

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE PRASENJIT BISWAS

MAT 2118 of 2024
with
CAN 1 OF 2024

SMT.TANUJA SANTRA (PARAI)
Vs.
THE STATE OF WEST BENGAL & ORS.

FOR THE APPELLANT	:	MR. SADANANDA GANGULI MS. USHA MAITI MS. ANITA KHATRI MR. SAKHYA MAITY
FOR THE STATE	:	MR. BHASKAR PRASAD VAISYA MR. GOUR DAS
FOR THE RESPONDENT NO.7	:	MR. SAJAL KANTI BHATTACHARYA MR. SARTHAK BARMAN
FOR THE RESPONDENT NOS.4 & 5	:	MR. SUDEEP SANYAL MR. SNEHASIS JANA MRS. TUTUN DAS MR. CHANDRACHUR LAHIRI
FOR THE RESPONDENT NO. 9/SCHOOL AUTHORITY:	:	MR. SARWAR JAHAN MS. SUMITA SEN MR. SAYANTAN HAZRA

HEARD ON : JANUARY 24, 2025

JUDGMENT ON : JANUARY 24, 2025

THE COURT:

1. An unsuccessful litigant approached the Court challenging the selection process on multiple grounds including the constitution of the selection committee and their conduct in awarding the marks in the interview as

an outcome of bias and favouritism. The selection process for filling the post of an Assistant Head Master in a relevant school was initiated in terms of the provisions contained in Memo No. 1628 dated 10th July, 2022. The said Memo contains an exhaustive provision, the mechanisms and the procedure to be adopted for selection of the eligible candidate to the post of a Assistant Head Master including the awarding of the marks on various counts.

2. According to the appellant the paragraph 3 of the said Memo postulates who shall be the members of the selection committee which includes a nominee of the Panchayat Samity and one Teachers representative to be selected by the managing committee.
3. It is a specific case of the appellant that the words “Selection” cannot be substituted with the word “Election” and the moment it is found that the Teachers representative is elected and not selected it vitiates the entire selection process.
4. It was vociferously submitted before the Single Bench that out of five members of the selection committee, two members namely the nominee of the Panchayat Samity and the Teachers representative awarded abysmally low marks in comparison to the other members and therefore the marks awarded by the majority should be taken as a composite marks and if such exercise is undertaken, the appellant would come in the first position of the panel.
5. The appellant has taken the plea of bias based upon the marks awarded in the interview by the aforementioned two members and have further proceeded to contend that those members do not have the requisite qualification more particularly the nominee of the Panchayat Samity to adjudge the capability, knowledge, proficiency of a teacher in a relevant subject.

6. On the basis of the aforesaid pleadings and the submissions advanced before the Single Bench, the writ petition was dismissed as the points so raised does not hold water in eye of law. The said order is assailed before us in the Intra Court appeal and we invited the counsel for the respective parties to address us on the merit thereof.
7. Ms. Maiti, the learned Counsel appearing for the appellant vociferously submits that the nominee of the Panchayat Samity and the Teachers representative have acted in bias in awarding the low marks in the interview when the other members of the said selection committee awarded a higher marks and, therefore, bias being one of the factor where the Court should step in and quash and set aside all the decision of the administrative authority. Ms. Maiti further submits that the Teachers representative was in fact elected and not selected and, therefore, it offends the provision of the said guidelines and the moment it is found that the constitution of the selection committee is in contravention to the said guidelines, it would vitiate the entire selection process. Ms. Maiti further submits that the nominee of the Panchayat Samity does not have the requisite qualification and, therefore, the marks awarded by him should be ignored and/or discarded and the marks awarded by the majority should be taken for arriving at the average of the total marks.
8. Ms. Maiti further submits that the Writ Court passed an order of injunction on 08.02.2018 restraining the authority from giving appointment to the post and it appears that the approval was granted by the District Inspector of School on 23rd February, 2018 when the said interim order was subsisting which per se is illegal. Ms. Maiti audaciously submits that any action done on the teeth of an order of temporary injunction is always regarded as illegal and, therefore, such appointment so made should immediately be quashed and set aside. Ms.

Maiti further submits that the life span of the panel being three months from the date of the approval granted by the authority to the panel and the moment the appointment is made beyond the life span of such panel it is illegal and, therefore, to be quashed and set aside.

9. In fact, Ms. Maiti has taken all the points which were taken before the Single Bench in the instant appeal and have taken an additional point that the Court ought to have taken into consideration the supplementary affidavit filed in the writ petition.
10. From the submissions so advanced before us there is no hesitation in our mind that if the action of the authority is tainted with bias which is apparent on the face of the record or otherwise substantiated by cogent documents, interference is inevitable. The act of bias corrodes the very fabric of the impartiality, fairness and transparency in the selection process which are the hallmark in any selection process. Mere suspicion or the apprehension is not sufficient enough to entertain a plea of bias nor can be a facet of one's imagination. The bias has to be considered in due accord with a prudence of a reasonable man which must be shown to be present. The test often applied on examination whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias in a given case.
11. In the event it is apparent from the record that there is a real danger of bias, the decision would attract the judicial chastisement but if it is founded upon a probability or preponderance of probability it would hardly affect the decision. The purity in the administration requires the demeanour of the selection committee to be such that it would not percolate any sense of apprehension of bias into a person but it is equally true that every suspicion felt by a party may not lead to an inescapable conclusion of bias. The Court must deprecate the vague suspicion or whimsical, capricious and unreasonable allegation as the

standard for judging the bias in the event the action of the selection committee does not remotely suggest so.

