

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 13385 of 2011

Mirja Abdul Alim

Vs.

State of West Bengal & Ors.

For the petitioner : Mr. B. N. Ray
Ms. Shetparna Ray.

For the State : Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey.

Heard on : February 08, 2024

Judgment on : February 08, 2024

Aniruddha Roy,J. :

Facts:

1. This is the third round of writ litigation by the writ petitioner.
2. The petitioner was an aspirant for the post of **Group-D**, at **Kharamba Bani Vidyalaya, District – 24-Parganas (South)** [for short the school].
3. The Managing Committee of the school initially proposed to hold the selection process on the basis of the Panel of Candidates received from the jurisdictional Employment Exchange.
4. The petitioner being aggrieved filed the first writ petition being **WPA 21126 (W) of 2008**. A coordinate Bench by its order dated **August 26,**

2008, Annexure-P2 at page 30 to the writ petition disposed of the said writ petition with a direction upon the school authorities not to hold the recruitment test from amongst the candidates only sponsored by the concerned Employment Exchange and liberty was granted to hold such recruitment after giving wide publication regarding the vacancy in question through different media. It was further observed that, if the 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.

5. Pursuant to and in terms of the said direction of the coordinate Bench, the wide publication inviting candidatures was published by the managing committee of the school on **September 9, 2008, Annexure-P4 at page 33** to the writ petition.

6. Pursuant to and in terms of the said wide publication, the petitioner applied thereunder and participated in the recruitment process and ultimately the petitioner secured the first position for the Group-D employment, **Annexure-P8 at page 40** to the writ petition.

7. The panel was sent by the school authority before the jurisdictional District Inspector of Schools (for short the D.I.), who sat idle on the panel.

8. The petitioner filed the second round of writ litigation being **WPA 16413 (W) of 2010**. A coordinate Bench by its order dated **August 6, 2010, Annexure-P9 at page 43** to the writ petition, disposed of the writ petition with a direction upon the D.I. to convey its decision on the panel, in

accordance with law, to the managing committee of the school as well as the petitioner within a specific time-frame.

9. Pursuant to and in terms of the said direction of the coordinate Bench, the D.I. passed its reasoned order dated **January 31, 2011** rejecting the panel, **Annexure-P10 at page 47** to the writ petition.

10. Being aggrieved thereby the petitioner filed the instant writ petition.

11. Another writ petition assailing the said impugned decision of the D.I. being **WPA 5800 of 2011** was filed by the managing committee of the school.

12. Both these writ petitions were considered analogously for some time. Ultimately, the managing committee of the school did not pursue its writ petition and their writ petition being **WPA 5800 of 2011** stood **dismissed for default** by this Court on **January 10, 2024**.

13. At this juncture, this Court has raised an issue with regard to the **locus** of the writ petitioner to maintain the instant writ petition.

Submissions :

14. Ms. Shetparna Ray, learned counsel led by Mr. B. N. Ray, learned counsel appearing for the writ petitioner submits that, the moment the petitioner appeared in the recruitment process and was selected for the post by the managing committee of the school, a valuable right has accrued in favour of the petitioner to be considered for the employment.

15. Referring to the first order of the coordinate Bench dated **August 26, 2008** she submits that, the right of the petitioner was recognised by the coordinate Bench and then only the coordinate Bench directed the petitioner to participate in the selection process, if otherwise qualified in terms of the wide publication to be caused.

16. She then refers to the second order of the coordinate Bench dated **August 6, 2010** and submits that, after being satisfied with the locus and right of the petitioner, the coordinate Bench directed the D.I. to communicate the fate of the panel to the managing committee of the school.

17. Ms. Ray, learned counsel for the petitioner then submits that, whenever an aspirant participates in a selection process and gets empanelled by virtue of his/her merit and the panel is rejected, automatically a vested right accrues in favour of the candidate to challenge the said rejection. In support, learned counsel has relied upon the following decisions :

- i) A decision of the Hon'ble Division Bench ***In the matter of : Kaushik Mallick vs. West Bengal College Service Commission & Ors.*** reported at **2010 (4) CHN (CAL) 69**,
- ii) A decision of the Hon'ble Supreme Court ***In the matter of : East Coast Railway and Another vs. Mahadev Appa Rao and Others*** reported at **(2010) 7 SCC 678**,
- iii) A judgment of the Hon'ble Supreme Court ***In the matter of : R. S. Mittal vs. Union of India*** reported at **1995 SCC, SUPL. (2) 230**.

