

23.04.2025
SI No.3-4
Court No.8
(gc)

**FMA 149 of 2025
CAN 1 of 2025**

**Narayan Majumder & Ors.
Vs.
The State of West Bengal & Ors.**

With

**FMA 153 of 2025
CAN 1 of 2025**

**Sukhendu Mandal
Vs.
The State of West Bengal & Ors.**

Mr. Biswaroop Bhattacharya,
Mr. K. M. Hossain,
Mrs. Sujata Mukherjee
... for the Appellants.
Mr. Supriyo Chattopadhyay, Ld. A.G.P.
Ms. Iti Dutta
...for the State.
Mr. Bhaskar Prasad Vaisya,
Mr. Gourav Das
...for the DPSC, South 24 Parganas.

1. Both the appeals and the connected applications are heard together as both the appeals involved similar questions of law and fact.
2. Both the appeals are arising out of an order passed by the learned Single Judge on 23rd December, 2024 by which the selection process initiated by the South 24 Parganas District Primary School Council on 19th February, 2013 presumably on the basis of the Memo No.672-SE(P)/10M-72/2006 dated 27th August, 2010 in which, *inter alia*, the

School Education Department had sanctioned 8 number of posts for South 24 Parganas, out of which 6 posts were reserved for LDC and 2 posts for Peon. It appears that the District Primary School Council, South 24 Parganas disregarding the Memo had issued Employment Notice on 19th February, 2013 in respect of 15 posts for Lower Division Clerk in which category wise selection was made. Admittedly, the said Employment Notice was issued without the prior approval of the School Education Department and without following the 100 Point Roster. The appellants/petitioners 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"). Thereby in various rounds of litigation concerning the said issue and last of which prior to the proceeding in which the impugned order was passed, an order was passed on 15th September, 2019 in WPA 23670 of 2019 whereby the DPSC was directed to comply with the requisition of the Directorate vide Memo dated 18th March, 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. Pursuant thereto, the Commissioner of School Education passed an order on 13th December, 2022 which was the subject matter of challenge in the writ petitions in which the impugned order was passed on 23rd December, 2024. The Commissioner of School Education cancelled the entire recruitment process including all the panels prepared for 15 posts which was submitted by the DPSC.

3. Mr. Biswaroop Bhattacharya, learned Counsel appearing on behalf of the appellants submits that in view of the fact that the present petitioners/appellants were successful in the examination and their names figured in the panel prepared by the DPSC concerned on selection of the candidates as approved by the School Education Department in its Memo dated 27th August, 2010, the candidature of the petitioners/appellants could have been

considered. It is submitted that the petitioners have become victim of circumstances. They are bona fide candidates and have participated in the selection process without knowing that entire process was initiated without the approval of the School Education Department.

4. Mr. Bhaskar Prasad Vaisya, learned Counsel appearing on behalf of the DPSC and Ms. Iti Dutta, learned Counsel appearing on behalf of the State have opposed the said prayer on the ground that no direction could have been passed upon the authority concerned for approving the panel as the DPSC has acted beyond its authority and jurisdiction in increasing the numbers of posts and without following 100 Point Roster.
5. The learned Counsel for the DPSC has submitted that the recruitment process ought not to have been initiated without prior approval of the School Education Department and the Commissioner for Reservation.
6. Although, we are of view that the appellants appear to be victim of circumstances but having regard to the fact that their entire recruitment process was initiated without prior approval of the School Education

Department and the Commissioner for Reservation, the entire process is vitiated and no one participated in the said process does not acquire any right. A writ of mandamus can only be issued provided a legal right is established.

7. In the instant case, in view of the fact that the entire process was flawed from the beginning, no direction can be passed for revival of the panel in which the names of the appellants could be considered. Moreover, it appears that finding of the Commissioner of School Education Department 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 prepared under SC category was completely beyond the sanctioned strength as the Memo dated 2nd February, 2022 issued by the Assistant Commissioner for Reservation and Ex-Officio Assistant Secretary, Backward Classes Welfare Department, Government of West Bengal, the register of appointment contains unfilled reserved vacancy or vacancies as roster point no.01 (SC) of 1st cycle (Reserved Points and Reserved for).

8. Although we are of the view that the appellants are victim of circumstances and have suffered by reason of utter negligent conduct of DPSC, we are unable to grant any relief to the petitioners/appellants. However, the DPSC shall pay each of the petitioners/appellants a sum of Rs.20,000/- (Rupees Twenty Thousand) as for their negligent conduct within two weeks from date.
9. The DPSC shall take immediate steps for filling up the existing vacancies and in the event the appellants are willing to participate and are over-aged by this time, the age bar criteria shall not apply in their case. The process for fresh recruitment should be initiated within four weeks from date as there are admitted vacancies.
10. Accordingly, both the appeals and the connected applications are disposed of.
11. However, there shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)