

23.12.2024
Item Nos.5-6
gd/ssd

WPA/28879/2022
NARAYAN MAJUMDER AND ORS.
VS
STATE OF WEST BENGAL
With
WPA/28882/2022
SUKHENDU MANDAL
VS
STATE OF WEST BENGAL AND ORS.

Mr. Biswaroop Bhattacharya,
Mr. K.M. Hossain,
Ms. Sujata Mukherjee,
Mr. Kazi Ardan Ali
..for the Petitioners.

Mr. Supriyo Chattopadhyay,
Ms. Iti Datta
..for the State in WPA 28879 of 2022.

Mr. Ranjan Saha
..for the State in WPA 28882 of 2022.

Mr. B.P. Vaisya,
Mr. Gourav Das,
..for DPSC.

1. The petitioners in WPA 28879 of 2022 claim to have requisite qualification and eligibility for appointment to the post of Lower Division Clerk (for short, LDC) under District Primary School Council, 24-Parganas (South) (for short "DPSC").
2. The petitioners in WPA 28882 of 2022 claim to have requisite qualification and eligibility for appointment to the post of Group-D Staff (SC) under DPSC.

3. The petitioners in the aforesaid writ petitions participated in the selection process. They appeared in the written test and the interview.

4. The petitioners in WPA 28882 of 2022 approached this court by filing WPA 23670 of 2019 challenging the order of the Commissioner of School Education, West Bengal dated July 4, 2019 whereby the said respondent authority did not approve the panel submitted by the DPSC.

5. The aforesaid writ petition being WPA 23670 of 2019 was disposed of by an order dated 15th September, 2019 by directing the DPSC to comply with the requisition of the Directorate vide Memo dated March 18, 2014 and the Commissioner of School Education was directed to take a fresh decision on the panel forwarded by the DPSC by passing a reasoned order after taking into consideration all the documents including the approved roster of appointment supplied by DPSC and upon giving an opportunity of hearing to the interested parties.

6. Pursuant to the said order, the Commissioner of School Education passed an order on December 13, 2022, which is under challenge in these writ petitions.

7. By the said order, the entire recruitment process including all the panels prepared for 15 posts which was submitted by the DPSC was cancelled.

8. Mr. Bhattacharya, learned Advocate appearing for the petitioners submits that the issues involved in these writ petitions was decided by this court in WPA 23670 of 2019 and the Commissioner of School Education was only directed to consider the roster of appointment and take a decision on the panel forwarded by the DPSC.

9. He submits that the entire recruitment process could not have been cancelled on the ground that it was in excess of the sanctioned posts. According to Mr. Bhattacharya, the issue of approval of the panel ought to have been restricted to the sanctioned posts only.

10. Mr. Bhattacharya places reliance upon a decision of the Hon'ble Supreme Court in the case of *Anupal Singh and Others Vs State of Uttar Pradesh* reported at (2020) 2 SCC 173 in support of his contention that the entire recruitment process should not be cancelled.

11. Mr. Bhattacharya also placed reliance upon the decisions of the Hon'ble Supreme Court in the case of *Sachin Kumar & Others vs. Delhi Subordinate Service Selection Board and others* reported at (2021) 4 SCC 631 and in the case of *Union of India & Ors.*

vs. *Rajesh P.U. Puthuval Nikathu & Anr.* reported at (2003) 7 SCC 285 in support of his contention that cancellation of the entire recruitment process is not warranted if it is possible to weed out the beneficiaries of irregularities and illegalities.

12. Mr. Bhattacharya attacked that the finding of Commissioner of School Education in paragraph 6 of the order dated 13th December, 2022 that the claim of the petitioners in WPA 28882 of 2022 for empanelment in Group-D (Peon) panel under SC Category is completely beyond the sanctioned strength by drawing the attention of the court to the Memo dated 2nd February, 2022 which is the authentication certificate issued by the Assistant Commissioner for Reservation and Ex-Officio Assistant Secretary, Backward classes Welfare Department, Government of West Bengal wherein it has been stated that the register of appointment contains unfilled reserved vacancy or vacancies as roster point no.01 (SC) of 1st cycle (Reserved Points and Reserved for).

