

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 3824 of 2016

Sib Kumar Bhujel

Vs.

The State of West Bengal & Ors.

For the Petitioner : Ms. Mousumi Bhowal
: Mr. A. Gupta

For the respondent nos. 7 to 10 : Mr. Sandip Kr. De
: Mr. Amit Chaudhury
: Mr. Abhijit Sarkar

For the State : Mr. Pantu Deb Roy, Ld. AGP
: Mr. S.G. Biswas

Heard on : **08/04/2025**

Judgment on : **06/05/2025**

Rai Chattopadhyay, J. :-

1. In the instant case, the petitioner claims himself to be a successful contender in the recruitment process for appointment of a group-D staff in the respondent school and to have been appointed as a group-D staff in the said school by dint of a letter of appointment dated February 8, 2016. He is aggrieved that in spite of issuance of appointment letter dated February 8, 2016 to him and in spite of the school, having allowed him to join and participate in the duties of the school as a group D Staff on February 17, 2016, and February 18,

2016, he has never been again allowed to sign the attendance register or perform the duties of the school by attending there in, since thereafter. Hence, this writ petition.

2. Ms. Bhowal has represented the writ petitioner. She has submitted firstly that the school is a Christian minority institution covered under the protective umbrella of article 30 of the Constitution of India and is governed by the provisions of the “Special Rules for the Management of Secondary Schools Established and run by the Christian Church, Missionary Society (Board)/Religious Society, Subsidiary Trust”, dated May 23, 1974 [in short the “Special Rules of 1974”]. She submits that the petitioner has been recruited duly in terms of the Special Rules of 1974. she submits further that the respondent school has allowed the petitioner to join in duties. In such circumstances, according to the petitioner, he could not have been restrained from continuing with his service as he has been duly appointed in terms of the applicable Rules, and through the course of a duly instituted recruitment process, which have been initiated, continued and concluded in terms of the applicable Rules. It is submitted further that that after being appointed the petitioner could not have been unreasonably and without assigning any reasons, restrained to join in his duties. Learned advocate for the petitioner has submitted that, the respondent school in not allowing the petitioner to join in duty has acted beyond the provisions as contained in the said Special Rules of 1974. Hence, such action of the respondent school is not only whimsical, arbitrary, but also an action tented with gross legality. During the course of her argument, learned advocate, for the petitioner has referred to the relevant provisions under the Special Rules of 1974. She has also referred to the panel dated February 5, 2016, which she has addressed to be a

purported manipulated document. She has stated that though the name of the writ petitioner has appeared there in at the first place, but motivated and by tampering the actual result, the panel position of the petitioner has been mentioned to be the second position. By this way, the petitioner has challenged the panel dated February 5, 2016, in the instant writ petition.

3. A notification No,1314 (50)-SE(S)/4A-35/2002 dated September 17, 2002 [in short "No.1314"], has also been referred to by the learned advocate for the petitioner for the two reasons that according to the same, separate score-sheet for each empanelled candidate should be prepared. Similarly, a panel as per the merits that is marks obtained by the respective candidates has also to be prepared in the process of recruitment. Also that the panel has to be submitted before the District Inspector of School (Secondary Education) for approval of appointment within 15 days of joining of the employee. In case of the petitioner, allegedly none of these steps as contemplated in the said notification No. 1314, has been complied with by the respondent schools, Ms. Bhowal has submitted. Hence, she has prayed for an appropriate order in this case by allowing the writ petition.
4. The school authority has contested in the instant case by filing their affidavit in opposition. Mr. De has represented the school authority. The said respondent has conceded to the fact that the respondent school is an institution with minority status and governed by the Special Rules of 1974. So far as the selection process having been initiated by the school authority, in terms of the said Special Rules of 1974, is also an admitted fact in the instant writ petition. However, allegedly, as per the said respondent, the selection process has culminated into certain legalities and could not have been concluded

in a lawful and right manner, in so far as the selection committee has never placed the panel for approval of the school, managing committee, as well as of the district inspector of schools, secondary education. Before approval of the panel of candidates prepared by the selection committee by the school managing committee or the district inspector of schools, secondary education, the petitioner was appointed by the secretary of the school managing committee, which is an unauthorised and illegal action on part of the secretary of the school managing committee. Hence, according to the said respondent, petitioners appointment is unsupported by a lawful process being exhausted before such appointment. Hence, the appointment cannot be sustained in the eye of law. According to the said respondent, the letter of appointment of the writ petitioner dated February 8, 2016 issued by the secretary of the managing committee of the school, is an unsustainable, illegal and void document, which bears no force at all.

5. On the other hand, according to the said respondent, the entire recruitment process should be considered as vitiated since the panel prepared by the selection committee has never been approved by the school managing committee and the District Inspector of Schools (Secondary Education).
6. The writ petitioner on one hand seeks fruits of his empanelment in the panel dated February 5, 2016 as he says that he being successful in the recruitment process has been appointed in the school, which appointment cannot be terminated without following the due process of law. On the other hand he challenges the panel allegedly being not in terms of the said notification No. 1314, which provides for the procedure for recruitment. Thus, the petitioner is blowing hot

and cold at the same time. He simultaneously approbates and reprobates, which is not maintainable in the eye of law. Facts remain that in the panel the petitioner has obtained second place. The said panel has never been approved by the District Inspector of Schools (Secondary Education), in terms of the notification No. 1314 which has provided that the selection committee after preparing the panel on the date of interview shall submit the same to the managing committee. On being examined by the managing committee, the panel shall be forwarded to the District, Inspector of Schools (Secondary Education) for approval, with all relevant papers, within 15 days from the date of interview. It is also not clear from any material on record as to how the second empaneled candidate, being the writ petitioner has been appointed in the school, since the first empaneled candidate has never shown to have withdrawn his candidature or has been found ineligible for being appointed. It is found that with respect to the panel dated February 5, 2016, the above provision in notification number 1314 has not been complied with. Hence, The court's decision in this regard is that the panel as above cannot be acted upon by employing anyone from there. Being dehors the Rules, the said panel has to be rendered as invalid and illegal. That, the petitioner cannot lawfully be appointed in accordance with the same. Neither he can seek any equitable relief on the basis of the same. As a matter of fact, the petitioner himself has challenged the legality and propriety of the said panel, though on some other grounds.

7. Be that as it may, for the reasons as mentioned above, the court does not find any merit in the present writ petition and the same should therefore fail.

8. Hence, writ petition No. WPA 3824 of 2016 is dismissed.
Applications if any pending is also disposed of.

(Rai Chattopadhyay, J.)