

**HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

Before: The Hon'ble Justice Hiranmay Bhattacharyya

WPA/2002/2023

SUNANDA DEY

VS

STATE OF WEST BENGAL & ORS.

For the Petitioner:	Mr. Kollol Basu, Mr. Aninda Bose, Mr. Surajit Basu	 Advocates
For the State:	Mr. Subir Kumar Saha, AGP, Mr. Momenur Rahman	 Advocates
For the private respondent no.6:	Mr. Biswarup Biswas, Mr. Pradip Kr.Roy, Mr. Debajit Kundu	 Advocates
For the School Authority:	Mr. Ekaramul Bari, Sk. Imtiaz Uddin	 Advocates
Heard on:	09.01.2024	
Judgment on:	09.01.2024	

HIRANMAY BHATTACHARYYA, J.:-

1. The petitioner has prayed for issuance of a writ of mandamus commanding the respondents to set aside the order of the District

Inspector of Schools (S.E.) (for short DI), Alipurduar dated July 27, 2023. By the said order, DI approved the panel of Assistant Head Master forwarded by the school authority.

2. Prior permission for recruitment to the post of Assistant Headmaster in favour of Shilbarihat High School (H.S.), Alipurduar was granted by the DI vide Memo dated September 28, 2021. Thereafter the concerned school authority invited members of the regular approved teaching staff of the school having requisite qualification to apply for the post of Assistant Headmaster of the said school.
3. Pursuant to such invitation the petitioner and the private respondent, who were at the relevant point of time Assistant Teacher of the said school applied for the post of Assistant Headmaster.
4. Alleging inaction on the part of the concerned DI in not disclosing the result of the selection process, the private respondent filed a writ petition being WPA 706 of 2023 which was disposed of by an order dated May 12, 2023 by directing the DI to pass a reasoned order upon considering the records and giving an opportunity of hearing to the private respondent herein with regard to the subject selection process for appointment of Headmaster of the said school.
5. Pursuant to the said order dated May 12, 2023 the DI passed the order dated July 27th, 2023 which is the subject matter of challenge in this writ petition.
6. Mr. Bose, learned Advocate for the petitioner submits that no opportunity was given to the petitioner herein by the concerned DI while deciding the issue as to the approval of the panel of the Assistant Headmaster. He submits that the petitioner is having the requisite academic qualification for appointment to the post of Assistant

Headmaster and the private respondent herein did not possess the requisite qualification for being appointed as an Assistant Headmaster.

7. Mr. Bose further submits that the selection process was initiated in terms of Memo No.1628-GA/OM-18/2001 dated July 10, 2002 and the private respondent being a pass graduate could not have been awarded 35 out of 40 marks. He, therefore, submits that the respondent authorities acted in an illegal and arbitrary manner in the matter of preparation and approval of the panel.
8. Mr. Bose submits that the master degree qualification of the private respondent was not approved as she was enjoying the scale of pay fixed for pass graduate teacher and, therefore, the private respondent was not eligible to participate in the selection process.
9. Mr. Bose has challenged the authority of the Commissioner of School Education, West Bengal by contending that the Memo dated July 10, 2002 could not have been modified by the Commissioner of School Education by issuing the Memo dated February 26, 2015 as such authority do not have any power of review. He, therefore, submits that the Memo dated February 26, 2015 is liable to be set aside and quashed.
10. Mr. Bari, learned Advocate representing the School Authority submits that the petitioner participated in the selection process and after he was declared unsuccessful in the selection process has challenged the selection process. By placing reliance upon the decisions of the Hon'ble Supreme Court in the case of Dhananjay Malik and ors. vs. State of Uttaranchal and ors reported at (2008)4 SCC 171 and Tajvir Singh Sodhi & ors. vs. The State of Jammu and Kashmir & ors. reported at 2023 Live Law (SC) 253 he submits that it is well settled that a challenge thrown by a candidate after he had been declared unsuccessful in the selection process ought not to be entertained in the light of the principle of waiver

and acquiescence. He further submits that the private respondent herein is also possessing the master degree qualification as would be evident from the approval of appointment given by the District Inspector of Schools (S.E.), Alipurduar vide Memo dated 9th August, 2023. He submits that the private respondent having secured more marks than the petitioner was placed in the first position and the panel was forwarded to the concerned DI for its approval and the same was ultimately approved vide Memo dated 9th August, 2023.

