

AD -38 & 39
30.09.2024
Ct No. 25
S.Das

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 15812 of 2021

The Secretary of the Managing Committee of Bramho Balika Sikshaniketan

-Vs.

The State of West Bengal & Ors.

with

WPA 19492 of 2021

with

CAN 1 of 2022

The Secretary of the Managing Committee of Bramho Balika Sikshaniketan

-Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari

Mr. Sk. Imitiaj Uddin

.....for the petitioner.

In spite of service of notice, none appears for the respondents/State. Hence, the matter is taken up for consideration and order in absence of the State respondents.

The two writ petitions being WPA 15812 of 2021 and WPA 19492 of 2021 along with CAN 1 of 2022 are taken up together for disposal by dint of this common order.

The petitioners are the appointees to the respondent School namely Brahmo Balika Sikshalaya which is not an institution governed by the West Bengal School Service Commission Act, 1997.

The school sought for prior permission from the District Inspector of Schools (S.E), Kolkata, for recruiting the non-teaching staff for the posts of Librarian, Clerk and Group-‘D’ Peon(1 un-reserved and 1 reserved). The prior permission was granted by the respondent District Inspector of Schools (S.E), Kolkata vide order dated 7th

December, 2020.

Since thereafter, the School proceeded for recruiting the said staff by initiating recruitment process and the petitioners were appointed. The petitioners had joined in school on 7th April, 2021.

Allegedly however, since thereafter the service of the petitioners have not been approved by the respondent Authority. The school Authority has prayed for approval of service of the petitioners who have been appointed through a process of recruitment which has been duly initiated pursuant to the prior permission of the respondent Authority, by dint of its letter dated 10th May, 2021 and 3rd July, 2021.

By dint of the order dated 10th September, 2021 the respondent District Inspector of Schools, has withdrawn prior permission of it, earlier granted to initiate the recruitment process. The same is under challenge in this writ petition. Let the relevant portion of the same be extracted, as herein below:-

“With reference to the subject noted above, the school authority is hereby informed that your school is under Special Constitution Rules and it is managed by Sadharan Bramho Samaj. So recruitment rules will be followed vide G. O. 175-SE/JS/13 dated 17-08-2013 regarding appointment of teacher and non-teaching staff of the school. The Prior Permission was accorded by the Office of the District Inspector of School(S.E.), Kolkata regarding appointment of non-teaching staff(Librarian) vide memo no. 942/M dated 07.12.2020 mentioning Recruitment Rules Memo NO. 2256/1(21) G. A dt-14-09-2001/1628-G.A. dt-10.07.2002/G.O. NO. 1314(50)-SE(S) dated 17.09.2002, No. 605-SE(S) dated 20.06.2006 & No. 904-SE(B) dated 18.07.2007 which is contradictory to the Recruitment Rules of your school.

Hence, Prior Permission issued by this office vide Memo No. 942/M dated 07.12.2020 is hereby withdrawn at this stage.”

Mr. Bari learned advocate appearing for the petitioners has submitted that after prior permission having been accorded and a process having been undertaken for recruitment, in which the petitioners have duly qualified and been appointed thereafter, there would not be any reasonable or a justified ground for the respondent Authority to withdraw such prior permission, by dint of the impugned order.

It has further been submitted that the impugned order, therefore, is an arbitrary one, whimsical, oppressive and not maintainable in the eye of law. He would seek that the respondent Authority be directed to immediately approve the service of the petitioners and allow them the service benefits including the salary from the date of their joining.

On careful perusal of the impugned order dated 10th September, 2021, the court finds that the respondent D. I of Schools have acceded to the fact therein, that prior permission was accorded to the respondent school Authority to initiate a process of appointment and to appoint non-teaching staff of the category mentioned above. He writes that the same was accorded vide memos no. 2256/1(21) G. A dt-14-09-2001/1628-G.A. dt-10.07.2002/G.O. No. 1314(50)-SE(S) dated 17.09.2002, No. 605-SE(S) dated 20.06.2006 & No. 904-SE(B) dated 18.07.2007 .

The respondent/D. I of Schools has stated in the impugned order, that the said memos pursuant to which the prior permission was granted, are contradictory to the

Recruitment Rules applicable in the respondent school. Therefore, the respondent District Inspector of Schools (S.E.), Kolkata by dint of the said impugned order dated 10th September, 2021, has withdrawn the prior permission earlier issued to the school Authority to initiate the process of recruitment.

The decision of the respondent D. I of Schools in the impugned order appears to be unreasonable in so far as pursuant to the grant of permission by the said Authority, the school Authority has already undertaken a recruitment process and appointed the present petitioners. Therefore, grant of prior permission is an admitted fact. The said fact is never challenged in this case.

As a reason to withdraw such permission the respondent/ District Inspector of Schools has mentioned that the said permission has been granted earlier in terms of such provisions or memos, which were contradictory to the recruitment rules of the school, in other words, were not applicable in case of the respondent/school.

It is, however, not the contention of the respondent that any illegality has happened in the course of recruitment, thereby to pose any question as to the sanctity of the same. The reason is only due to grant of permission by the said authority in terms of some rules which may not apply to the respondent school in view of its own recruitment rules. The court finds that, unless there is any fundamental objection as to the validity, legality, or sanity of the recruitment process and in absence of any allegation as to the propriety of the process of recruitment,

such withdrawal of prior permission, by the said authority, even if it was granted under some other rules, excepting the recruitment rules applicable to the school, at a point of time, when after conclusion of the said recruitment process, the petitioners have been appointed in the school and has already discharged duties there in for a considerable period of time, would only be iniquitous.

Any official error should have been rectified by the respondent authorities, immediately or at least before the school completed the entire process. After the appointments being made and the appointees having discharged duties for a considerable time period, it should be too late for the said authority to rectify its error, if any, for which, as a matter of fact, neither the petitioners, nor the school authorities had any role to contribute to. That too when the said respondent is unable to find any alleged illegality or impropriety to have taken place, in the entire process thereof. Therefore withdrawal of prior permission by the said respondent, vide the impugned letter dated 10th September, 2021, after conclusion of the process of recruitment and appointment being granted to the present writ petitioners, is found not only to be unreasonable, but also arbitrary and unsustainable.

Considering the same the action taken by the District Inspector of Schools pursuant to the impugned order dated 10th September, 2021 thereby withdrawing the prior permission and invalidate the entire process of recruitment which was undertaken pursuant to that prior permission is liable to be set aside.

For the reasons as stated above, this court find it proper to allow the present writ petitions by directing as follows:-

- I. The impugned order dated 10th September, 2021 is set aside.
- II. The respondent no.3/D. I. of Schools (SE), Kolkata, is directed to immediately accord and give approval of the service of the petitioners in their respective category and posts in which the petitioners were appointed and serving since after joining in the said posts, with effect from the date of their initial appointment.
- III. The entire exercise as above shall be concluded by the D. I. of Schools (S.E), Kolkata within a period of six weeks from the date of the communication of a copy of this order.
- IV. Current salary as well as arrear be paid immediately.

Since I have not called for an affidavit, the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

With the above observations, both the writ petitions along with the connected application, if any, are disposed of.

All parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Rai Chattopadhyay, J.)