

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 17207 of 2017

Md. Aslam Sk.

Vs.

The State of West Bengal & Ors.

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

For the State : Mr. Sagnik Chatterjee

Judgment on : **09.12.2025**

Rai Chattopadhyay, J. :-

- 1.** An order dated May 25, 2017, passed by the respondent No.3/District Inspector of Schools (Secondary Education), Birbhum [in short 'the DI'], has been challenged by the petitioner in this writ petition. The issue relates to non approval of the panel for recruitment of a clerk in the respondent/school, in which the writ petitioner has been mentioned as a successful candidate in the selection process.
- 2.** The respondent No.3 has founded his decision principally on the ground that in the recruitment process, the provisions of the West Bengal Schools (Recruitment of Non-Teaching Staff) Rules 2005, vide the Government Order No. 1594-SE(S) dated 26.12.2005 and the Management Rules 1969, have been violated, so far as fixation of full marks as well as preparation

of the individual score sheets, are concerned. Also that formation of the selection committee was invalid being not in consonance with the Rules and the attendance and individual mark-sheets have also not been produced. Hence, he has held the panel to be invalid.

- 3.** Challenging the said decision of the respondent No.3, Mr. Bari learned advocate for the writ petitioner has submitted that the respondent school has initiated the recruitment process as per prior permission granted to it by the respondent No.3 on August 11, 2006. Accordingly, the process was initiated and selection/interview was held on August 29, 2007. After completion of the process, a panel was prepared wherein the writ petitioner was placed at the first position.
- 4.** He says that the said panel has once been challenged by the second empaneled candidate, vide the writ petition No. W.P. 19458 (w) of 2007 and the Court directed for a time bound decision by the present respondent No.3, as regards the grievance of said petitioner, that is the said second empaneled candidate, vide the order dated September 26, 2007.
- 5.** Since the school forwarded the panel for approval to the respondent No.3, by dint of an order dated January 18, 2008, the said respondent rejected the panel and also the prayer for approval of the same, with an observation that due to some procedural defects, the panel could not be considered. The

matter was sent back to the school to hold interview afresh, upon cancellation of the process of interview dated August 29, 2007 and the result thereof.

- 6.** That the present petitioner filed his first writ petition challenging the decision of the respondent authority dated January 18, 2008 and the notice issued by the school for fresh interview dated February 26, 2008, being W.P. No. 4236 (w) of 2008. The Court sets aside the order of the respondent dated January 18, 2008. The Court in its order dated February 16, 2017, has recorded reasons that the original copy of the panel being misplaced in the office of the respondent there would not be any impropriety by the said respondent to proceed with the photocopy of the panel, concerning its approval.
- 7.** Mr. Bari learned advocate has submitted that hence the respondent conducted hearing and passed the order dated May 25, 2017, which is under challenge in the instant writ petition. He says that the grounds mentioned in the impugned order are not tenable in the eye of law, that the respondent, by passing the order impugned in this writ petition, has acted beyond scope of the earlier order of this Court dated February 16, 2017 and fresh grounds have been mentioned as a part of its endeavour to strengthen its case subsequently. According to him procedural lapses as mentioned by the respondent in the said impugned order are baseless as the school is required only to send the panel to the respondent for approval, as per Rules

9(7) of the Recruitment Rules of 2005. Therefore, by virtue of the said provision of Rules, the other documents leading to preparation of panel after conclusion of the process becomes inconsequential as per law. No valid decision could have been based upon the same. Hence, Mr. Bari, learned Advocate says that the writ petition may be allowed by setting aside the impugned order of the respondent No.3 dated May 25, 2017 and directing the said respondent to approve the panel and appoint the writ petitioner in the said post, in the respondent school, with immediate effect.

8. The State represented by Mr. Sagnik Chatterjee learned advocate has raised strong objections to the contentions and prayer of the writ petitioner. According to the said respondent, the composition of the selection committee is dehors the Recruitment Rules of 2005, as the selection committee did not include a nominee of the Panchayat Samiti or Municipal Corporation or Municipality or Notified Area Authority, as the case may be, as a member thereof. Further more, the score sheets showing allotment of marks to each of the candidates, were not produced, individual score sheets of the participating candidates were also not produced, Hence, according to the respondent, due to insufficient documents being filed by the school authority, the respondent could not verify the calculation of average marks. Objection of the State respondent has been based on further grounds of non-production of blood

relation certificate between the members of the selection committee and the candidates, managing committee resolution regarding formation of selection committee, and the attendance sheets on the day of interview. It has been submitted that the panel was approved in a meeting of the managing committee where the quorum was not formed at all, with 50% of the total members of the managing committee, as per the Management Rules, 1969. Mr. Chatterjee learned advocate for the respondent has insisted that the present writ petition may be dismissed.

- 9.** Admittedly the writ petitioner is the topper in the panel prepared by the selection committee in the year 2007. Admittedly also, the school authority, before embarking on the process of recruitment, has obtained prior permission on August 11, 2006, from the respondent District Inspector of Schools (Secondary Education) Birbhum. The respondent has also not denied the fact that the panel has been duly forwarded by the school, to his office, for grant of approval. What he states that the original panel has been misplaced in the office.
- 10.** Pursuant to the Court's order dated February 16, 2017, the said respondent thereafter has considered the writ petitioner's prayer, on the basis of the photocopy of the panel and other relevant documents and has passed the order dated May 25, 2017, which has been challenged in the instant writ petition.

