

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 1982 of 2014

***Manoj Kumar Singh
Vs.
State of West Bengal & Ors.***

For the Petitioner

: Mr. Saibal Acharyya
: Mr. Prahlad Ch. Ghosh
: Mr. Subir Hazra

For the State respondent

: Mr. Pritam Chaudhury
: Mr. Sartik Dewan

Judgment on

: 25/07/2025

Rai Chattopadhyay, J. :-

(1) An order of the District Inspector of Schools (Secondary Education), Barrackpore, North 24 Parganas, dated May 8, 2013 (being annexure - P4 to the writ petition) is under challenge in the instant case. The petitioner has prayed for setting aside of the said impugned order and for directions to be issued on the respondent No. 3/District Inspector of Schools (Secondary Education) North 24 Parganas [herein after referred to as "DI"], to approve the panel for the post of Group-D staff in Nimta High School (H.S.) and also to the school authority/respondent No. 4 and 5, to issue appointment letter in favour of the petitioner, who happens to be the first empanelled candidate in the said panel.

(2) It is necessary that the factual background of the case be discussed in a nutshell, which is as follows. According to the petitioner, the respondent school authority has obtained prior permission of the respondent/DI, in the year 2000, to fill up the post of Group-D staff in the said school. First round of interview was held on November 25, 2000, but the results were postponed. Thereafter, the respondent/DI has accorded further permission to hold the interview, vide his letter dated February 17, 2010. The petitioner has specifically relied on the text of the said letter dated February 17, 2010 that as per direction of respondent/ DI in the said letter, the school authority was to hold re-interview for recruitment of two vacant posts in the school, with the same set of candidates, along with already sponsored candidates from “live register”, under the died-in-harness category. Accordingly, the process of interview of the specified candidates was held again and a panel was prepared. That, the school authority has forwarded the said panel to the respondent/DI on April 9, 2010.

(3) On the allegation of inaction of the respondent/DI in considering the panel as above, the petitioner had moved this Court previously, in which the Court has directed by dint of order dated June 25, 2012, that the respondent/DI should consider for approval of the panel and pass a reasoned order within the stipulated time. The Court, in the said order has proceeded to add and clarify that the Recruitment Rules prevailing at the time when the process was started, should be taken into consideration by the respondent/DI, while considering regarding approval of the panel. The resultant order is that dated May 8, 2013, which is under challenge in this writ petition.

(4) The findings and directions of the respondent/DI in the said impugned order dated May 8, 2013, inter alia is that as per notification No. 2398-GA dated December 15, 2008, the vacancy of Group-D post in the school was of 1st Stage in nature. That, the said vacancy should have to be filled up by the candidates only from died-in-harness category, whose names have been registered in the 'live register', being maintained with the DI. The DI in the said impugned order has practically held the panel to be improper and in violation of the existing Rules and the notification No. 2398-GA dated December 15, 2008.

(5) The writ petitioner is represented by Mr. Saibal Acharyya. He has first referred to an order of this Court dated June 27, 2000, in W.P. No. 8505(w) of 2000. It is submitted that the said writ petition was moved by the present petitioner and the Court had directed that the petitioner should be allowed to appear at the interview, for filling up the post of Group-D staff of the said school, subject to his being eligible for the post and the process of interview having not been completed.

(6) He has also referred to the letter of the DI dated February 17, 2010 and said that by virtue of the said letter the DI has accorded permission for 're - interview', for the said post, with the same set of candidates, along with already sponsored candidates from 'live register', under died-in-harness category. He submits further that the writ petitioner has been eligible otherwise also for appointment in the said post. Mr. Acharyya has categorically submitted that this Court in the order dated June 25, 2012, in writ petition No. W.P. 4536(W) of 2012, has been pleased to direct that the concerned authority is required to consider the said panel in the light of the Recruitment Rules, which were prevalent on the date when the process of selection for those posts was initiated in 2000. According to the

petitioner, both the previous orders of this Court dated June 27, 2000 and June 25 2012, have reached finality, without being challenged. Those are binding on the parties to the litigation. That, by dint of the impugned order dated May 8, 2013, the respondent/DI has not only acted in derogation of the Recruitment Rules as prevalent on the date of initiation of the recruitment process in 2000, but also has manifestly violated the above orders of the Court.

(7) It is submitted that in the petitioners case, the respondent/DI could not have relied on the notification No. 2398-GA dated December 15, 2008, while deciding in so far as firstly, the said respondent was directed by the Court to consider the prevalent Rules as were there in the year 2000 and also that any direction made vide the said notification dated December 15, 2008, could not have been given any retrospective effect to make the same applicable in the petitioner's case. In this regard, Mr. Acharyya has relied on the judgments **Nomita Chowdhury Vs. The State of West Bengal & Ors.** reported at **1999(2) CLJ 21** and **P. Mahendram and Others Vs. State of Karnataka and Others** reported on **1990(1) SCC 411**.

