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FMA 1347 of 2024
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IA No.: CAN 1 of 2024
**The West Bengal Central School
Service Commission & Others**
- *Versus* -
Subhankar Nath & Others

Dr. Sutanu Patra
... for the Appellants/
WBCSSC.

Mr. Firdous Samim,
Ms.Gopa Biswas,
Ms. Salini Bhattacharjee,
Mr. Naman Shah
... for the Respondent no.1/
Writ Petitioner.

The West Bengal Central School Service Commission (in short, the Commission) and its functionaries have preferred the present appeal challenging an order dated 04.09.2024 passed by the learned single Judge in a writ petition, being WPA 17624 of 2022 which was preferred by the writ petitioner/respondent no.1 herein, namely, Subhankar Nath (in short, Subhankar) *inter alia* praying for issuance of necessary direction upon the appellants to call him in the counseling process immediately and to appoint him in the post of Assistant Teacher in Upper Primary level in the subject of Work Education (10% Para-teachers).

Dr. Patra, learned advocate appearing for the appellants primarily argues that Subhankar approached the writ Court belatedly. Subhankar alleged that he was misled by the summary of final result published by the Commission in the website on 01.05.2019 wherein his status was disclosed to be '*Not Empanelled/Not Waitlisted*' but the veracity of such plea cannot be ascertained by the Commission about three years after the conclusion of the selection process. The panel was published on 30.04.2019 and the writ petition was affirmed on 02.08.2022.

Drawing our attention to the representation dated 10.05.2022, submitted by Subhankar, annexed at page 78 of the stay application, Dr. Patra contends that the said representation was submitted almost two years and seven months after submission of the first representation on 30.09.2019. Subhankar again waited for about four months thereafter to file the writ petition in the month of August, 2022. No explanation has been furnished as regards such delay. In view of such conduct, Subhankar did not deserve any discretionary relief.

He further argues that a comparison of the documents at pages 72 and 74 of the stay

application with the document annexed at page 75 of the stay application would reveal that there is a glaring disparity. Subhankar ought to have responded on the basis of the result disclosed in the website through the documents annexed at pages 75 and 76 of the stay application. No explanation is forthcoming as to why he did not respond when it was explicit from the said documents that he had secured 5th rank in the merit list and as to why he did not take immediate steps to reverify his status upon browsing the Commission's website contemporaneously. The date for counseling was duly published in the website but Subhankar chose not to participate.

Mr. Samim, learned advocate appearing for Subhankar, however, denies and disputes the contention of Dr. Patra and submits that upon noting the discrepancies in the result published in the Commission's website, Subhankar immediately brought the same to the notice of the Commission by submitting a comprehensive representation on 30.09.2019 much prior to expiry of the panel on 29.04.2020. Though it was a statutory obligation on the part of the Commission to respond to the same, it maintained a deceptive silence and as such, Subhankar had

no other alternative but to submit repeated representations thereafter. As the same were not responded to, Subhankar was constrained to prefer the writ petition. In the backdrop of such fact scenario, it cannot be argued that Subhankar was not alert and he did not take appropriate steps. On the contrary, the document annexed at page 72 of the stay application would reveal that Subhankar had been misled since in the said document the status was reflected to be '*Hold due to court order of WP No.28890 (W) of 2017*' and in the document at page 74 of the stay application the status was stated to be '*Not Empanelled/Not Waitlisted*'. The Commission had miserably failed to dispute the correctness of the said documents and as such, for the fault on the part of the Commission, Subhankar cannot be made to suffer. The learned single Judge had exercised discretion in favour of Subhankar upon giving reasons and there is no infirmity in the order impugned.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Appellate power interferes not when the order appealed is not right but only when it is clearly

wrong. The learned single Judge has rightly discounted the argument that Subhankar had approached the Court belatedly by specifically observing that Subhankar pointed out the infirmities immediately on 30.09.2019 and prior to expiry of the life of the panel. The same was also followed up by several representations thereafter but the same were also not responded to by the Commission.

The learned single Judge rightly found it hard to believe that Subhankar being selected in a competitive examination would not participate in the counseling more so when Subhankar is not working in any post more advantageous in terms of service benefits than the post of assistant teacher in a government aided school.

We also do not find any error in the observation of the learned single Judge that no plausible explanation had been furnished by the Commission as to why there was a sharp disparity in between the two results in connection with the same selection process.

The learned single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)