12. Merely because two members of the selection committee awarded lower marks in the comparison with the other members of the selection committee, does not ipso facto raises a presumption of bias beyond any reasonable doubt. We thus, do not find any infirmity in the decision of the Single Bench that the notion of bias cannot be stretched too far based upon the fact that some of the members of the selection committee has awarded lower marks than the others.
13. It is a uniform stand of the parties that the guidelines framed by the School Education Department, the Government of West Bengal in relation to an aided school under Memo No. 1628 dated 10th July, 2002 has a statutory flavor and it would be adhered strictly. The said guidelines is relatable to the mechanism, the modalities and the procedure to be undertaken by the authority in filling up the post of an Assistant Head Master/Assistant Head Mistress in the aided school.
14. Paragraph 3 of the said guidelines exhaustively contain the procedure including the constitution of the selection committee and awarding of the marks on several parameters including the preparation of the panel and its approval to be granted by the District Inspector of School in the following:-

“3. A) The School Authority shall form a Selection Committee for selection of Assistant Headmaster/Assistant Headmistress with the following persons:-

(a) Secretary of the Managing Committee/Ad-hoc Committee Administrator of the concerned Institution, if the Headmaster/Headmistress and the Secretary of the School are one and the same

person, the President of the Committee shall be included as a Member.

(b) The Headmaster/Headmistress/Teacher-in-Charge/ Superintendent of the concerned institution.

(c) One Teachers' Representative to be selected by the Managing Committee; in case of Govt. Sponsored Schools where there is no Teachers' Representative in the Managing Committee. In Schools having Administrator/Ad-hoc Committee, Teachers' Representative shall be selected by the Teaching Staff in a meeting convened by the Head of the Institution.

(d) One nominee of the Panchayat Samity for institution situated in Rural Area to be nominated by the Sabhapati, for other areas, one Member of the Managing Committee other than representative of the Teachers or Non-Teaching Staff to be selected by the Managing Committee. The nominee of the Panchayat Samity, however, shall not be a member of the staff or that school.

(e) EXTERNAL EXPERT: An approved Head of a Recognised High and Higher Secondary School/High Madrasah having at least 5 years' continuous teaching experience as Head of the said Institution situated within the Sub-Division where the school is situated.

In case of Municipality/Corporation-managed Non-Govt. Recognised School having no individual Managing Committee and managed by the

Corporation/Municipality centrally will form a Selection Committee with the following members:-

(a) H.M. of the School (b) Subject Expert (c) One of the representatives from the Teachers to be selected by the teachers, (d) One nominee of the D.I. (SE) (e) One nominee of the Corporation/Municipality.

B) (1) The Selection Committee shall elect one of the Members as President of the Selection Committee, but he/she will have no power of a casting vote.

(2) No person who is related to any of the candidates to be interviewed shall be a member of the Selection Committee; in such case, the position of that members of the Selection Committee shall remain vacant.

(3) All the candidates for interview shall be required by the Selection Committee to record their attendance before the interview.

C) The Selection Committee shall select the candidates in the following manner:-

**** (a) Academic qualifications including professional qualifications---30 Marks as in Annexure 'A'.**

(b) Experience :- 5 marks : for experience of 5 years or above, but less than 10 years-2 Marks, for experience of 10 years or above, but less than 15 years- 3 Marks, for experience of 15 years or above, but less than 20 years- 4 Marks and for experience of 20 years and above- 5 Marks.

(c) Personality Test: (interview) – 5 Marks.

D) A panel shall be prepared with average of marks awarded by each of the Members of the Selection Committee in his/her individual score-sheet with signature. If any of the members wants to keep his/her opinion reserved, he/she shall submit a blank sheet containing names etc. of the candidates and duly signed by him/her and average shall be calculated on the marks awarded by other members. The panel shall be prepared in presence of at least 3(three) Members out of 5(five) Members of the Selection Committee and the panel should be signed by all these Members.

E) The Selection Committee after preparing the Panel on the date of interview shall submit the same to the Managing Committee/Ad-hoc Committee/Administrator. The Managing Committee/Ad-hoc Committee/Administrator shall examine the panel and forward a panel of 3(three) candidates according to their positions to the District Inspector of Schools (SE) for approval along with all relevant papers within 15 days form the date of interview. The Dist. Inspector of Schools(SE) shall convey his decision within 1(one) month from the date of receipt of the panel from the Managing Committee/Ad-hoc Committee/Administrator.

A panel of less than three candidates may be prepared provided three or more candidates are not available. If two or more candidates secure equal marks, preference shall be given to the academically better candidate.

