

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**W.P.A. 20999 of 2005
Sanat Kumar Das
Versus
The State of West Bengal & Ors.
With
W.P.A. 8119 of 2006
With
IA No. CAN 1 of 2015 (Old No. CAN 8765 of 2015)
+
IA No. CAN 2 of 2017 (Old No. CAN 382 of 2017) (Not in File)
Chandan Mete
Versus
The State of West Bengal & Ors.**

For the Petitioner in
WPA 8119 of 2006

: Md. Nurezamman
Mr. Somen Bose
.....advocates

For the State

: Mr. Tapan Kumar Mukherjee
Ms. Sangeeta Roy
... advocates

For the Respondent No. 6

: Mr. Nikhil Kr. Gupta
... advocate

Reserved On

: 04.04.2024

Judgment on

: 17.05.2024

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner in W.P.A. 8119 of 2006 has prayed for setting aside the order of the District Inspector of Schools (S.E.), Birbhum dated September 26, 2005 and for cancellation of the candidature of Sanat Das i.e., the 6th respondent and to approve the panel prepared on the basis of

interview held on 28.08.2002 by placing the writ petitioner i.e., the 2nd empanelled candidate at the top of the panel.

2. Facts giving rise to this writ petition in a nutshell are as follows-
3. Post of Group D (Peon) under the Scheduled Caste category was declared vacant at Labpur Junior High Madrasah (for short "the Madrasah"). After obtaining prior permission to fill up the said vacancy, the competent authority of the Madrasah decided to conduct the selection process for filling up the said vacancy. Names of the eligible candidates were sponsored by the Employment Exchange. Petitioner approached the Writ Court with a prayer to allow him to participate in the selection process and a co-ordinate bench by an order dated 30.08.2001 in WP No. 12289(W) of 2001, allowed the petitioner to participate in the said interview. Petitioner participated in the interview held on 28.08.2002. The 6th respondent was placed in the first position of the panel, the writ petitioner was placed in the 2nd position and one Tapas Kumar Bagdi i.e., the 7th respondent was placed in the 3rd position of the panel. Pursuant to an order passed in W.P. No. 11451(W) of 2005 at the instance of the 7th respondent, the District Inspector of Schools (SE), Birbhum (for short "the DI") passed the order dated 26.09.2005, directing the authority of the Madrasah to recast the panel in order of merit keeping the 7th respondent in the 1st position and deleting the names of the 6th respondent and the writ petitioner herein.
4. Being aggrieved by the said order of the DI dated 26.09.2005 the 2nd empanelled candidate has approached this Court.
5. The learned advocate for the petitioner attacked the impugned order on the ground of violation of the principles of natural justice by submitting that no opportunity of hearing was provided to the writ petitioner before directing deletion of his name from the panel. He contended that the name of the 6th respondent has to be struck off from the panel as he appeared in the interview held on 28.08.2002 by totally suppressing the order dated 14.09.2001 dismissing the writ petition filed by the 6th respondent. He, thus, submitted that the respondent authorities should be directed to approve the panel prepared on the basis of the interview dated 28.08.2002 by placing the writ petitioner in the 1st position in the panel.
6. Mr. Mukherjee, learned Additional Government Pleader seriously disputed the contentions of the writ petitioner. He contended that after issuance of the prior permission by the D.I., the authority of the

Madrasah did not publish any advertisement for the said post as per the law declared by the Hon'ble Supreme Court in the case of ***Excise Superintendent vs. K.N. Visweshwara Rao and others*** reported at **(1996) 6 SCC 216**. He submitted that the issue regarding recasting of panel and approval of the panel pursuant to the selection process initiated by the Madrasah has become academic in view of coming into force of The West Bengal Madrasah Service Commission Act, 2008 (for short "the 2008 Act") and the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of persons for Appointment and Transfer to the posts of Teacher and non-teaching Staff) Rules, 2010 (for short "the 2010 Rules"). He submitted that after coming into force of the 2008 Act, DI has got only the power to approve appointment after the recommendation is made by the Commission and the Managing Committee of the Madrasah is denuded of its power to prepare or even recast the panel. He further submitted that the vires of Sections 8, 10, 11 and 12 of the 2008 Act and the 2010 Rules was challenged in the case of ***SK. Mohd. Rafique vs. Managing Committee, Contai Rahamania High Madrasah & Ors.***, and the Hon'ble Supreme Court in the decision reported at **(2020) 6 SCC 689** upheld the vires of the aforesaid provisions. He concluded by submitting that the vacant post in question has to be filled up as per the 2008 Act read with the 2010 Rules.

