

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 952 of 2020

**Rituparna Gari
Vs.
State of West Bengal & Ors.**

For the Petitioner : Mr. Rajendra Banerjee
: Mr. Souvik Ganguly

For the State : Mr. Shamik Ul Bari

Judgment on : **28.10.2025**

Rai Chattopadhyay, J. :-

1. The school namely, 'Narayanpur Mission Girls' School [HS]', is a Christian Minority Institution, protected under the Article 30 of the Constitution of India and guided and regulated by the Special Rules of 1974. The writ petitioner has been appointed therein, as an Assistant Teacher of the subject Physics, vide appointment letter dated February 9, 2016. She has joined in service on and from February 15, 2016 and has been working since thereafter continuously and uninterruptedly. She is aggrieved due to her service not being approved till date by the respondent authorities and in particular with regard to the

order of the District Inspector of Schools (Secondary Education) Birbhum [in short “the DI”], dated June 17, 2019, by dint of which the DI has rejected her prayer for approval in the service. Hence, she has filed the instant writ petition to seek appropriate relief.

- 2.** According to the writ petitioner, she had responded to an advertisement published in the newspaper on January 26, 2015 [The Statesman] and was called for the interview to be held on December 16, 2015. Later she has been granted appointment letter dated February 9, 2016 and ultimately, she has joined in service with effect from February 15, 2016. The post she has joined and working in since then has been sanctioned on an earlier date, vide order of the Commissioner of School Education, Government of West Bengal dated June 26, 2012. The respondent/DI has granted prior permission for recruitment in the said sanctioned post, vide his order dated December 17, 2014. Hence, according to the writ petitioner there is no infirmity, irregularity and/or illegality in the entire process of her appointment and she is entitled to be approved in her service, which allegedly has been unauthorisedly and illegally denied to her.

3. Mr. Rajendra Banerjee who has represented the writ petitioner in this case has mentioned about an order of this Court dated January 21, 2019, passed in the first writ petition filed by the present petitioner being W.P.No. 15852 (w) of 2016. In the same the Court has directed for payment of salary to the petitioner for the period from February 2016 to January 21, 2019 and also for consideration of the petitioner's prayer for approval of service. It has been submitted that the petitioner was appointed in a post sanctioned vide order of Commissioner of School Education, Government of West Bengal dated June 26, 2012. It has been submitted further that though prior sanction of the respondent was not imperative for the said Minority Institution to initiate and conduct a process of recruitment for appointment in the said post, the same was sought for and granted vide the order of the respondent/DI dated December 17, 2014. That the process started with an open advertisement in the newspaper and was followed by an interview. The writ petitioner having succeeded therein, was appointed as the Assistant Teacher of the school and joined in service on and from February 15, 2016. According to Mr. Banerjee, the grounds taken by the respondent/DI are not sustainable, given no illegality or impropriety in the entire process of recruitment

of the writ petitioner. He submits that the impugned order may be set aside and the petitioner's service may be approved.

4. The State respondent per contra has supported the impugned order and it is submitted that for the reasons as stated in the same, the petitioner's prayer is baseless and not maintainable. Dismissal of the instant writ petition is the prayer of the respondent.

5. On careful perusal of the impugned order in this writ petition dated June 17, 2019, it appears that the following reasons inter alia have been cited therein for rejection of the prayer of the writ petitioner;

- a. Recruitment procedure as laid down in G.O.No. 1092/ES/S1014 dated June 6, 2012 [in short "No.1092"], has not been followed;
- b. The mandatory provision under Clause-4 of notification No. 1092, has been violated due to the fact that no prior information of constitution of the selection committee was furnished to the Director of School Education, Government of west Bengal and the DI;
- c. Also, the school did not furnish the sanction order, cause of vacancy, no litigation certificate as regards the post

and necessary document in support of validity of the managing committee;

- d. Advertisement was not given as per Annexure-I of the said notification No. 1092. In the advertisement the following information were missing: date of recognition of the school, pay scale for the post advertised as per the latest ROPA rules, age limit and citizenship required;
- e. That there are infractions regarding the rules followed in the process that is the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2007;
- f. Management Rules were violated as no information of the managing committee meeting dated December 20, 2014 was sent to the Government nominee;
- g. Prior permission for the recruitment was granted in violation of Clause-15 of the Notification No. 1092;

6. The facts that the petitioner was appointed as against a sanctioned post and since the date of appointment she has been working in the school continuously and without any break, are not disputed in the instant case. Record has revealed that vacancy advertisement was published in newspapers, one vernacular and another English. In that way, grounds taken by

the respondent/State that there has been an infection of the applicable rules, so far as vacancy notification is concerned, is unsustainable. The respondent himself has stated in the impugned order regarding furnishing of necessary information by the school authority to the DI. On careful perusal of the impugned order, it transpires that whatever non-compliance or infraction of rule has been alleged therein in the process, are either at the instance of the school authority or the State itself, for which the writ petitioner had no role to contribute at the time of her appointment and induction in service. Most importantly, the Court does not find any aggrieved person to have come up against the claim of the petitioner that she should be approved in service. No one has come up with any grievance as to the appointment of the writ petitioner in the said school.

- 7.** Rather, on the other hand the Court finds that the institution as above being a minority institution, is protected under Article 30 of the Constitution of India and government by the Special Rules, 1974. According to the same the institution itself has the authority, liberty and discretion to appoint teachers subject to the fact that the post is sanctioned. The respondent/State is duty bound under the rules to give approval for such

appointment made by the institution in any post which is sanctioned and vacant. The notifications dated June 6, 2012 and February 9, 2015, duly protect the rights of the writ petitioner in this regard. On careful perusal of the materials in the instant case the Court does not find any gross infraction of the rules or impropriety in the entire recruitment process, which can be questioned as to be vitiated due to non-fulfilment of any rules or norms. The gross illegality as alleged is only found to be exaggeration and not on the basis of proper appreciation of the records.

8. Considering all as discussed above is Court finds that the impugned order dated June 17, 2019, of the respondent/DI, is unreasonable, irrational and arbitrary. The same is due to non-consideration of the factual background of the case in its proper perspective and thus is unsustainable and liable to be set aside. Hence this writ petition should succeed.

9. The writ petition No. WPA 952 OF 2020, is allowed with the following directions:

a. the impugned order dated June 17, 2019, of the respondent/DI is set aside;

- b. the writ petitioner is entitled to be approved in service with effect from the date of her appointment;
- c. the respondent No. 4/DI shall take necessary steps for issuance of order of approval of service in favour of the writ petitioner with effect from the date of her appointment;
- d. appropriate pay fixation shall be made by the said respondent immediately after issuance of the order as directed above;
- e. the exercise as directed in 'c' and 'd' above, should be concluded within a period of 3 weeks from the date of communication of copy of this judgment;
- f. arrear amount of pay, if any and subject to deduction of amount of arrear already paid, if any, shall be paid to the writ petitioner within a period of 2 months from the date of communication of copy of this judgment.

10. The writ petition No. WPA 952 of 2020 is allowed and disposed of.

11. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)