13. Mr. Chattopadhyay, learned Additional Government Pleader appears for the State in WPA 28879 of 2022 and submits that the Government of West Bengal, School Education Department accorded sanction for filling up of six LDC and two Peon i.e. total eight vacancies for the DPSC, 24-Parganas

(South) and the DPSC published advertisement for 15 posts in complete violation of the sanction accorded by the School Education Department for filling up the vacant posts.

14. Mr. Chattopadhyay submits that since the recruitment process was initiated by the DPSC in complete violation of sanction accorded by the School Education Department, the entire recruitment process was rightly cancelled by the Commissioner of School Education, West Bengal.

15. Heard Mr. Vaisya, learned Additional Government Pleader assisted by Mr. Das on such submission.

16. Mr. Saha, learned Advocate appears for the State in WPA 28882 of 2022.

17. Mr. Saha refers to the affidavit-in-opposition affirmed by the Assistant Director of School Education and places strong reliance upon the roster of appointment at page 56 of the said affidavit.

18. By drawing the attention of the court to the said document, Mr. Saha submits that the post reserved for Scheduled Castes was filled up vide Order No.54 dated 5th January, 2021 and the first post which was reserved for Scheduled Castes category was carried forward to the eight posts which is fixed for Unreserved Posts as per order dated 5th January, 2021.

19. Heard the learned Advocates for the parties and perused the materials.

20. After going through the earlier order dated 15th September, 2022 passed in WPA 23670 of 2019 this court finds that the cause of action for filing the said writ petition was that the Commissioner of School Education did not approve the said panel.

21. The grievance of the petitioner in the aforesaid writ petition that the Commissioner of School Education did not approve the panel on the alleged ground that the DPSC did not furnish the requisite papers and documents to the competent authority for the approval of the panel was taken note of in the said order dated 15th September, 2022.

22. During the pendency of the said writ petition the competent authority certified the position of vacancy/vacancies occurring between on 27th March, 2019 and 1st July, 2021, which was placed in the form of a report before the court at the time of hearing of the said writ petition.

23. This court, after taking note of the submission of the learned Advocate appearing for DPSC, that all the documents and information as sought for by the Deputy Director's Memo dated 18th March, 2014 were available with the DPSC and they were in a position to comply with the said Memo dated 18th March, 2014 within the time limit that may be

stipulated by this court, passed the order dated 15th September, 2022.

24. By the said order that Commissioner of School Education was directed to pass a reasoned order after taking into consideration all the documents including approved roster of appointment supplied by the DPSC and upon giving an opportunity of hearing to the petitioner or his authorized representative and/or any other interested person whom the respondent may consider necessary to be heard for arriving a reasoned decision.

25. The doctrine of Res Judicata means that an issue or a point decided and attained finality should not be allowed to be reopened and reagitated once again.

26. In the earlier round of litigation the grievance raised was non-grant of approval to the panel. By the order dated September 15, 2022, direction was passed upon the concerned authority to take a decision. The issue of approval of the panel was not decided by the authority when the earlier writ petition was filed. Such issue was also not decided by this court in the order dated September 15, 2022. To the mind of this court, the doctrine of res judicata cannot be applied to the case on hand.

27. After going through the earlier order dated 15th September, 2022 this court finds that the same was

an open remand to the authorities. Therefore, the authorities were free to consider all the issues with regard to the approval of panel and take a decision in connection thereto.

