

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 12740 of 2011

**Sri Pratap Roy
Vs.
State of West Bengal & Ors.**

For the Petitioner : Mr. Ekramul Bari
: Mr. Sk. Imtiaz Uddin

For the State : Mr. Rezaul Hossain

Judgment on : **22.09.2025**

Rai Chattopadhyay, J. :-

- 1.** The writ petitioner's grievance is with regard to non-approval of his service in Nayabazar High School in the post of Clerk. In the instant writ petition he has challenged the decision of the District Inspector of Schools, Secondary Education, Dakshin Dinajpur vide his order dated July 22, 2011.
- 2.** Facts remain that prior permission for filling up of the post of Clerk was obtained by the School Authority from the respondent No. 4/Additional District Inspector of Schools, Secondary Education, Gangarampur on July 9, 2008.
- 3.** Hence, there was advertisement of vacancy published and interview held by the School Authority. The Selection Committee has thereafter

prepared the panel, which was approved firstly by the Managing Committee of the School and ultimately by the said respondent No. 4 vide memo dated November 4, 2008. Pursuant to such approval, the petitioner was appointed and joined in the said school as a Clerk with effect from November 5, 2008.

4. Dispute arose in 2009 when the same respondent, that is, respondent No. 4/the Additional District Inspector of Schools, Secondary Education, Gangarampur, issued a letter dated September 23, 2009, observing inter alia that the prior permission and approval of panel for the post of Clerk (third vacancy) in the said School was done erroneously, due to wrong interpretation of the Government Notification No. 333-SE (Aptt.)/10M-32/01 Pt dated June 8, 2007 read with No. 2356 (20) GA. OM -15/2007 dated October 2, 2007. Therefore, by dint of the said letter dated September 23, 2009, the respondent No. 4 has directed the prior permission and approval of panel granted earlier in favour of the said School Authority to be treated as cancelled.

5. The petitioner being aggrieved, moved this Court challenging the said order dated September 23, 2009 of the respondent No. 4 in Writ Petition No. W.P. 14135 (W) of 2010. The Hon'ble Single Judge directed for consideration of the petitioner's grievance by affording him an opportunity of hearing and specified in his order dated July 30, 2010 that excepting the point of breach of natural justice no other points on merit were decided by the Court by dint of the said order. This order of the Hon'ble Single Judge was turned down by the Appeal Court. The Appeal Court has directed in its order dated March 23, 2011 that any genuine error in the order of granting prior permission as well as approval of panel may be brought to the notice of the

Authority concerned as well as to the present writ petitioner and necessary steps may be taken in terms of law after giving him an opportunity of hearing. The Division Bench directed that till the time a decision is taken by the respondent Authority the petitioner should function as a Clerk as against applicable salary and other emoluments.

6. The decision in terms of the Court's order as above has come into effect in the form of the impugned order dated July 22, 2011, which is challenged in the instant writ petition. The District Inspector of Schools, Secondary Education, Dakshin Dinajpur has turned down the veracity and propriety of the permission for giving appointment to the post of a Clerk in the said School, in which the writ petitioner has been appointed subsequently, and approval granted to the panel at a later point of time as erroneous and not maintainable for the reason that the school did not have a sanctioned post of Clerk (third vacancy) in the said school.
7. Mr. Bari, learned Advocate for the writ petitioner has submitted two fold. Firstly, that the respondent No. 4 after according permission for appointment to the particular post and approval of panel cannot by itself come forward at a later point of time to disown its own decision and declare the actions taken by the same earlier as above as erroneous and not maintainable. He says that, according to the own notifications of the respondent Authority, the minimum strength of non-teaching staff is relaxable. He has further stated that the petitioner having appointed through a well-formulated recruitment procedure and having worked in the school since from November 5, 2008 has acquired vested right as to the said post and he cannot be removed therefrom without compliance with the due process of law.

According to the petitioner, the decision of the Authority for cancellation of the prior permission as well as panel for the reason of error, at a point of time when the petitioner having been appointed, has concluded substantial period of service in the said post, is not only prejudicial but also illegal as it violates the petitioner's legal rights.