11. Mr. Biswas, learned Advocate representing the private respondent places reliance upon a Coordinate Bench decision delivered on 15th February, 2019 in WP 178 (w) of 2019 in the case of Md. Abu Nasim Baidya vs. Commissioner of West Bengal and ors. and submits that the master degree scale of pay is not relevant for being considered by the selection authority when an assistant teacher has obtained a master degree qualification. He submits that since the private respondent has already obtained the master degree long prior to initiation of the selection process, the private respondent was eligible to apply for the post of Assistant Headmaster.
12. In reply Mr. Bose, learned Advocate for the petitioner placed reliance upon a decision of a Coordinate Bench in the case of Jayasri Ghosh vs. The State of West Bengal reported at (2014) 1 CLJ 17 and submits that it is well settled that a candidate can legitimately question a concluded selection process if there is a glaring illegality in the selection procedure. He submits that since an ineligible candidate was allowed to participate in the selection process, the petitioner has a right to question the same after completion of such process.
13. Heard the learned Advocates for the parties and perused the materials placed.

14. In course of hearing of the writ petition the learned Advocate appearing for the private respondent produces a copy of the certificate issued by the University of North Bengal dated 5th May, 2009 which is taken on record. It appears from the said certificate that the private respondent obtained the degree of Master of Arts from the said university at the annual examination held in the year 2007.
15. On a query of the Court as to whether the petitioner is disputing the fact that the private respondent is having the master degree qualification, Mr. Bose, Learned Advocate for the petitioner submits that though the petitioner is not questioning the master degree qualification of the private respondent but such master degree qualification is of no relevance as such degree has not been approved by the concerned authorities. Mr. Bose would contend that the private respondent, at the relevant point of time, was enjoying the scale of pay fixed for pass graduate teacher and the post graduate scale of pay was not sanctioned in her favour.
16. According to Mr. Bose unless the master degree qualification is approved by the concerned authorities by granting him the appropriate scale of pay, the private respondent cannot be said to be eligible for the post of Assistant Headmaster.
17. The issue that falls for consideration in this writ petition is whether the selection Committee was justified in awarding marks for the Master degree to the private respondent.
18. To decide such issue it would be relevant to take note of the Memo dated July 10, 2002. It appears from the said Memo dated July 10, 2002 that graduates with Honours including Special Honours or holding Master Degree with two years course and having five years teaching experience in a Junior High School/Secondary institution and holding Regular

BT/B.Ed/ PGBT degree/ Diploma Certificate shall be eligible to participate in the selection process for the post of Assistant Headmaster.

19. Annexure A to Memo dated 10th July, 2002 is a tabular chart indicating the full marks as well as the marks to be awarded to the candidates on the basis of their academic performance in various examinations.
20. Subsequently the Commissioner of School Education issued the Memo dated February 26, 2015 wherein it was stated that henceforth in terms of Annexure-“A” of Office Memo No1628-GA dated July 10, 2002, if an Assistant Teacher appointed in Pass graduate or Honours Graduate scale of pay has a Honours Degree or Master Degree qualification as applicable obtained from recognized institution before or after joining in service and has applied for the post of Assistant Headmaster/Headmistress then marks will be awarded to him/her for the aforesaid degree for preparation of panel for the post of Assistant Headmaster/Headmistress irrespective of the fact that he/she has any kind of approval obtained from the District Inspector of Schools (SE) concerned for the said degree or not.
21. The principal objection of Mr. Bose is that the Master Degree qualification of the private respondent was not approved by the concerned authority.
22. The private respondent was appointed in Pass Graduate Scale of Pay. She has obtained the Masters’ Degree as is evident from the certificate issued by the North Bengal University. Upon reading the Memo dated 26.02.2015, this Court finds that if an Assistant Teacher appointed in Pass Graduate scale of pay obtains the Masters’ Degree, then marks will be awarded to her for the Masters’ Degree for preparation of panel for the post of Headmaster/ Headmistress. Approval of the District Inspector of Schools for the degree is not relevant.