7. The learned advocate for the 7th respondent contended that the writ petitioner got himself registered with the Employment Exchange only in the year 1997 whereas the Employment Exchange sponsored candidates were registered on or before 31.12.1984. Therefore, the petitioner was not eligible to participate in the interview as he could not come within the zone of consideration. He disputed the submission of the learned advocate for the petitioner on the issue of violation of the principles of natural justice by contending that the writ petitioner was casual in his approach as he had chosen to remain absent at the hearing.
8. In reply, the learned advocate for the petitioner contended that the selection process commenced and the panel was prepared as well as the order directing recasting of the panel was passed at a point of time when the 2008 Act and 2010 Rules did not come into force. He submitted that once the selection process has commenced, it should be finished in accordance with the law that it stood at the time of initiation of process, even if a new law has come into force in the meantime. In support of the aforesaid contention, he placed reliance upon the decisions of the Full Bench of this Court in a batch of matters, the lead case being **FMA No. 768 of 2007** in the case of ***Tulsi Roy vs. Sri Krishnendu Roy & Ors.***

reported at **(2011) 2 CHN 1021**. He contended that the vacancies which occurred prior to coming into force of the new rules would be governed by the Old Rules and in support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in **P. Ganeshwar Rao and Ors. vs. State of Andhra Pradesh and ors.** reported at **AIR 1988 (SC) 2068**, **P. Mahendran and ors. vs. State of Karnataka and ors.** reported at **(1990) 1 SCC 411** and **Gopal Krushna Rath vs. M.A.A. Baig (dead) by L. Rs. and Ors.** reported at **AIR 1999 (SC) 2093**.

9. Heard the learned advocate for the parties and perused the materials placed.
10. A Group D Post (Peon) under the Scheduled Caste category fell vacant in the said Madrasah. Prior permission for filling up the said post was obtained. The authorities of the Madrasah decided to conduct the selection process. Accordingly, the names of the eligible candidates were sponsored by the concerned Employment Exchange pursuant to requisition of the Madrasah. The writ petitioner and the 6th respondent participated in the interview which was held on 28.08.2002 along with several other candidates including the 7th respondent. The 6th respondent was placed in the 1st position of the panel, the writ petitioner was placed in the 2nd position and the 7th respondent was placed in the 3rd position.
11. It is not in dispute that the writ petitioner as well as the 6th respondent appeared in the interview pursuant to orders allowing them to participate in the interview in the writ petitions filed by them.
12. The D.I., by his order dated 26.09.2005, directed deletion of the names of the 6th respondent and the writ petitioner from the panel on the ground that their names were not sponsored by the Employment Exchange.
13. The issue as to whether the field of choice of selection of candidates should be restricted to sponsorship of candidates by Employment Exchange fell for consideration in the case of **Excise Superintendent Malkapatnam, Krishna District, A.P. vs. K.B.N. Visweshwara Rao and ors.** reported at **(1996) 6 SCC 216** wherein the Hon'ble Supreme Court held that it should be mandatory for the requisitioning authority/ establishment to intimate the employment exchange and in addition to the names sponsored by the employment exchange, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and display on their office notice boards or announce on radio, television and

employment news bulletin and then consider the names of all the candidates who have applied.

14. In **Tulsi Roy** (supra), the Hon'ble Full Bench formulated three questions, one of which relates to applicability of the principle laid down in **K.B.N. Visweshwara Rao** (supra) to government sponsored schools. The said question was answered by the Full Bench by holding that the observations of **K.B.N. Visweshwara Rao** (supra) will be equally applicable to the employment in any educational institutions sponsored by the Government.
15. By applying the aforesaid proposition of law laid down by the Hon'ble Full Bench, this Court holds that the principle of law laid down in **K.B.N. Visweshwara Rao** (supra) shall be applicable in case of the said Madrasah.
16. The second question that fell for consideration therein was whether a person, whose name has not been sponsored by the employment exchange, can file a writ petition thereby praying for allowing him to participate in the process of selection without praying for a direction for advertisement for that post in the newspaper.
17. The said question was answered by the Hon'ble Full Bench by observing that a person by taking aid of **K.B.N. Visweshwara Rao** (supra) can certainly come to the High Court for enforcing the directions passed therein, but he cannot approach the Court for permitting him to appear at the selection process without praying for direction for giving advertisement with the object of avoiding contest with other similarly placed candidates.
18. In the orders passed by the co-ordinate bench, the writ petitioner and the private respondents were allowed to participate in the interview. No direction appears to have been passed in the said writ petitions directing the authority of the Madrasah to publish advertisement for the post.
19. In the case on hand, after prior permission was granted to fill up the vacant post, only requisition was sent to the Employment Exchange. Some candidates namely the writ petitioner and the 6th respondent were permitted to appear at the interview pursuant to orders passed by the writ Court.
20. Therefore, the choice of selection of candidates was restricted only to the candidates sponsored through Employment Exchange and those permitted to appear in the interview pursuant to orders of the Court. No