8. Secondly, Mr. Bari, learned Advocate appearing for the writ petitioner has contended that during pendency of the instant case, a person appointed as a Clerk in the said School as against a permanent sanctioned post, has died on January 27, 2023. After death of the said person, the said post is lying vacant. The school authority has adopted a resolution dated June 16, 2023 for appointment of the writ petitioner in the said vacant post to that effect a representation has also been made by the petitioner enclosing the resolution of the Managing Committee, before the respondent No. 4/Additional District Inspector of Schools, Secondary Education, Gangarampur. Mr. Bari, learned Advocate has informed that the said representation of the writ petitioner dated June 1, 2023 still remains unattended by the respondent Authority.

9. Mr. Bar, learned Advocate appearing for the petitioner has relied on an order of this Court dated January 5, 2011 in WP No. 13442 (W) of 2010 in which the Court has opined that, once prior permission was given and the process was completed, the Additional District Inspector of Schools, Secondary Education had no jurisdiction to review its own decision, particularly when veracity of the selection process was never under challenge on the part of the respondent Authority Mr. Bar, learned Advocate for the petitioner has relied on a judgment of Supreme Court in **Amarkant Rai Vs. State of Bihar** reported at

(2015) 8 SCC 265. He has submitted that the writ petitioner neither did lack in qualification nor there was any challenge as to the legality and propriety of the selection procedure through which he has been appointed. In such factual circumstances and considering the length of service of the appellant there, the Supreme Court in the said judgment has held that, in the interest of justice, the service of the concerned appellant should be regularized.

- 10.** Mr. Bari, learned Advocate for the petitioner therefore, has insisted that the present writ petition may be allowed with appropriate directions.
- 11.** Objection has been raised on behalf of the respondent Authorities. Mr, Hossain has represented the respondents. He has submitted a report of the respondent/District Inspector of Schools, Secondary Education, Dakshin Dinajpur in Court dated July 11, 2024, the following relevant portion therefrom has been relied on by Mr. Hossain -

“But at that instant matter the school had not sanctioned memo of Addl. District Inspector of Schools (SE) for filling up the post of additional (3rd) clerk. So the post of clerk (3rd) was not sanctioned one and in terms of the G.O No. 333-SE (Apptt) dated 8th June 2007 the said post (3rd clerk post) was not admissible for the school. The then Addl. District Inspector of Schools (SE), Gangarampur Sub-division accord prior permission for filling up the post (3rd Clerk Post) due to misinterpretation of the Said G.Os on 09/07/2008 i.e. well after the enforcement of the G.O No. 2356(20)-GA dated 03.10.2007.

Hence the 3rd clerk post of the school is bad in law and liable to be cancelled.

In question of the regularize his service in place of vacant post of 2nd clerk, created due to death of one of the regular clerk of the school is not permissible. This is because now School Education Department (Secondary Branch) Government of West Bengal launches rules vide

No. 697-ES/S/IS-18/08.- 09th July, 2009, namely West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff Rules, 2009. (Annexed herewith and marked as C). Now all non-teaching staff has been recruited by the West Bengal Regional School Service Commission, after written examination and personality test. So it is not possible by Addl. District Inspector of Schools (SE), Gangarampur Sub-division to absorb him to the vacant post of Clerk."

