

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 5090 of 2009

With

CAN 1 of 2022

Bhagirath Bauri

Vs.

State of West Bengal & Ors.

With

WPA 21217 of 2014

With

CAN 1 of 2014 (Old No. CAN 9475 of 2014)

Kanai Lal Bouri

Vs.

State of West Bengal & Ors.

For the Petitioner

: Mr. Subhrangsu Panda

: Mr. Iva Bhattacharyya

: Ms. Mithu Singha Mahapatra

: Ms. Bratati Pramanik

: Ms. Haritri Roy

For the WBBSE

: Ms. Koyeli Bhattacharyya

: Mr. Bibek Dutta

For the State

: Mr. Supriyo Chattopadhyay, Id. AGP

: Ms. Iti Dutta

Judgment on

: 08.08.2025

Rai Chattopadhyay, J. :-

1. The subject matter of the writ petitions as mentioned above are related to each other, hence the writ petitions as above have been

taken up for being heard together and are being disposed of by dint of the common judgment as follows.

2. The matters relate to the grievances of the writ petitioners that the appointment to the post of group – D in the school namely Shankhari Bansberia High School [herein after referred to as the ‘said school’] has been done illegally and hence is unsustainable, due to the reason that the appointee did not possess a valid school leaving certificate and produced a fake one, at the time of his appointment; hence in cancellation of such appointment of the person, the writ petitioner, who is the 2nd empanelled candidate, should be appointed [in the writ petition No. W.P.5090 (w) of 2009]. In the other matter, the petitioner’s order of suspension is under challenge. That is for the reason that allegedly the order of suspension of the writ petitioner is de-hors the law, insofar as the same is unreasonable and arbitrary, having been passed by not affording any opportunity of hearing to the writ petitioner [in the writ petition No. WPA 21217 of 2014].
3. The background facts may be stated in a nutshell, which is as follows. The local employment exchange has sponsored names of number of candidates including the two writ petitioners pursuant to the prior permission accorded by the District Inspector of

Schools (Secondary Education) Purulia [here in after referred to as 'the DI'], for being appointed in the post of a group-D staff (peon), in the said school. An interview was held on March 18, 2008 and the panel was prepared. The writ petitioner in WPA 21217 of 2014 [namely, Kanailal] occupied first position therein whereas the writ petitioner in W.P.5090 (w) of 2009 [namely, Bhagirath] has occupied the 2nd position. Immediately thereafter, on May 29, 2008, Bhagirath submitted his complaint letter before the DI that the first empanelled candidate did not possess valid credentials, particularly the school leaving certificate from the school at Jharkhand State and certificate if any submitted by the said candidate is only a fake one. Bhagirath has alleged in a writ petition that the authority has been sitting tight over the complaint lodged by him regarding lack of genuineness of the certificate submitted by the first empanelled candidate due to some ulterior motive. He has urged in his writ petition that necessary enquiry is required to be done as regards genuineness of the school leaving certificate of the first empanelled candidate or otherwise, being the next empanelled candidate and eligible for being appointed in case the necessary credential of the first empanelled candidate is detected to be a fake one, his rights for being appointed in the said post shall be immensely jeopardised. Bhagirath as prayed for a direction upon the DI for conduct of an

enquiry as to the genuineness of the school leaving certificate of the first empanelled candidate, which was produced at the time of interview held on March 18, 2008 and to take steps for recast of the panel and for his appointment, based on the result of such enquiry which might reveal the school leaving certificate produced by the other candidate as a fake document.

4. During pendency of the said writ petition the first empanelled candidate namely, Kanailal has come up before this court with the other writ petition in the year 2014, to seek redress of setting aside the order issued by the DI dated September 3, 2014 touching the subject matter of suspension of him, from service. The records and the argument made before the court has revealed that Kanailal has relied upon the letter of the headmaster of Sarvodaya High School at Jharkhand dated June 9, 2009. While considering the query as regards verification of certificate submitted by Kanailal, the Headmaster of the Jharkhand School writes that Kanailal was a student of class-IX and his date of birth is May 3, 1968. Pertinent is to note that such declaration was made by the headmaster in the letter dated June 9, 2009 as per the “given certificate”, and not in accordance with any other record possessed by the school authority. It is also pertinent to note that copy of the said letter dated June 9, 2009 does not reveal as to

how the same has reached to the desk of the school authority, that is whether by post or by hand delivery or by any other means. Be that as it may, the record has further revealed that on the very next date that is June 10, 2009 an appointment letter was issued by the Secretary of the said school to Kanailal and eventually he has joined in service.

5. The incidents changed course in 2010. A letter dated May 17, 2010, was received from the school authority of Sarvodaya High School at Jharkhand. In the same and with reference to the query raised by the said school for verification of the school leaving certificate of Kanailal, it has been stated that he did not study in the school at Jharkhand from 1981 to 1983. It has also been categorically mentioned that such information was derived from the records and register of the school. In 2013, the DI has again requested the District Education Officer, East Singhbhum, Jamshedpur, Jharkhand, to verify and report about the said two contradictory certificates issued by the school at Jharkhand regarding Kanailal.
6. In 2014, vide letter dated July 10, 2014, the Secretary of the said school has suspended Kanailal, with effect from July 11, 2014, pursuant to the resolution of the managing committee held in its

meeting dated July 10, 2014 (No.28). He was granted subsistence allowance. Also, it was informed that the order of suspension was to abide by the Court's order, in the instant writ petition. By dint of a letter dated July 17, 2014, the Secretary of the said school has requested the Secretary of the respondent/West Bengal Board of Secondary Education, for approval of suspension order as above. The same was approved vide the Board's letter dated September 10, 2015.

