

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 32190 of 2013

With

CAN 1 of 2015 (Old CAN No. 2271 of 2015)

Reserved on : 19.04.2024

Pronounced on: 26.06.2024

Narayan Chandra Das

...Petitioner

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Alok Roy Chowdhury

Ms. Anindita Roy Chowdhury

....for the petitioner

Ms. Indrani Nandi

Mr. Suman Dey

... for the State

Mr. Indranath Mitra

...for the respondent No.5

Rajarshi Bharadwaj, J:

1. The present writ application has been preferred by one Narayan Chandra Das herein the writ petitioner challenging the letter of appointment dated July 08,2011 issued by Secretary of Management Committee, Kharua Rajapur High School, Rajapur, North 24-Parganas herein respondent No.4 in favour of one Ashutosh Sarkar herein respondent No.5 to the post of clerk

(reserved) at Kharua Rajapur High School, in pursuance of Memorandum dated July 03, 2011 issued by The District Inspector of Schools (SE), Barasat herein respondent No.3.

2. The facts of the case in brief are that on the basis of Memorandum bearing no 926/G dated November 28,2002 permission was granted for filling up the post of clerk (reserved for SC), lying vacant for eight years. The Managing Committee of Kharua Rajapur High School prepared a Selection Committee consisting of four members for conducting the selection process and on April 18, 2003 interviewed eligible candidates including the petitioner and respondent No.5 having requisite qualifications sponsored by Employment Exchange. A panel prepared with the names of the selected candidates including name of respondent No. 5 was forwarded to respondent No.3.

3. The writ petitioner challenging the selection process moved a writ application being W.P No. 8945 (W) of 2003 wherein by order dated July 14, 2003 the Learned Single Judge directed respondent No.3 to consider panel in question after examining allegations of violation of recruitment Rules and Regulations. Thereafter, respondent No.5 preferred a writ petition being W.P No. 11850 (W) of 2003 which was disposed of by order dated August 08, 2003.

4. Respondent No. 3 passed an order on March 09, 2004 invalidating the Resolution adopted by Selection Committee held on April 26, 2003 for want of quorum and directing a fresh panel to hold fresh interview with the same set of candidates. The order passed by respondent No.3 was challenged by respondent No. 5 in writ petition being W.P No. 4906 (W) of 2004. The Learned Single Judge was pleased to pass an order dated January 06, 2006 setting aside order dated March 09,2004 and further instructed respondent No.3 to consider question of acceptance of the panel dated April 18, 2003 by holding a fresh meeting.

5. A meeting of the school authorities was held on July 17, 2006 in pursuance of order dated July 07, 2006 passed by respondent No.3 wherein necessary steps were taken to prepare a fresh panel in accordance with the recruitment Rules and Regulations. The validity of the resolution was questioned by respondent No.5 in writ petition being W.P No 23065 (W) of 2006. In the following meeting held on December 10, 2009, it was resolved that appointment letter to the post of clerk would be issued to respondent No.5. The Resolution adopted on December 10, 2009 was forwarded to respondent No.3 which was approved by order vide Memo no 48/LAW dated June 03, 2011. Thereafter, respondent No.5 was appointed as clerk (reserved) in the school on June 10, 2006 by appointment letter dated June 08, 2011. Thus, aggrieved by the aforesaid letter of appointment and other related orders, the present writ application lies.

6. It has been submitted by the learned counsel for the petitioner that the entire selection process in the matter of filling up of the post of clerk in the school has been conducted in clear violation of Management Rule of West Bengal Board of Secondary Education. The Selection Committee was formed vide Resolution No. 17/2003 on March 26, 2003 when only four out of eleven members were present and the teacher-in-charge of the school was absent on the day of interview on April 18, 2003 which clearly violates Rule 10 of the aforesaid Rules. According to Rule 10 of Management Rule of West Bengal Board of Secondary Education, fifty percent of the total members of the Managing Committee is to form a quorum in each meeting. Therefore, the panel prepared by such Selection Committee is invalid and impermissible in law. The panel was not accepted by the Managing Committee of the school in its meeting held on July 17, 2006 however in the meeting resolution dated December 10, 2009 the unapproved panel was wrongfully recommended by the succeeding Management Committee. The Management Committee was

given considerable opportunities by several solemn orders to rectify the irregularities in the procedure and prepare a fresh panel of suitable candidates which was not observed.