15. It is evident from the abovementioned paragraph that the school authority shall constitute a selection committee comprising of the Secretary of the Managing Committee, the Head Master/ Head Mistress,

one Teachers representative to be selected by Managing Committee, one nominee of the Panchayat Samity and an external expert. It further postulates that the selection committee shall elect one of the members as President of the selection committee without having any power to cast vote. The embargo is also created to the effect that no person shall be the member of the selection committee if any of the candidates to be interviewed is related to him. For the purpose of determining the suitability based on merit 30 marks were allowed for academic qualification; 5 marks for experience together with the subdivision and 5 marks for interview.

16. The appellant has not assailed the said guidelines being contrary to the statutory provisions but have founded the case on the non-adherence or a departure having made in constituting the selection committee and/or functioning of the selection committee. It is evident from the paragraph 3 of the said guideline that the Teachers representative shall be selected by the managing committee which according to the petitioner would invalidate the constitution thereof if the exercise is undertaken by electing the Teachers representative instead of selecting the same. The record reveals that two teachers offered their candidature for being chosen as a Teachers representative before the school authority and one was chosen upon deliberation by the school authority. The word “selection” should not be construed in the mandatory sense as the school authority has been conferred with the power to constitute the selection committee. The word “selection” cannot be interpreted in such manner which would offend and frustrate the core value of the provision or would render the provision unworkable. The moment the power is conferred on the school authority to select the Teachers representative the process of the selection can be adopted in absence of any express provision contained in the said statutory document. The interpretation

sought to be made by Ms. Maity, if accepted would invite an analogous situation in the event two teachers offers their candidature then the selection process would be totally frustrated the moment the school authorities have chosen one teacher to be part of the selection committee it does not invalidate the constitution of the selection committee and, therefore, the contention of Ms. Maiti in this regard is not acceptable.

17. We also do not find any substance in the submission of Ms. Maiti that the nominee of the Panchayat Samity must acquire a requisite educational qualification for being the member of the selection committee to adjust the calibre, the proficiency, the knowledge in the domain subject. The said guidelines is silent in this regard and the moment the legislators have consciously taken a decision not to incorporate such qualification for the member of the selection committee, it is not open to the litigant to raise such point. In absence of any qualification attached to any of the members of the selection committee in the said statutory document, the constitution thereof cannot be said to be infirm and/or illegal.
18. It is sought to be contended that there was a subsisting order of injunction passed on 8th February, 2018 in the writ petition on the appointment to the post. The said order was assailed in a Intra Court appeal being MAT 504 of 2018 wherein the Division Bench on 18.07.2018 stayed the operation of the impugned order taking into account that the District Inspector of School, Purba Medinipur on examination of the panel prepared for the purpose of appointment to the post of Assistant Head Master has approved the same and any appointment if made on the basis thereof shall abide by the result of the stay application. On 30th July, 2018 the said interim order was set aside

without any further observations made upon the approval granted by the D.I. of Schools and the appointment if made in the meantime.

19. It is sought to be contended that the D.I. of Schools approved the panel on 23rd February, 2018 during the subsistence of an injunction order and subsequent appointment made in the month of August, 2018 is beyond the life span of the panel and therefore such appointment is infirm and illegal.
20. Indubitably paragraph 4 of the said guidelines indicates that the panel shall remain valid for three months from the date of the approval of the panel by the District Inspector of School. Admittedly the approval to the panel was accorded on 23rd February, 2018 during the subsistence of an interim order dated 08.02.2018. In order to ascertain whether such action is on the teeth of an order of injunction, the Court must look into the tenor of the order of injunction. The injunction was restricted to an appointment to the post of an Assistant Head Master and does not impinge upon the approval of the panel by the District Inspector of School. Anything or the action taken dehors the purview of the order of injunction cannot be said to be illegal. The order of injunction was restricted to an appointment to the post and not on the approval to be granted to the panel and, therefore, we do not find any illegality in this regard.
21. There was a subsisting order of injunction on the appointment to the post and, therefore, the period enshrined in the said guidelines for the life span of the panel remain suspended. By virtue of an order dated 18.07.2018 the Division Bench upon staying the operation of the order of injunction impliedly permitted the authority to proceed with the process of appointment with a rider that it would be subject to the result of the stay application. Within a span of one month from the date of the

said order the appointment is made and, therefore, it cannot be regarded to have been made beyond its natural life.

22. The moment an order of injunction is passed on the appointment to the post which was later on vacated, the period during which the order of injunction was subsisting shall be excluded for the purpose of counting the period enshrined in the said guideline in relation to a life span of the panel.
23. Since the appointment is made within three months from the date of the stay of the injunction order or when the injunction order is set aside by the Appellate Court, the contention of the appellant that the appointment is made beyond the life span of the said panel is unacceptable and unsustainable.
24. From whatever angle we look at we do not find any merit in the instant appeal. The same is hereby dismissed along with all connected applications.
25. There shall, however, be no order as to costs.
26. Urgent Photostat Certified copy of this order, if applied for, be given to the parties upon complying with requisite formalities.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)