7. Kanailal has challenged the said order of suspension as mentioned above in his writ petition WPA 21217 of 2014. He has contended that after being successful in interview he has been duly appointed in the said post in due observance of the rules and procedures of recruitment. According to him, he cannot be suspended therefore, without following the procedures under the law. However, in his case allegedly the authority has not followed the procedure prescribed under the law and has acted in violation of the principles of natural justice to issue a suspension order against him without even granting him any opportunity to defend his cause. As such, he has challenged the legality and validity of the suspension order as above and prayed for setting aside of the same.

8. Bhagirath on the other hand, has contended in his writ petition No. W.P.5090 (w) of 2009 that candidature of the first empanelled person Kanailal should have been rejected in view of him not submitting valid and genuine credential. He has stated that necessary enquiry is required to be done and upon proof of illegitimacy of the school leaving certificate of the said person occupying first position in the panel, he being the next empanelled candidate should be appointed in the said post. An expeditious and proper enquiry is the prayer of the petitioner. He has also prayed for an order of his appointment on the basis of the result of such enquiry.
9. A question has arisen in these writ petitions as to whether after expiry of the validity period of the panel in question due to the efflux of time and after appointment of a person as against the post, whether the writ petition filed by Bhagirath would be maintainable any further. In this regard learned advocate appearing for the said writ petitioner has referred to various judicial pronouncements, in support of his contention that it in view of pendency of this writ petition and the fact that first empanelled candidate should not be considered as eligible having submitted fake credential, the validity of panel could not seize to

be in effect, even after expiry of one year period from the date of same.

10. He has referred to the judgment of ***Purushottam vs Chairman, MSEB and Another reported at (1999) 6 SCC 49***. The court has held therein that the right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. The court has held further that usurpation of the post by somebody else was not on account of any defect on the part of the appellant but due to erroneous decision of the employer himself. The court has held that in such view of the matter, the appellant's right to be appointed to the post cannot be taken away or else the same will be rendered as illegal. Upon due observance of the ratio thereof, it can be seen that the law thus becomes well settled that expiry of a panel after a particular period would not be a concept sustainable in the eye of law in case the person's right to be appointed has been jeopardised due to erroneous decision of the authority and not in any way attributable to himself.

11. Further reference has been made to various decisions of this court in ***Partha Pratim Jana vs State of West Bengal*** [WPA 1864 of

2021], ***Rentu Biswas vs State of West Bengal*** [WPA 5970 of 2021] and ***Amal Kanta Giri vs State of West Bengal*** [WPA 4138 of 2021], in which while disposing of the writ petitions the court has granted relief to the respective petitioners in terms of the ratio decided in ***Purushottam's case (supra)***. The judgment in ***Amal Kanta Giri's case (supra)*** has been tested in an appeal though unsuccessfully. Later on the Supreme Court has also rejected the Special Leave Petition.

12. Another judgment of the Division Bench of this court in ***Kaushik Mallick vs West Bengal Collage Service Commission & Others reported at (2010) 4 CHN 69 (Cal) (DB)*** has also been referred to in this regard, in which the court has held as follows:

"In order to do substantial justice to a citizen this Court should take every possible step. In the present case, appellant herein cannot suffer injustice due to expiry of the life of the panel since during the life time of the said merit panel, appellant herein did not know that the less meritorious candidates were illegally recommended by the respondent-College Service Commission for appointment to the post of Lecturer superseding the rightful and legitimate claim of the appellant herein.

Exhaustion and/or expiry of the life of the merit panel cannot be a ground to defeat the rightful and legitimate claim of the appellant since the respondent-College Service Commission by their illegal acts frustrated the very object of preparing the merit panel by recommending the less meritorious candidates superseding the appellant herein who secured higher position in the merit panel as more meritorious candidate. The action of the respondent-College Service

Commission in this regard cannot be approved by this Court. The appellant herein could not be superseded by any candidate of lesser merit under any circumstances and the College Service Commission by doing so has committed serious illegality which cannot be sustained in the eye of law.

In the present case, undisputedly, the private respondents namely, the respondent Nos. 5 and 6 were placed below the appellant herein in the merit panel being less meritorious candidates. The respondent-College Service Commission illegally recommended the aforesaid private respondents for appointment to the post of Lecturer in the affiliated colleges in the territory of West Bengal without recommending the name of the appellant who secured higher position than the aforesaid respondents in the merit panel. On account of the aforesaid illegal action on the part of the respondent-College Service Commission appellant herein has suffered serious prejudice since the said appellant has not yet been recommended for appointment to the post of Lecturer whereas the less meritorious candidates like the private respondents have been appointed to the post of Lecturer in the affiliated college pursuant to the recommendation of the respondent-College Service Commission.