advertisement for filling up the vacant post was published by the Madrasah. Many eligible candidates may have been deprived of the opportunity to be considered for appointment to the said post. Such a restricted manner of choice of selection of candidates would offend Articles 14 and 16 of the Constitution of India.

21. The selection process was thus initiated and the panel was prepared in violation of the law declared in **K.B.N. Visweshwara Rao** (supra). The entire selection was thus vitiated.
22. Now, the question that arises is whether direction should be passed by this Court to complete the selection process under the law that was prevailing at the time of initiation of the said process or by the new law which has already come into force in the meantime.
23. The 2008 Act was enacted to provide for the constitution of Madrasah Service Commission in West Bengal and for matters connected therewith or incidental thereto. Assent of the Governor to the said Act was first published in the Kolkata Gazette Extraordinary of 22nd October, 2008. Section 8 of the 2008 Act starts with a non obstante clause and states that it shall be the duty of the Commission to select and recommend persons to be appointed to the vacant posts of the teachers and the non-teaching staffs. Section 9 deals with the manner and scope of selection and procedure for conduct of business of the Commission. Section 10 states that the Managing Committee, the Adhoc Committee or the Administrator shall be bound to appoint the candidate recommended by the Commission to the post of teacher or the non-teaching staff of the Madrasah concerned.
24. 2010 Rules have been framed wherein the manner and scope of selection of persons for appointment to the posts of teachers and the non-teaching staffs have been specifically prescribed.
25. The Managing Committee of Contai Rahamania High Madrasah filed a writ petition challenging the vires of Sections 8, 10, 11 and 12 of the 2008 Act on the ground that the provisions of the said Act transgressed upon the rights of a minority institution of choosing its own teachers. The writ petition was allowed by the Hon'ble Single Judge. Aggrieved by the said order, some of the candidates including one Sk. Mohd. Rafique whose names were recommended by the Commission to be appointed as teachers in the aided Madrasah, filed an appeal. The State of West Bengal also filed an appeal against the order of the Hon'ble Single Judge. All the appeals were dismissed by the Hon'ble Division Bench thereby

affirming the view taken by the Hon'ble Single Judge. Aggrieved by the said order, SK. Mohd. Rafique preferred an appeal before the Hon'ble Supreme Court.

26. The Hon'ble Supreme Court in **SK. Mohd. Rafique** (supra) held that the provisions of the 2008 Act do not violate the rights of the minority educational institutions on any count. The Hon'ble Supreme Court, however, observed that if after disposal of the matters by the High Court any appointments are made by the Madrasahs concerned, such appointment of teachers shall be deemed to be valid for all purposes. The Hon'ble Supreme Court observed that the Commission shall hereafter be competent to select and nominate teachers to various Madrasahs in accordance with the provisions of the 2008 Act and the rules framed there under.
27. In the case on hand, no appointment was made to the vacant post. Therefore, the writ petitioner cannot take advantage of the observations in **Sk. Mohd. Rafique** (supra) to treat the appointment made in the meantime to be valid. In view of the aforesaid decision, there is no doubt that only the Commission shall be competent to select teaching and non-teaching staffs of the Madrasah with effect from the date of the said decision. The said decision was delivered on 06.01.2020.
28. In **P. Mahendran** (supra), the Recruitment Rules were amended by omitting the qualification of Diploma in Mechanical Engineering for the post of Motor Vehicle Inspectors. The Hon'ble Supreme Court held that as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment.
29. In **Gopal Krushna Rath** (supra), it was held that when the selection process has actually commenced and the last date of inviting applications is over, any subsequent change in the requirement regarding qualification will not affect the process of selection which has already commenced.
30. By relying upon the aforesaid decisions, the learned advocate for the petitioner contended that the Hon'ble Supreme Court has declared the law that a selection process initiated has to be finished as per the rules that stood at the time of commencement of such process.