7. It has been further submitted by the learned counsel for the petitioner that respondent No.3 has acted unlawfully by approving on June 03, 2011, the panel prepared on April 18, 2003 which had already become infructuous and void after the Resolution taken on July 17, 2006. Therefore, the appointment of respondent No.5 to the post of clerk is illegal and has no existence in the eyes of law.

8. It has been submitted by the learned counsel for respondent Nos. 1-3 that appointment of respondent No.5 was in due compliance of solemn order dated August 08, 2003, January 06, 2006 and November 13, 2006. The order dated November 13, 2006 dismissed the writ petition being W.P No 23065 (W) of 2006 and removed legal restrictions on the order of respondent No.3 dated July 07, 2006 as well as the subsequent decision of cancellation of the panel taken in the meeting of the Managing Committee on July 17, 2006. The final resolution of the Management Committee dated December 10, 2009 was neither challenged by the writ petitioner nor respondent No.5 and thus there was no embargo to approve the said panel.

9. It has been submitted by the learned counsel for respondent No 4 that all formalities were completed following the order passed by respondent No. 3 on July 07, 2006 and order of Learned Single Judge dated November 13, 2006. After giving opportunity of hearing to all the parties, a proper meeting was convened by the Managing Committee wherein the irregularities in the selection process were realized and panel prepared on April 18, 2003 was approved. Appointment letter was issued in favour of respondent No. 5 only after a unanimous decision was taken in a later meeting held on December 10, 2009 as well as after obtaining approval from respondent No.3.

10. It has been submitted by the learned counsel for respondent No. 5 that respondent No. 5 is qualified for appointment to the post of clerk (reserved) in place of retired clerk in the school. An interview letter was issued to him by respondent No.4 on the basis of the concerned Employment Exchange sponsoring names of eligible candidates. On completion of the interview, the Selection Committee prepared a panel of three candidates in order of merit; respondent No.5 stood first in the panel because he stood first in the interview. The order dated June 06, 2011 passed by respondent No.3 clearly stated that *“The Managing Committee may appoint the candidate whose position in the Panel is First”* Thus the appointment letter issued to respondent No. 5 is lawful and correct. The petitioner, whose name did not appear on the panel prepared by the Selection Committee and who is not fit for appointment is barred from turning around and questioning the method of selection and its outcome.

11. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the appointment of respondent No.5 in permanent post of clerk (reserved) is valid and subsisting.

12. It is a settled principle of law that an unsuccessful participant in a recruitment process cannot belatedly turn around and challenge the same, alleging irregularities or bias in the process of selection by members of the Selection Committee. In the case of **Madan Lal -versus- State of Jammu and Kashmir** reported in **(1995) 3 SCC 486**, the Honorable Supreme Court opined that:

“9....It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair....”

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.”

13. In the present case, no nexus is made out between the appointment of respondent No.5 and the case of the writ petitioner. The petitioner participating in the selection process had knowledge about the requisite qualifications for appointment as clerk and appeared in the interview without objection or demur. It is only when the petitioner found himself to be unsuccessful, he challenged the appointment of respondent No.5. The petitioner cannot approbate and reprobate at the same time and he is thereby estopped from questioning the correctness of the selection process.

14. In such view, the writ application being WPA 32190 of 2013 lacks merit and the same is dismissed accordingly. Pending application is also disposed of.

15. There will be no order as to costs.

16. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

26.06.2023

PA (BS)