be concluded by the respondent D.I. within a period of 6 weeks from the date of communication of copy of this order.
19. With the directions as above, the instant writ petition being WPA No. 14283 of 2021, is disposed of.
20. Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.
21. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)