In the aforesaid circumstances, the appellant cannot be remediless only on the ground of expiry of the life of the panel. The appellant had no control on the respondent-College Service Commission and the aforesaid illegal action on the part of the respondent-Commission came to the notice of the appellant afterwards. Therefore, it cannot be said that the appellant herein waived his right by appearing at the subsequent selection test in the year 2003. The appellant cannot be said to be conscious about the waiver of his right since the said appellant had no knowledge regarding recommendation of the less meritorious candidates like the private respondents herein by the respondent-Commission for appointment to the post of Lecturer.”

13. Hence, Bhagirath has sought relief that proceedings against the present appointee that is the first empanelled candidate may be concluded by the respondent Board, as expeditiously as possible and on the basis of the result thereof appointment of that candidate may be cancelled and in the said vacant post he may be directed to be appointed.
14. Ms. Bhattacharya, learned advocate, who has represented the respondent/Board has submitted that with the coming into effect of the West Bengal Board of Secondary Education(Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018, the respondent Board or any officer authorised by the same would be eligible under the said rules for conducting disciplinary proceeding as against any alleged misconduct of a non-teaching staff of the school. She has submitted that Rule 5(2) of the said Rules of 2018 has authorised the respondent/Board to issue show cause notice as against the delinquent staff and to initiate disciplinary proceeding against him. She asserts that till date no such disciplinary proceeding has been initiated against the delinquent to he has been suspended earlier. Ms. Bhattacharya has submitted that according to the said Rules disciplinary proceeding against the said person is required to be done.

15. The issue of non-maintainability of the writ petition No. W.P.5090 (w) of 2009 for the reason that the panel might have been expired after lapse of one year period from its date, has to be set at rest in view of the decision of the Supreme Court in **Purushottam's case (supra)**. The ratio of the decision of the Division Bench of this court in **Kaushik Mallick (supra)** is also worth noting which is squarely applicable in case of the writ petitioner, in W.P.5090 (w) of 2009.
16. The allegation against the first empanelled candidate is of exercise of fraud by being appointed by producing fake school leaving certificate. In response to the query made regarding verification of the certificate submitted by him, two contradictory responses are available vide the two letters sent by the authority from the school at Jharkhand. Pertinent also is, as discussed above, that in the first letter dated June 9, 2009, which has been relied on by the said first empanelled candidate, the school authority has endorsed its comment in accordance with the certificate already issued to the said person and authenticity of which has been challenged. The court wonders as to what extent the said letter should be rendered as worth consideration, if at all. Be that as it may, the record has revealed that the said first empanelled candidate after

having been appointed in the said post, has been suspended at a later stage. It is also known to the court that the respondent/Board has not yet initiated any disciplinary proceeding against the said person in accordance with the Rules of 2018.

- 17.** On consideration of the facts and circumstances of the case and in due observation of the laws settled as discussed above, the court is of considered opinion that the respondent/Board should immediately initiate the disciplinary proceeding against Kanailal, as is pending in terms of the Rules and the person concerned has been kept under suspension. The court is of further opinion that in view of the facts and circumstances in these cases where, upon being prima facie satisfied about the illegitimacy of the credential of the appointee he has been suspended, the right of Bhagirath, as the next empanelled candidate for being appointed in the post has really subsisted, irrespective of the fact that one year time period from the date of publication of panel has already expired. It is worth noting that Bhagirath has raised his objection on May 29, 2008, within about two months from the date of interview. Therefore, on his part there is no slag or latches and he has been enough vigilant about the sanctity of the process of recruitment and necessity of appointment of a right and bona fide candidate

for the said post. Therefore substantial justice would be made in this case when at the end of the disciplinary proceeding, if the charges of submission of fake document against Kanailal is proved and necessary steps are taken against him, in accordance with law on proof of such fact, the respondent authority would be directed to issue the appointment letter, in favour of Bhagirath, in the said post.

- 18.** Hence, both the writ petitions No. **WPA 5090 of 2009** and **WPA 21217 of 2014** are disposed of along with the connected applications if any, with the following directions:

(i) The respondent/Board shall initiate the disciplinary proceeding against Kanailal, within a period of 3 weeks from the date of this judgment and conclude the same within a maximum period of 6 months from the date of this judgment;

(ii) Subject to the result of the disciplinary proceeding as above, necessary steps shall be taken by the said respondent in accordance with the Rules;

(iii) The results of the disciplinary proceeding shall be communicated to the respondent DI and the two writ petitioners in the respective writ petitions;

(iv) In an eventuality, if so arises, when the authority decides to terminate employment of Kanailal, in accordance with the Rules and subject to the result of the disciplinary proceeding, the DI shall issue appropriate order for appointment of the candidate in the 2nd place, in the said panel, that is, Bhagirath;

(v) In such an eventuality an order to that effect shall be passed within a period of 3 weeks from the date of receipt of copy of the outcome of the disciplinary proceeding, by the District Inspector of schools.

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

(Rai Chattopadhyay, J.)