18. Learned counsel for the petitioner, in the light of the above submissions submits that, the writ petition is maintainable and this Court, in exercise of its power under judicial review, shall proceed to adjudicate the writ petition on merit.

19. Mr. Suman Dey, learned State counsel led by Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader appearing for the respondent nos. 1 to 3 submits that, in the facts of this case the writ petitioner was merely an empanelled candidate under the panel prepared by the managing committee of the school. The panel was sent for approval before the D.I. but for certain valid reasons, as would be evident from its decision dated **January 31, 2011, Annexure-P10 at page 45** to the writ petition, the panel was rejected. He also submits that, until a panel is approved and an Appointment Letter is issued, no candidate has any right to challenge the panel or the selection process and/or the rejection of the panel, as in the instant case. Therefore, the writ petitioner cannot claim any approval of the relevant panel, which has been rejected by the D.I. on the ground of irregularity.

20. Referring to the decisions cited on behalf of the petitioner, Mr. Dey, learned State counsel submits that, in each of such decisions, the respective panels were approved or the selection process was cancelled due to the arbitrary exercise of discretion on the part of the State authority and then the Courts held the writ petitions were maintainable by a candidate and

proceeded on merit. Whereas, in the instant case, neither the selection process was cancelled nor the panel was approved neither appointment was made, hence the petitioner has no right to challenge the impugned decision of the D.I.

Decision :

21. After considering the rival contentions of the parties and upon perusal of the materials on record, this Court proceeds to deal with the point of maintainability of the writ petition.

22. The law is well settled that, 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 the Appointment. On the basis of the said golden rule, this writ petition needs to be looked into. In this case the petitioner was merely an empanelled candidate. The panel was not approved but was rejected. Thus, no right had accrued in favour of the petitioner.

23. The first order in the first writ petition dated **August 26, 2008** merely directed the school authority to go for a wide publication before holding the recruitment process and an observation was made that, if the petitioner was otherwise qualified he could participate in the selection process. This definitely cannot create any right or vested right in favour of the petitioner to challenge the selection process merely being empanelled.

24. The next order in the second writ petition dated **August 6, 2010** merely directed the D.I. to communicate the fate of the panel on which he was sitting idle, to the school authority. The question of recognition of any right of the petitioner did not arise in the said order. Therefore, none of these orders created any right in favour of the petitioner in any manner whatsoever.

25. ***In the matter of : Kaushik Mallick (supra)*** the relevant panel was published and a lesser rank holder candidate superseded a higher rank holder candidate. In the light of such fact situation, the writ petition was held to be maintainable and ultimately the Division Bench proceeded on the merit of the writ petition in the appeal. In the instant case, there is no approved panel neither there is any question of supersession. Hence, the ratio of this judgment shall not apply in the facts of this case.

26. ***In the matter of : East Coast Railway and Another (supra)***, the examination was cancelled and no reason and/or valid reason was assigned for such cancellation. Hence, the writ petition by a candidate was held maintainable. This is not the case in the facts in hand. Therefore, the ratio in this judgment shall not apply in the fact situation of this case.

27. ***In the matter of : R. S. Mittal vs. Union of India (supra)***, there was a breach of rule of the game of the selection process. Hence, the writ petition was entertained filed by a candidate who participated in the selection process. This is not the case here. Hence, the ratio of this judgment shall not apply in the facts and circumstances of this case.

28. For this foregoing reasons and discussions, this Court is of the considered view that, the petitioner has no right and locus to maintain the instant writ petition.

29. Accordingly, this writ petition, **WPA 13385 of 2011** stands ***dismissed***, without any order as to costs.

30. However, it is made clear that, this Court has not gone into the merits of the rejection of the panel in any manner.

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

(Aniruddha Roy, J.)