

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE PRASENJIT BISWAS

**FMA 2368 OF 2013
with
CAN 1 OF 2024**

**DEBASISH MAHATO
Vs.
THE STATE OF WEST BENGAL & ORS.**

**FOR THE APPELALNT : MR. EKRAMUL BARI, ADVOCATE
MR. SK. IMTIAZ UDDIN, ADVOCATE**

**FOR THE RESPONDENT : MR. IVAN ROY, ADVOCATE
NOS. 4 & 5 MR. DEBANGSHU BANDHU, ADVOCATE
MR. NIRUPAM DUTTA, ADVOCATE**

HEARD ON : NOVEMBER 11, 2024

JUDGMENT ON : NOVEMBER 11, 2024

THE COURT:

1. The appeal arises from a judgment and order dated 25th March, 2013 by which the writ petition filed by the appellant was rejected, thereby, upholding the decision of the District Inspector of School, by which the approval to the panel prepared for appointment of a Clerk in the school by the managing committee of the school was rejected.
2. Undisputedly, the recruitment process for filling up the post of a Clerk was initiated at the behest of managing committee of the school under the West Bengal Schools (Recruitment of Non-Teaching Staff) Rules, 2005. The selection committee appears to have been constituted and a date for interview was also fixed in respect of intending candidates. Admittedly, no interview could be held on the date so fixed which was duly notified to the District Inspector of School but the school authorities, on their own, fixed another date for interview and conducted the same. The panel was prepared

which does not contain the signature of the nominee of the Panchayat and also do not contain the total number of the candidates who were called for interview. The District Inspector of Schools further found that two constituents of the selection committee were intimated on the same day and, therefore, it appears that there is a discrepancy in this regard. The learned Single Judge did not interfere with the decision of the District Inspector of Schools in declining to grant approval to the panel submitted by the school authority and dismissed the writ petition.

3. Mr. Bari, learned Advocate appearing for the appellant vociferously submits that the grounds taken by the District Inspector of Schools, in an order of rejection of a panel, are procedural irregularities and cannot defeat the valuable rights accrued to the appellant. He further submits that for the fault of the school authorities, the candidate, who stood first in the panel, cannot be deprived of a right to an appointment. He, thus, submits that if there is a small infraction of the provisions of the said Rules, it can at best be treated as irregular not illegal.
4. Before we proceed to deal with the submissions so advanced before us, it would be apposite to recapitulate relevant provisions of the said Rules which have a statutory flavour.
5. Rule 5 of the said Rules postulates the method of recruitment in relation to a Librarian or Clerk or a Group-D staff in a school to be made on the basis of a selection (direct recruitment). It further postulates that there should be a selection committee for selection of a candidate for the aforementioned post, as and when the occasion so arise.
6. Rule 6 of the said Rules contain the extensive provision relating to the constitution of the selection committee and its constituents. So far as the selection committee to be constituted for filling up the post of a Clerk is concerned, the same shall be done in the following:

“... 6(1)(b) for the selection of a Clerk or a Group-D staff in a school, the selection committee shall consist of the following:-

 - (i) Headmaster,
 - (ii) Secretary of the school authority;

Provided that if the Headmaster and the Secretary of the school authority are one and same person, the President of the school authority shall be the member of the selection committee :

Provided further that nothing in the last preceding provision shall be applicable in case there is an Administrator of the school.

(iii) Headmaster of a school in the same sub-division as the school for which the Clerk or the Group-D staff is to be selected is situated, and

(iv) a nominee of the *Panchayat Samity* or Municipal Corporation or Municipality or Notified Area Authority as the case may be:

Provided that no person who is a staff of a school shall be nominated as the nominee.

Explanation : For the purposes of this sub-rule, “recognised” means recognised or established by or under law.”

7. It is manifest from the aforementioned provisions that apart from the other outsider members, the Headmaster and the Secretary of the school should be an integral part of the said selection committee. It also imbibe within itself the Headmaster of School, in the same sub-division, to be a part of such committee. The nominee of the Panchayat Samity or the Municipal Corporation or the Municipality shall also be a member of the selection committee. Sub-rule (5)(b) of Rule 6 further provides that the selection committee along with every panel shall submit to the District Inspector of Schools, a certificate indicating the actual position to that effect.
8. Rule 8 contain an exhaustive provision relating to general procedures to be adopted by the selection committee while undertaking the recruitment process in relation to the post of a Clerk. Sub-rule (8) of Rule 8 of the aforesaid Rules is quoted as under:

“... 8(8)(a) Once the date of interview has been fixed up and communicated to any of the candidates, the interview shall not be postponed except for the reason of a severe emergency or natural calamity.

(b) If the interview is postponed, the selection committee shall forthwith communicate the fact to the District Inspector of Schools

and shall obtain his approval (but not his sanction afresh) for holding the interview on any other date.”

9. It is evident from the aforesaid provision that the moment a date for interview is fixed and communicated to all the candidates, it shall not be postponed except for the reason of a severe emergency or of natural calamities. In the event the interview date is postponed, it is obligatory on the part of the selection committee to communicate such fact to the District Inspector of Schools suggesting a proposed date for an approval.
10. Admittedly, on the date fixed for the interview which was duly communicated to the District Inspector of Schools, no interview could be conducted. The selection committee, in complete defiance to the mandatory provision contained in Rule 8 of the aforesaid Rules, unilaterally fixed another date for interview without communicating the same to the District Inspector of Schools for the purpose of obtaining the consent and/or approval which has been highlighted by the said authority in an order of rejection of the said approval.
11. It is no longer *res integra* that the authorities cannot travel beyond the peripheral of the statutory provisions nor shall be permitted to transgress the same unless so provided. The authorities have to follow the statutory provisions as any transgression would entail the action of the authorities liable to be struck down. If a thing is required to be done in a particular manner, under the statute, the authorities cannot travel beyond its circumference but have to take all steps within the four corners thereof. Whether the certain provisions which are merely procedural in nature invites a serious consequence or not or can be brought within the purview of an irregularity is one aspect but once there is a clear mandate given in the statute, in relation to obtaining an approval for conducting the interview at the postponed date, non-adherence thereof cannot be perceived as irregular.
12. Furthermore, the school authority while sending the panel containing the documents did not obtain the signature of a nominee of a Panchayat Samity which creates a doubt in the mind of a District Inspector of Schools that being a member of the selection committee, he ought to have conducted the interview and in absence of the same, we do not find that there is any infirmity in the decision of the District Inspector of Schools in this regard.

13. Without venturing to delve upon the other aspect, which in our opinion are mere irregularities, the aforesaid lapses and/or infirmities committed by the school authorities in adopting and/or adhering to the procedure provided in the statute, does not render the decision of the District Inspector of Schools in declining to grant approval to the said panel illegal. Consequently, we do not find any illegality and/or infirmity in the decision of the Single Bench.
14. Accordingly, the appeal being **FMA 2368 of 2013** and the connected application being **CAN 1 of 2024** are **dismissed**. No order as to costs.
15. Urgent Photostat Certified copy of this order, if applied for, be given to the parties within three days of such application.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)