

Court No. 22

04.3.2024

(Item No. 64)

(AB)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 21910 of 2012

Maria Asunta Tirkey

VS

The State of West Bengal & Ors.

Mr. Ekramul Bari

..... for the petitioner

Mr. Sanjay Bead

.... For respondent Nos. 4 & 5

Mr. K. N. Nabi

Mr. Sasthi Charan Dhara

.... For the State

This is a hearing matter.

Mr. Ekramul Bari, learned counsel appears for the petitioner.

Mr. K. N. Nabi, learned State counsel appears for respondent Nos. 1 to 3.

Mr. Sanjay Bead, learned counsel appears for respondent Nos. 4 and 5.

The two sets of respondents as referred to above have filed their respective affidavits-in-opposition. The writ petitioner chose not to file any affidavit-in-reply thereto.

Today Mr. Bari, learned counsel for the petitioner, on instruction, submits that the petitioner shall not file any affidavit-in-reply and shall proceed on the basis of the existing records, since, question of law is only involved for adjudication.

The petitioner was an aspirant for the post of **Assistant Teacher** of one **St. Peter's Higher Secondary School, District - Darjeeling**. The

petitioner participated in the selection process and was declared as the candidate securing first position in the selection process by the Managing Committee of the school. The institution is a minority community institution. From the document being **Annexure R-2** appearing at **pages 12 and 13** to the affidavit-in-opposition filed on behalf of respondent Nos. 4 and 5, it appears that in the Madhyamik Pariksha for the year **1998** the petitioner was assessed as a **compartmental candidate**. Then again in the year **2000** the petitioner had qualified **Madhyamik Pariksha** at **Passed Division**. The Graduation documents of the petitioner are available at **pages 19 and 20** to the writ petition which show, the petitioner was an **Honours Graduate** in **Hindi** from the **University of North Bengal**.

On **June 4, 2012, Annexure P-5** at **page 25** to the writ petition, the School discovered that, the petitioner was wrongly assessed by securing the first position in the selection process and the mistake on the part of the school was apparent and *bona fide* as would be evident from the academic documents of the petitioner as discussed above. While assessing the petitioner in the selection process declaring her to have secured the first position the school authority overlooked that the petitioner was a compartmental candidate in her Madhyamik Pariksha.

However, the said panel was sent to the respondent No. 3 for approval. The school authority then discovered its *bona fide* mistake and immediately re-assessed the performance of the petitioner taking into account the compartmental mark sheet of the petitioner and sent it again before the respondent No. 3.

The respondent No. 3 then after examining the documents received from the school, issued a communication dated **May 28, 2012** asking the Managing Committee of the school to recast the panel after taking into account the rectified assessment done by the school on the basis of the compartmental mark sheet of the petitioner, **Annexure R-1** at **page 12** to the affidavit-in-opposition filed on behalf of the respondent No. 3. The necessary recast was made in the panel by the Managing Committee of the school on the basis of the selection criteria that the post for the relevant selection process was for Pass Graduate Teacher. On recast of panel the respondent No. 3 has issued its report dated **December 01, 2023**, **Annexure R-1** at **page 5** to the affidavit-in-opposition filed on behalf of the respondent No. 3.

The petitioner has challenged the said report of the respondent No. 3 on the recast of the panel through the instant writ petition.

Mr. Ekramul Bari, learned counsel appearing for the petitioner submits that, the respondent No. 3

has no power and authority under the law to recast a panel. The respondent No. 3 is merely an approving authority.

Mr. Bari, submits that if at all recast to be done, it has to be done by the Commissioner of School Education. However, learned counsel for the petitioner has failed to place any provision of law in this regard or any ruling on the issue. Mr. Bari submits that, the rule prescribed for approval of panel is that the Selection Committee of the relevant school with its assessment on the aspirants shall prepare a panel and send it before the jurisdictional District Inspector of Schools for his decision. The jurisdictional District Inspector of Schools then on the basis of available materials shall take a decision and convey the same to the school authority.

Mr. Nabi, learned State counsel appearing for respondent No. 3 submits that, the respondent No. 3 being the approving authority is obliged to approve or disapprove the panel upon careful scrutiny of the materials placed before him. Upon scrutiny of the materials placed before him, it appeared that the petitioner was wrongly assessed in the selection process as the academic record of the petitioner ex facie speaks for the same. Hence, he submits that, the recast of panel done by the school authority on the basis of the opinion of the respondent No. 3 was just, proper and there is no illegality in it at all.

Mr. Sanjay Bead, learned counsel appearing for the respondent Nos. 4 and 5 has adopted the submissions of Mr. Nabi. He also submits that, an authority who is entrusted for approval of a panel and communicate its decision to the school authority upon scrutiny of the relevant materials placed before him, is also authorized to take its own decision even advising the school to recast the panel, if any apparent gross mistakes are detected.

After considering the rival contentions of the parties and upon considering the materials on record, it appears to this Court that, the petitioner was a **compartmental candidate** in her **Madyamik Pariksha** in the year **1998** and then she qualified **Madhyamik Pariksha** as a **Passed candidate** in the year **2000**. The selection process was announced for Pass Graduate aspirants.

While the petitioner was first assessed by the Managing Committee of the school and declared to have secured the first position was wrong as a result of mistake, which is apparent on the face of record. The mark sheet of the Madhyamik Pariksha of the petitioner would *ex facie* demonstrate to be such. After detecting this mistake, the school authority rightly re-assessed the assessment of the petitioner and communicated the re-assessment with all relevant materials before the respondent No. 3 for his decision on the issue.

The rule shows respondent No. 3 is the decision making authority. The moment the expression the decision is used in the rule, it is imperative that, there has to be a clear application of mind by the decision making authority. The decision making authority will have to apply its mind with reasons on the basis of the available materials before him. In the fact of this case on the basis of the available materials before him the respondent No. 3 suggested the relevant school to recast the panel as the mistake was apparent on the face of record. It is therefore, incorrect to contend, as contended on behalf of the petitioner that the respondent No. 3 has no authority or jurisdiction to suggest the school to recast the panel.

In view of the foregoing reasons and discussions, this Court is of the considered opinion that, there was no error in the decision making process of the respondent No. 3 and the school authority. The decision to recast the panel of the school authority stands **affirmed** as the same being found to be just and lawful on the basis of the records.

For the foregoing discussions and reasons, this Court is of the firm view that, this writ petition is totally devoid of any merit.

Accordingly, this writ petition being **WPA 21910 of 2012** stands dismissed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)