- 12.** On consideration of the rival contentions as well as on perusal of record, it is found that the respondent No. 4 has granted permission for conducting recruitment process as regards filling up of post of a Clerk in the School concerned. Later on, after conclusion of the recruitment process duly conducted, when the panel was forwarded towards the said respondent for approval, necessary order has also been passed by the same, by approving the said panel. Accordingly, the writ petitioner was appointed in the said school with effect from November 5, 2008. Since thereafter, he has been continuously working in the said school till the date of issuance of memo by the respondent No. 4 dated September 23, 2009.
- 13.** The memo dated September 23, 2009 has affected in termination of service of the writ petitioner. On careful perusal of the said memo, it is found that the respondent has cheated the actions earlier taken by it as cancelled for the reason that the previous actions of granting prior permission for appointment as well as approval of panel was due to wrong interpretation of Government orders No. 333 (supra) and 2356 (20) (supra).
- 14.** Such action of the respondent during the earlier actions is mentioned above as cancelled by dint of the letter dated September 23, 2009 was

tested before the Court of law when the Hon'ble Single Bench do not enter into any other question on merit excepting that the petitioner was not granted an opportunity of hearing. The Hon'ble Division Bench has endorsed the view of the Hon'ble Single Bench that the petitioner should have been granted opportunity of hearing and also that, till the time the Authority decides on the grievance of the petitioner, he should continue with the service in the said post and with the appropriate remuneration.

- 15.** In the impugned order dated July 22, 2011, the respondent Authority has come up with the reason that at the relevant point of time, the post as against which the writ petitioner was appointed, was not a sanctioned post. Hence, according to it, the entire process of appointment to a non-sanctioned post is illegal and void ab initio.
- 16.** Without challenging the contention of the respondent regarding the concerned post being a non-sanctioned one at the relevant point of time and even today, the petitioner has put forth his argument that he being a bona fide appointee in a duly formulated process of recruitment which commenced with prior permission of the respondent Authority, he would have vested right to remain appointed and his appointment cannot be cancelled excepting following due process of law in terms of existing Rules for cancellation thereof. In this regard, the ratio decided in the two judgments relied on, Mr. Bari have supported the petitioner's case immensely. Firstly, that the Additional District Inspector of Schools, Secondary Education respondent No. 4 in this writ petition shall have no jurisdiction to review its own order. In such circumstances, an earlier order of the same office shall only be followed up at the subsequent point of time and there is no scope to revert back to a position antedate.

- 17.** It may further be mentioned that the Court fully concurs with the submission made on behalf of the writ petitioner that so far as petitioner's appointment is concerned, the same cannot be said to have been flawed for any reason whatsoever including lack of essential qualification of the writ petitioner as well as proper conduct of the recruitment process. As a matter of fact, there is no challenge as to the said two aspects by the respondent Authority in this case.
- 18.** In such view of the fact, the Court finds the writ petitioner to be bona fide appointee having adequate qualification and duly participated in the recruitment process to be justifiably appointed in the post advertised, being emerged as a successful candidate thereof. So far as the error of the Authority, if any, is concerned, the petitioner shall not have any role or contribution therein. In that view of the matter, his appointment to the concerned post may at best be termed as an irregular appointment which is required and justified to be regularized to prevent violation petitioner's legal and vested rights and prejudice.
- 19.** At this juncture, it is noted that there is a vacancy available as regards the sanctioned permanent post of a Clerk in the said School, which has fallen vacant due to death of the incumbent therein on January 27, 2023.
- 20.** Following the irregular and not any illegal nature of appointment of the writ petitioner it would be proper to direct in the instant writ petition for appointment of the petitioner as against the said post with effect from the date on which it has fallen vacant.

21. Hence, this writ petition is allowed with the following directions:-

- i)** Impugned order dated dated July 22, 2011 is set aside.
- ii)** The writ petitioner shall be treated as appointed in the sanctioned permanent vacant post of a Clerk in the said School which has fallen vacant due to death of the incumbent therein on January 27, 2023, with effect from the date from which it has fallen vacant.
- iii)** The petitioner shall be granted notional benefit during the period of discontinuation of his service, if any, from the date of his initial appointment on November 5, 2008 till the date of his appointment as against the post fallen vacant due to the death of the incumbent as directed in point no. (ii).
- iv)** The concerned respondent Authority shall take appropriate steps in compliance with the directions as above positively within a period of four (04) weeks from the date of communication of copy of this judgment.

22. Writ petition No. WPA 12740 of 2011 is disposed of.

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

(Rai Chattopadhyay, J.)