11. It may be noted that at the first instance the said respondent authority did not get an opportunity to verify the panel and the connected documents due to the same being untraceable. It has only verified those after resubmission of the photocopy of the panel and rest of the documents. In such view of the fact, the submission made on behalf of the petitioner that while verifying the panel and the documents, the respondent has travelled beyond scope of the Court's order dated February 16, 2017, does not appear to be cogent and acceptable. Similar is with regard to the submissions made on behalf of the writ petitioner that by changing stand at all the subsequent stages, the respondent has tried to improve case in its favour. The Court's direction is that the respondent should be authorised to take a decision as regards approval of panel on the basis of the photocopy of the same, which in no manner intervenes into the discretionary statutory power of the respondent authority to assess the legality or maintainability of the panel or the ancillary documents. It is a fact that before receipt of the photocopy, the original panel was received in the respondent's office, but was untraceable. In that view of the matter while verifying the panel and the documents for the first time with a photocopy of the same, the respondent authority cannot be denuded of the scope of enquiry, for which he is authorised under the statute to do for the purpose of approval of a panel.

12. In his order dated May 25, 2017, the DI has mentioned both the statutory and procedural violation being made in the process of selection. The statutory violation is said to be in respect to the alleged unlawful composition and absence of quorum in the selection committee and erroneous fixation of marks by the selection committee. The procedural lapse mentioned in the impugned order is with regard to non-production of individual mark-sheets, score-sheets, attendance sheets etcetera. In precise terms, it can be stated that absence of a Panchayat nominee in the selection committee has been disputed, citing the reason that it violates the provisions contained in the Rules applicable.

13. Under the West Bengal Schools (Recruitment of non-teaching staff) Rules, 2005, the Selection Committee was to comprise of four persons namely, the Headmaster/Teacher-in-charge, Expert, Secretary and Panchayat nominee. Since allegedly, the Panchayat nominee was not there in the Committee and the Committee functioned with the other three persons, the validity of the Selection Committee and the process undertaken by the same has been challenged in the instant writ petition. The Court intends here to mention a judgment of this Court, in ***District Inspector of Schools, Murshidabad and Others Vs. Samsul Huda and Others*** reported in **1987 (2) CLJ 144** in which the Court has held that, marks given by 50 per cent of the members of the Selection Committee were valid and to be

counted while making selection. Hence, the absence of 50 per cent of the members of the Selection Committee did not vitiate the process. This view was later followed by Hon'ble Justice Jyotirmay Bhattachayya in WP No. 19279W of 2009 with WP No. 5430W of 2010 (***Pawan Kumar Dutta Vs. State of West Bengal & Others***), decided on June 21, 2011. The same ratio was followed by Hon'ble Mr. Justice Debasish Kar Gupta in WP No. 37561W of 2013 in ***Usha Munshib (Panja) Vs. The State of West Bengal and Others*** decided on January 30, 2014 by relying on the decisions as mentioned above, the Court again decided similarly in the ***Managing Committee of Baduria Senior Madrasah Vs. The State of West Bengal*** reported in (2017) 2 CHN 138.

14. On careful perusal of the pronouncements of the Court as mentioned above it appears that the Court has held 50 per cent of the corum of the Selection Committee shall suffice so far as the interview and grant of marks in interview to the respective contestants are concerned in a process of recruitment. The point urged in denial of the petitioner's contention by the respondent regarding invalidity of the composition of the Selection Committee does not therefore appear to have been founded on good grounds. Hence, the same is not tenable in view of the law settled by the Court in the judgments as above.
15. The other point raised by the respondent that with promulgation of the West Bengal Madrasah Service

Commission Act in 2009, no direct recruitment can be made in any post in a recognized Madrasah by the School Authority even if after obtaining prior permission, also that there is no scope after promulgation of the said law for obtaining prior permission from the respondent authority. In this regard, it is noticeable that the process of recruitment of the petitioner was initiated and completed much prior to coming into force of the West Bengal Madrasah Service Commission Act, in 2009. The law now well-settled is that the process of recruitment has to be concluded in terms of the Rules by dint of which the same has been started. The Rule of the game cannot be changed in the meanwhile. That being so, in case of the writ petitioner who has taken part in the recruitment process of 2007 and qualified in the same, the subsequent Act of 2009 which has no retrospective effect, should not be made applicable. Hence, it is found that in case of the present petitioner there is no applicability of the said statute.

- 16.** On perusal of the panel as annexed with the writ petition at Page 32, it appears that, the members of the Selection Committee present have duly signed the evaluation sheet for preparing panel for appointment. It reveals that numbers have been duly marked, following the due process of law, the final marks have been determined calculating average of the marks given by the respective examiners and thereafter the position of the candidates in the panel have been determined. The Court is

of the considered opinion that the process undertaken by the Selection Committee, composition of which has to be treated as valid in terms of the ratio of the judgments as mentioned above, has been substantially in compliance with the settled legal provisions.

17. In consideration of all as mentioned above, the Court does not find any justifiable reason as to why the panel prepared for selection of the clerk of the respondent/Madrasah cannot be approved by the respondent No. 3/DI. Hence, the impugned order dated May 25, 2017 appears to be unjust, irrational and also not in consonance with the settled principles of law. The same therefore, is liable to be set aside.

18. For the reasons as discussed above, the instant writ petition is allowed with the following directions:-

- i) Order of the respondent No. 3/DI dated May 25, 2017 is set aside.
- ii) Let the respondent No. 3/DI accord approval to the panel dated August 29, 2007 recommended before it by the School Authority for approval for appointment of clerk in the respondent/Madrasah, within four (04) weeks from the date of communication of this judgment;
- iii) Needless is to say that, pursuant to such approval being granted, the Madrasah Authority shall issue the necessary direction for appointment of the petitioner in the said post.

- 19.** W.P. No. WPA 17207 of 2017 is allowed and disposed of.
- 20.** Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)