

S/L 6
02.4.2024
Court No.11
SD

WPA 16642 of 2007

Smt. Nupur Maity
Vs.
State of West Bengal & Ors.

Mr. Anil Kr. Chatterjee
Mr. Dinesh Pani

...for the Petitioner.

Mr. Jayanta Samanta
Mr. Supriya Majumder

...for the State.

Mr. S. Biswas
Mr. Amalendu Bhaumik

...for the School Authority.

Questioning the sustainability of the memo. *vide.* no. 243 dated 13.7.2007 issued by the D.I. of Schools directing the Secretary of the School to recast the panel as per prior permission dated July 24, 2006 and seeking a direction upon the D.I. of Schools to approve the panel prepared for the post of Group-D staff, the present writ petition was preferred.

Briefly stated, the facts, as delineated in the writ petition, are that a permanent vacancy in the post of Group-D staff of Ram Krishnapur Balika Vidyalaya (in short, the school) arose due to retirement of one Anjali Karmakar. On 05.11.2003, by adopting one resolution, the Managing Committee of the school engaged the petitioner, who happens to be a Madhyamik passed candidate, in the post and on being so engaged, the petitioner has been rendering her service without any blemish till the date against a paltry sum of honorarium of Rs. 300/- p.m. The petitioner

approached the respondents with a prayer for regulation of her service but in vain.

In 2006, one selection process was undertaken to fill the post of Group-D staff of the school. The petitioner preferred a writ petition being W.P. no. 678(W) of 2006, which was disposed of by an order dated 18.01.2006 directing the school authority to allow the petitioner in the interview which was ultimately held on 25. 11.2006.

For sake of clarity and convenience, it would be apt to reproduce the operative part of the order dated 18.01.2006 which is as follows:

“ I dispose of the writ petition by directing the respondent nos. 4 and 5 to allow the petitioner to appear at the interview along with other eligible candidates to be held on 21st January, 2006 or on any other subsequent date to the post of Peon in Ramkrishnapur Balika Vidyalaya, Howrah-2, if she is found otherwise eligible, possesses requisite qualifications and fulfills all other criteria. Prior to the interview the respondent authorities shall verify the mark sheets and the testimonials to be furnished by the petitioner..”

In view of the order dated 18. 01.2006, the petitioner was allowed to appear in the interview and she emerged to be the 1st empanelled candidate. The panel was sent to the D.I. of Schools but the D.I. of Schools by passing an order *vide.* memo. no. 243 dated 13.7.2007 directed the school authority to recast the panel. Hence, the writ petition.

The school authority submits affidavit-in-opposition, as directed.

Mr. Chatterjee, learned advocate representing the petitioner being assisted by Mr. Pani, learned advocate contends that petitioner being appointed by the Managing Committee against a permanent vacancy has been rendering service in the post uninterruptedly since 2003 and the school authority has certified this fact. He asserts that the petitioner has made out a good case to be favoured with a direction upon the respondents to take steps to regularise her job.

Quite apart from above, he contends that the vacancy in the post of Group-D staff in the School arose due to retirement of Anajli Karmakar who was a candidate belonging to general category and as such, the post is unreserved. He argues that the D.I. of Schools has acted going beyond his jurisdiction in directing the school authority to re-cast the panel. He submits the order dated 13.07.2007 be set aside and the D.I. of Schools be directed to approve the panel.

From the prior permission issued by the D.I. of Schools *vide* his memo. no. 1001/M dated 24.07.2016, it would be explicit that the post was reserved for 'Scheduled Caste' candidate. The petitioner is a candidate belonging to General (unreserved) category. At the time of pressing the writ petition being W.P. no. 678(W) of 2006, these facts had not been brought to the notice of the Court. That apart, in the order dated 18.01.2006 passed in W.P. no. 678(W) of 2006, a coordinate Bench of this Court directed the school

authority to allow the petitioner to appear in the interview if she was found to be otherwise eligible, possessed requisite qualifications and fulfilled all other criteria and further direction was given to verify the mark sheet and testimonials of the petitioner prior to the interview.

It is surprising enough that despite having knowledge that the post is reserved for SC candidate and notwithstanding that facts that the petitioner was not eligible for the post, she did not possess qualifications and fulfill all other criteria, the school authority allowed the petitioner to appear in the interview. The school authority appointed/engaged in the post without having any authority to do so. No prior permission was taken before giving appointment to the petitioner in the post. It is noteworthy that though there was no interim order staying in operation of the order of the D.I. of Schools passed way back in 2007 yet despite of lapse of long 17 years, the school authority has not complied with the same. Therefore, it is a clear example of misplaced sympathy that is still being showered by the school authority on the petitioner. The post is still lying vacant and the candidate who deserved to get appointment in the post, failed to achieve his/her goal.

Though as on date, the way is not so smooth yet it can be stated that the appointment which is irregular can be regularized if law so permits but an illegal appointment cannot be directed to be regularized in any manner. Legality cannot be bestowed upon the petitioner's

appointment/engagement which took place in such a fashion.

In view thereof, I have no hesitation to hold that I do not find any reasonable force in the contentions canvassed by Mr. Chatterjee and I also do not find any error and flaw in the order of the D.I. of Schools dated 13.07.2007 warranting interference with the same.

Accordingly, taking stock of the chronological events and resume, the only analogy which can be drawn is that the writ petition is liable to be dismissed. Accordingly, the same stands dismissed, however, without any order as to the costs.

All parties are to act on the website copy of this order.

(Partha Sarathi Chatterjee, J.)