31. The learned advocate for the petitioner would also rely upon the observation of the Hon'ble Full Bench in support of his contention that the selection process already initiated should be finished in accordance with law that stood at the time of initiation of the process.
32. At this stage it would be relevant to point out that in **Tulsi Roy** (supra), the Hon'ble Full Bench after reiterating the broad proposition of law that if the process of selection has already been initiated, it should be finished in accordance with the law that stood at the time of initiation of the process even if a new law has come into force in the meantime, carved out an exception to such proposition where an appointment given pursuant to the said selection process had to be set aside.
33. To the mind of this Court the said broad proposition of law cannot have an universal application but would depend on the facts of the case.
34. The issue as regards commencement of a selection process towards appointment of a non-teaching staff in recognised educational institutions fell for consideration before the Hon'ble Larger Bench in a batch of writ petitions, the lead case being **The Managing Committee, Kadamtala High Madrasah vs. The State of West Bengal** and others reported at **(2019) 2 CHN 1**.
35. The Hon'ble Larger Bench noted the observation of the Hon'ble Supreme Court in the order dated 05.10.2012 in the case of **Nirjharini Sarkar Balika Vidyalaya (H.S.)**, that no vested right accrues in favour of the candidate merely by initiation of a selection process. The Hon'ble Larger Bench observed that the grant of prior permission does not confer any vested right in the management to complete the selection process by following the rules existing as on the date of creation of the vacancy notwithstanding any change in the selection rule before publication of advertisement of the vacant post under the old rules.
36. The Hon'ble Larger Bench noted that the new rules came into effect from 9th July, 2009 and prior thereto no advertisement was published. It was observed that on the date of prior permission to fill up the vacancy no right crystallised in favour of the candidate. It was further observed that upon availing such prior permission, a school is required to seek names of eligible candidates for the concerned post by sending requisition to the Exchange and by making open advertisement. It was held that it is only on the date of advertisement, when the candidates are invited to apply, the selection process commences.
37. The Hon'ble Larger Bench held thus-

“38. The term ‘selection’ means exercise of discretion of the members in the selection committee in examining the participants. The candidature of the aspirant cannot be construed to have been considered on the date of creation of the vacancy or on the date of issuance of prior permission. Since the said two dates are prior to invitation to participate in the interview, the selection process cannot be construed to have commenced on the said dates. It is only on the date of advertisement, when the candidates are invited to apply, the selection process commences and the fourth issue is, accordingly, answered.”

(emphasis supplied)

38. In the case on hand, open advertisement has not been published by the authorities of the Madrasah inviting the candidates to participate in the interview prior to the coming into force of the 2010 Rules.
39. This Court has already observed that the selection was vitiated. Under normal circumstances, a direction to proceed with the selection process from the stage it got vitiated and to conclude the same could have been passed. However, taking note of the fact that new Rules have already come into force, no direction can be passed to proceed with the selection process as per the old rules in the light of the observations in **Managing Committee, Kadamtala High Madrasah** (supra).
40. The decisions in the case of **P. Mahendran** (supra) and **Gopal Krushna Rath** (supra) dealt with amendment of the eligibility criteria with regard to qualification after commencement of a selection process. The said decisions are not applicable to the case on hand as it did not deal with situations where the selection initiated as per the old rules were vitiated and in the meantime the new Rules have come into force. The decision of the Hon’ble Larger Bench of this Court squarely applied to the case on hand.
41. In **P. Ganeshwar Rao** (supra) the Hon’ble Supreme Court after noting that the word “arising” appearing in the Explanation introduced by way of amendment in the Special Rules on 28.04.1980 held that use of the word “arising” made the amendment applicable only to those vacancies which came into existence subsequent to the date of amendment. The said decision being distinguishable on facts cannot be applied to the case on hand.
42. For all the reasons as aforesaid, the order of the D.I. dated 26.09.2005 directing recasting of the panel stands set aside and quashed. The prayer of the petitioner for preparation of panel by placing him in the 1st position

of the panel stands rejected. WPA 8119 of 2006 is allowed in part. There shall be, however, no order as to costs.

43. It will be open to the authorities of the Madrasah to fill up such vacancy in accordance with law in the light of the observations made hereinbefore.
44. Record reveals that the writ petition being WPA 20999 of 2005 was dismissed for default on 12.03.2015 and no steps appears to have been taken by the petitioner of the said writ petition to restore the same. Therefore, no further order is required to be passed in that writ petition. It is hereby recorded that the writ petition being WPA 20999 of 2005 stood dismissed for default on 12.03.2015.
45. All the pending applications stand disposed of.
46. Urgent photostat certified copies, if applied for, be supplied to the parties upon the compliance of all formalities.

(Hiranmay Bhattacharyya, J.)