(8) By referring to the judgments in **Snehansu Jas Vs. State of West Bengal & Ors.** reported at **2001(2) CLJ 558** and **Abani Mahato Vs. Kanchan K. Sinha and Others** at **(2000) 9 SCC 527**, Mr. Acharyya has emphasised more his argument that the orders of this Court as mentioned above having reached finality is now binding on the parties and the DI could not have deviated from the same, which it has done in the impugned order unauthorisedly and illegally.

(9) Mr. Pritam Chaudhury has represented the State respondent. So far as the State is concerned, a strong objection has been raised as regards

the contentions and prayers of the writ petitioner, in the instant case. Mr. Chaudhury has firstly referred to an order of the DI dated January 7, 2000 and submitted that by virtue of the same, names of three candidates were sponsored as the eligible candidates, from the 'live register', for being appointed in the vacant post, in accordance with the Recruitment Rules. That, the name of the writ petitioner did not find place amongst the three candidates sponsored by the DI from the 'live register', for being selected to be appointed in the said post. Sufficient reliance has been placed upon the notification No. 2398-GA dated December 15, 2008, issued by the Director of School Education, West Bengal. It says firstly that the school authority had misread the order passed by this Court and also violated the existing Rule by considering the candidature of the petitioner at the time of preparation of panel for Group-D staff. Also that, the vacancies are of 1st stage in nature, that is, as per order of the department, the vacancies should be filled up by the candidates from died-in-harness 'live register' of the DI. Thus, the Director of School Education, West Bengal, had requested the DI to prepare the panel afresh, from amongst the candidates only from died-in-harness category, whose names were either appearing in the 'live register' or application received from wide publication through advertisement. Mr. Chaudhury has therefore argued that the petitioner lacked the requisite eligibility criteria in terms of being qualified to apply for the said post. Thus, according to him, not even the order of this Court dated June 27, 2000 in W.P.No. 8505(w) of 2000 is applicable in case of the petitioner, as the Court has directed him to be allowed to appear in interview, only if the petitioner was otherwise eligible for appointment. The petitioner having not fulfilled the fundamental requisite condition for appointment in the post which was reserved for persons named in the 'live register' and queued up to be appointed in died-in-harness category.

(10) Mr. Pritam Chaudhury has also stated that the petitioner does not achieve any vested right for being appointed as to the post, for which he has been interviewed, by only merely being empaneled at the end of the selection process. That, his appointment shall always abide by the legality, propriety, fairness and reasonableness of the process of recruitment and absence of any kind of fraud being practised in the said process. That, in the instant case the petitioner having not fulfilled the basic eligibility criteria of being a person in died-in-harness category seeking to be appointed in the said post, which is reserved for only such a candidate, he lacks the very necessary eligibility criteria for being appointed in the said post.

(11) The respondent has also pleaded mistake of fact in connection with the letter dated February 17, 2010 issued by the DI. It is submitted that the direction of the DI as made there in, that the same set of candidates shall be re-interviewed along with the already sponsored candidates from 'live register' under died-in-harness category, has been a mistake on part of the said office and no final decision can be taken on the basis of such erroneous directions. For the reasons as above, the State respondent has pleaded that there is no illegality or infirmity in the impugned order dated May 8, 2013. Rather the present writ petition is a misconceived one, not maintainable and is liable to be dismissed.

(12) Though the writ petitioner in this case has not come up with the panel in question, it is an undisputed fact that the writ petitioner having taken part in the interview process, has secured the first position in the panel, which has ultimately not been approved by the respondent/DI by dint of his order dated May 8, 2013.

(13) It is also an admitted fact that this Court previously in writ petition No. W.P. 8505(W) of 2000 vide order dated June 27, 2000 has permitted the present petitioner to appear at the interview for filling up the post of Group-D staff in the respondent School along with other eligible candidates. The petitioner has been allowed to appear in the interview process, thereby negating the plea taken by the respondent in this case that the petitioner would not at all be eligible for appointment in the post. Even if so, the Court is constrained to hold that the State respondent has already waived any kind of ineligibility of the writ petitioner if there was one, by allowing him to appear in the interview process.

(14) In the case of ***Abani Mahato (Supra)***, the Hon'ble Supreme Court has held that a panel prepared in a recruitment process cannot be challenged on the ground of ineligibility of the selected candidate for the reason that the candidate was allowed to take part in the selection process by dint of the Court's order and succeeded in the process. The order of the Court having not been challenged was thus final and binding on the parties. In such circumstances, a panel prepared in a selection process and the appellant's position secured in the said panel cannot be thrown away outright for any particular reason like his name not been sponsored by the Employment Exchange. The Court finds the ratio of the decision as above, is squarely applicable in the present case. Admittedly, this Court twice interfered into the affairs of the petitioner before, that is, vide order dated June 27, 2000 as mentioned above and vide order dated June 25, 2012 in W.P. No. 4536(W) of 2012. In the order dated June 25, 2012, the Court has gone further to direct that the DI is required to consider the panel in the light of the Recruitment Rules which was prevalent on the

date when the process of selection for those two positions was initiated in the year 2000.