23. Memo dated February 26, 2015 clarifies such issue. This Court is, therefore, of the considered view that approval from the District Inspector of Schools for the master degree qualification is not relevant for being awarded marks for such degree for preparation of panel.
24. The prior permission was issued on 28th September, 2021 i.e. when the Memo dated February 26, 2015 was in force. Such prior permission was issued on condition that the procedures must abide by Recruitment Rules dated 10th July, 2002 of the School Education Department, West Bengal as amended from time to time.
25. It appears from the memo dated 9th August, 2023 that the DI has granted approval of appointment of the private respondent as an Assistant Head Master. It also appears from the said memo that the qualification of the private respondent is MA (History), B.Ed. Therefore, there cannot be any dispute as to the fact that the private respondent having master degree qualification was eligible to be appointed as an Assistant Head Master.
26. The selection process was initiated when the Memo dated 26.02.2015 was in force. Therefore, the selection committee was justified in awarding marks to the private respondent for the Masters' degree. The issue is, therefore, answered in the affirmative and against the petitioner.
27. The petitioner participated in the selection process being conscious of the fact that prior permission was issued on condition that the procedures must abide by the Recruitment Rules dated July 10, 2002 as amended from time to time.
28. Annexure A to the Memo dated 10.07.2002 was amended by Memo dated 26.02.2015 and the petitioner participated in the selection process without any demur.

29. Having participated in the selection process and only after she was declared unsuccessful in the selection process, the petitioner has challenged the selection process. A challenge to the selection process at the instance of an unsuccessful candidate cannot be entertained by this Court in the light of the principle of waiver and acquiescence as held by the Hon'ble Supreme Court in the Case of Tajvir Singh Sodhi (supra) and Dhananjay Malik (supra). This Court is therefore, of the considered view that the challenge to the selection process at the instance of the petitioner cannot be entertained at this stage. The Memo dated 26.02.2015 was in force at the time of initiation of the selection process and challenge to the said Memo at the instance of an unsuccessful candidate also cannot be entertained.
30. There is no quarrel to the proposition of law laid down in Jayasri Ghosh (supra) that a glaring illegality in the selection procedure which could not have been known to a candidate before the selection process was complete and that he/she came to learn of the same after completion of the selection process can legitimately question a concluded selection process. In the said reported case the candidates who had applied for appointment on Group D posts were allowed to compete for appointment in Group C posts. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
31. The decision of the co-ordinate bench in Md. Abu Nasim Baidya (supra) also supports the view taken by this Court. The co-ordinate bench after taking into consideration the decisions in the case of Dev Prasad Sarkar vs. Commissioner of West Bengal reported at (2012)2 CHN 644 and Kakali Bandyopadhyay vs. Commissioner of West Bengal reported at (2009) 1 CHN 874 held that the master degree scale of pay is not relevant for being considered by the selection authority when an assistant teacher has obtained the master degree qualification and also that non-granting

approval of higher scale of pay cannot stand in the way of considering the selection of a candidate who has obtained the Master Degree qualification.

32. In so far as the allegation of the petitioner that the petitioner was not given any opportunity of hearing, this court finds that the concerned DI passed the order dated 27.07.2023 after hearing the complainant i.e., the petitioner herein and after taking into consideration the effect of the memo dated February 26, 2015 and July 10, 2002. It was held that a pass graduate teacher who has obtained requisite qualification which was obtained before or after entering into service can apply for the post of Assistant Head Master.
33. The order dated 27th July, 2023 is a reasoned order. The same also do not suffer from any infirmity warranting interference under Article 226 of the Constitution of India.
34. In view thereof the writ petition stands dismissed.
35. There shall, however, be no order as to costs.
36. In view of the order passed in the writ petition, CAN 1 of 2023 has become infructuous and the same is also disposed of accordingly.

(HIRANMAY BHATTACHARYYA, J.)