28. It is not in dispute that the Government of West Bengal, School Education Department accorded sanction for filling up of six LDC and two Peon i.e. total eight vacancies for the DPSC, 24-Parganas (South). Admittedly, the DPSC prepared a panel for recruitment of 15 staff under different category of posts as specifically stated in the order of the Commissioner of School Education, West Bengal. The Commissioner of School Education after taking into consideration the materials placed recorded a factual finding that the DPSC went beyond the sanctioned strength stated in the prior permission for filling up eight vacancies and the DPSC arbitrarily advertised for filling up of 15 number of posts which is completely in violation of the order of the School Education Department, Government of West Bengal as well as the Finance Department of Government of the West Bengal and the Cabinet decision. The Commissioner of School Education also noted that according to the roster approved by the Assistant Commissioner for Reservation and Ex-Officio Assistant Secretary, Backward Class Welfare Department, Government of West Bengal vide Memo

dated 02.02.2022 the posts of six LDC and two Group-D (Peon) Posts were distributed with break up as indicated in the said order.

29. Mr. Bhattacharya, learned Advocate appearing for the petitioners in course of his argument did not dispute such factual position.

30. He, however, contended that the Commissioner of School Education instead of cancelling the entire recruitment process ought to have considered the issue of approval of panel as per the sanctioned vacancies.

31. Mr. Bhattacharya placed strong reliance on the decision of *Anupal Singh* (supra) in that regard. The Hon'ble Supreme Court in paragraphs 37 and 38 of the said report specifically noted that the total number of vacancies have not been changed or modified. In *Anupal Singh* (supra) only the category wise vacancy position was changed as it was found that a wrong calculation of category wise vacancy had been sent earlier. Such is not the case on hand.. It is not the case of the authorities that there was a wrong calculation of category wise vacancy in the case on hand. The roster of reservation was also for eight vacancies and not for 15 posts for which advertisement was published. Therefore, there also has been violation of the roster of reservation The DPSC in the case on hand proceeded to conduct the

recruitment process in gross violation and utter disregard of the sanction accorded by the School Education Department, Government of West Bengal in this regard. The very initiation of the recruitment process is defective and it hits at the root of the recruitment process and for such reason, this court is of the considered view that the Commissioner of School Education was right in cancelling the recruitment process.

32. In *Sachin Kumar* (supra) and *Rajesh P.U. Puthuval Nikathu* (supra) the Hon'ble Supreme Court noted that there may be situation where candidates who have indulged in irregularities can be identified and it is then possible for the authority to segregate the tainted from the untainted candidates and there may be situation where the nature of the irregularities may be manifold and the number of candidates involved is of such a magnitude that it is impossible to precisely delineate or segregate the tainted from the untainted candidates.

33. In the case on hand the allegation is not that some of the candidates have indulged in irregularities and it is possible to segregate the tainted from the untainted candidates.

34. In the case on hand the very initiation of the selection process is in contravention of the roster of reservation as well as the sanction accorded by the

School Education Department, Government of West Bengal for filling up the vacancies.

35. The decisions in the case of *Sachin Kumar* (supra) and *Rajesh P.U. Puthuval Nikathu* (supra) being distinguishable of facts cannot come to the aid of the *petitioners*.

36. The decision in *Baul Sarkar vs. Mina Chakraborty* reported at (2003) 1 CLT 585 was relied upon by Mr. Chattopadhyay, learned Additional Government Pleader in support of his contention that an appointment made de hors the rule is illegal. In *Baul Sarkar* (supra), the question that fell for consideration was whether appointment could be regularized by taking into consideration the long service rendered by such person. The Hon'ble Division Bench took note of the decisions of the Hon'ble Supreme Court wherein it was held that a person whose entry in service is illegal being in total disregard of the recruitment rules or being not in existing vacancy has no case for regularization. It was held in *Baul Sarkar* (supra) that an appointment made de hors the rules is simply an illegal appointment. The said decision being distinguishable on facts also cannot come to the aid of the State in the case on hand.

37. For the reasons as aforesaid, this court is not inclined to grant any relief to the petitioners.

38. Accordingly, these writ petitions stand dismissed.

39. There will be no order as to costs.

40. Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)