(15) It is noticed that neither in 2000, nor in 2012 the State has ever raised any point as regards ineligibility of the petitioner as to the said post which they say is earmarked for died-in-harness category persons, whose names are registered in the 'live register'. Hence, it is only belatedly, in the instant case, the State has come up with such a plea to justify and stand by the impugned decision of the DI. However, the Court is of considered opinion that since admittedly, neither of the orders as mentioned above, were challenged ever by the State respondent and both of those having become final and binding, the respondent cannot now come up with a plea of ineligibility of the petitioner as to the post.

(16) Let it be mentioned that this being the only point of objection mentioned in the impugned order dated May 8, 2013 by the DI and defended by the State respondent before the Court in the instant writ petition, the Court was curious to see at what position the vacancy of a Group-D post in the respondent School actually falls, in a 100 point roaster, which is the yardstick to determine the category of vacancy for the purpose of recruitment. It cannot be that whenever a vacancy arises, the same should be considered as the 1st stage of vacancy to be filled up by a person from the 'live register' of the DI who belongs to the died-in-harness category. This is only an improbable proposition. However, the State has not come up with any such reason or statement to show as to why the vacancy, which it has emphasized as a 1st stage of vacancy would actually be so, vis-à-vis the 100 point roaster. In such circumstances, the stand of the State respondent regarding ineligibility of the writ petitioner not being a candidate belonging to died-in-harness category, is not convincing at all.

(17) Regarding the letter dated February 17, 2010, the respondent has pleaded mistake of fact while issuing the said letter, that the same has been erroneously issued directing 're-interview' with the same set of candidates, along with already sponsored candidates from 'live register' under died-in-harness category. Excepting the submission from the bar, there is no other sufficient material to suggest that since from the date of issuance of that letter, any steps have been taken to eradicate the so-called error which is pleaded to have taken place due to issuance of that letter. Instead, only contrary can be noted that re-interview was held in terms of the said letter dated February 17, 2010 in the respondent School and after completion of the process, a panel was prepared and sent before the respondent/DI for approval.

(18) Since then however, the DI was seating idle on the issue and ultimately pursuant to the directions of this Court, has passed the order which is impugned in the instant writ petition. However, the Court finds that after the orders of the Court as mentioned above having reached finality and accepted by the parties being binding on them, the DI had very scanty or no scope at all, to raise a question as regards eligibility of the petitioner any further. This has been an act of gross arbitrariness and unreasonableness by the respondent/DI in the said impugned order. The DI while passing the impugned order, has not been mindful as regards the orders of the Court and its implication and thereby has committed gross error in directing that the panel could not have been approved for whatsoever reason he has cited in the said impugned order. This appears to be a gross non-compliance with the Courts order, particularly when the Court has directed for consideration of the panel in accordance with the Recruitment Rules as was prevalent in 2000. As a matter of fact, it can be

noted that there is no mention or discussion by the respondent/DI regarding the Recruitment Rules which was prevalent in 2000 and the fate of the panel in the light of the same.

(19) The Court is constrained to hold that in perusal of the orders of this Court dated June 27, 2000 and June 25, 2012 as mentioned above, the respondent/DI had no scope to independently apply its mind as to the eligibility of the writ petitioner, which has already been decided by Court by dint of the orders as mentioned above. In such circumstances, the Court is of considered opinion that impugned order dated May 8, 2013 passed by District Inspector of Schools (Secondary Education), Barrackpore, North 24 Parganas suffers from arbitrariness, illegality and sheer non-application of mind. The same thus is liable to be set aside.

(20) The Court is inclined to allow the present writ petition.

(21) Writ petition No. WPA 1982 of 2014 is allowed with the following directions:

i) The impugned order of the respondent/DI dated May 8, 2013 being Annexure P4 to the instant writ petition is set aside.

ii) The respondent/DI shall immediately approve the panel for appointment in the post of Group-D staff in Nimta High School (H.S.) as pending before it, in terms of Recruitment Rules as was prevalent at the time of initiation of the recruitment process in the year 2000.

iii) In pursuance to the order of approval of panel by the respondent/DI as directed in No. (ii), the respondent School Authority shall immediately issue appointment letter in favour of the first empanelled candidate.

(22) The entire exercise as above by the respective respondents, should be concluded within a total period of eight (08) weeks from the date of communication of copy of this order.

(23) Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)