
(2002) 01 CAL CK 0043
In the Calcutta High Court
Case No : Writ Petition No. 4238 (W) of 1998

Kashinath Karmakar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 CALLT 355

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Kausik Chanda, for the Appellant; Jayanta Kr. Das, for the Respondent

Final Decision : Allowed

Judgement

P.K. Ray, J.—In this writ application the writ petitioner who was empanelled as a first candidate of the panel as prepared on 25th September, 1997 relating to the selection of candidate for the post of Headmaster of the school in terms of the prior permission order reserving the post for scheduled caste candidate, has challenged the Memo No. 1419 dated 7th October, 1997 issued by the District Inspector of Schools (SE) Dakshin Dinajpur modifying the earlier prior permission order reserving, the post for scheduled caste candidate, as unreserved. The petitioner has prayed the following reliefs in this writ application:-

(a) A writ of and/or in the nature of Mandamus commanding the respondents particularly the respondent No.3 i.e. the District Inspector of Schools (SE), Dakshin Dinajpur, to cancel and/or rescind and/or set aside and/or quashed the impugned Memo bearing No. 1419 dated 7.10.97, which is in annexure-J.

(b) A writ of and/or in the nature of Mandamus commanding the respondents particularly the respondent No.3 to approve the panel prepared on the basis of the interview held on 25.9.97 for the post of Headmaster in Tilon High School, P.O. Tilon, Dist. Dakshin Dinajpur.

(c) A writ of and/or in the nature of Mandamus commanding the respondent No. 6 i.e. the Secretary of Tilon High School, P.O. Tilon, Dist. Dakshin Dinajpur, to appoint the petitioner in the said post of Headmaster reserved for SC after getting due approval from the District Inspector of Schools as regards the panel prepared on the basis of interview held on 25.9.97 for the post of Headmaster in Tilon High School. P.O. Tilon, Dist. Dakshin Dinajpur."

2. This writ petitioner has a chequered history, For the post of Headmaster of Tilon High School, Post Office-Tilon, District-Dakshin Dinajpur. the Managing Committee of the school in terms of the staff pattern of the school read with hundred point roster marked the post of Headmaster reserved for scheduled caste candidate. Such requisition accordingly was sent seeking prior permission of the District Inspector of Schools (SE) Dakshin Dinajpur (hereinafter referred to as the concerned District Inspector of Schools). The District Inspector of Schools thereafter accorded prior permission by Memo No. 737 dated 22nd August. 1996 following the Recruitment Rules issued by the Director of School Education. West Bengal as vogue at the material time directing the school authority to fill up the vacancy of the post of Headmaster by scheduled caste candidate. In terms of the Recruitment Rules, the School Authority advertised the post in the daily Newspaper as well as invited names from the Employment Exchange, The Managing Committee of the school constituted a Selection Committee for such selection and interview date was fixed on 25th September, 1997. On 23rd September. 1997 one Tapan Kumar Gangopadhyay a person not belonging to the scheduled caste category challenged the decision of the District Inspector of Schools concerned according prior permission to fill up the said vacancy of the post of Headmaster from scheduled caste candidates in this Court by filing writ petition No. W.P. 26114 (W) of 1997. No copy of such writ application was, however served to any of the respondents. In the said writ application the following persons were made respondents viz.

"1. The State of West Bengal, Service through the Secretary, Education Department, Blkash Bhavan, Salt Lake City. Calcutta-700091.

2. The Director of School Education, West Bengal. Blkash Bhavan. Salt Lake City, Calcutta-700091.

3. The District Inspector of Schools (S.E) Dakshin Dinajpur, having its office at Balurghat, P.O. Balurghat, District-Dakshin Dinajpur.

4. The Managing Committee of Tilon High School, P.O. Tilon. District-Dakshin Dinajpur, service through the Secretary.

5. The Teacher-in-Charge of Tilon High School.. P.O. Tilon. District-Dakshin Dinajpur.

6. The Secretary of Tilon High School, P.O. Tilon. District-Dakshin Dinajpur."

3. The matter was moved as unlisted Motion before N.K. Mitra, J. (as His Lordship then was) when His Lordship disposed of the matter on the very day

that is on 23rd September, 1997 allowing the writ application. The order was passed by N.K. Mitra, J. (as His Lordship then was) on 23rd September, 1997 is quoted below:

"23.9.97. Considering the urgency of the matter, requirement of Rule 27 relating to the Rules regarding matters under Article 226 of the Constitution of India is dispensed with.

Let service of copy of this application be effected upon Mr. Priyabrota Das, learned Advocate on behalf to the State, and Legal Remembrancer is directed to regularise his appointment.

In view of the Division Bench order dated 4th June, 1996 part annexure C to the writ application the impugned memo annexure stands quashed.

The District Inspector of School is directed to grant fresh permission for the post of Headmaster without reservation positively within 7th October, 1997 and the Managing Committee should complete the selection and prepare the panel for the post of Headmaster within 30th November, 1997. The District Inspector of School concerned should consider the panel for approval within 31st of November, 1997.

If the panel is approved, the school authority will be at liberty to give appointment to the first empanelled candidate of the approved panel.

The time limit so fixed above, is peremptory and mandatory.

This writ application is disposed of without any order as to costs with the above observations."

4. This order was communicated by the learned Advocate of Tapan Kumar Gangopadhyay who is respondent No. 7 herein in this writ petition to the Teacher-in-Charge of the school and the Secretary of the school on 24th September, 1997 by the forwarding letter dated 23rd September, 1997. The Selection Committee, however, completed the selection process by holding interview on 25th September, 1997 and empanelled the present petitioner as a first candidate of the panel. The Selection Committee by its Resolution dated 25th September, 1997 completed the selection process, a copy of such resolution is annexed at page 31 of the writ application wherein the present writ petitioner was shown as first empanelled candidate, in the Selection Committee the four members of the Selection Committee were present including the Secretary of the Managing Committee. The present writ petitioner challenged the said order of N.K. Mitra, J. (as His Lordship then was) dated 23rd September, 1997 in M.A.T. 4214/97. By the judgment and order dated 28th January, 1998 the appeal was disposed of by the Division Bench comprising of S.B. Sinha, J. (as His Lordship then was) and Ranojit Kumar Mitra, J. The Judgment of the Division Bench dated 28th January, 1998 is quoted in extenso :-

"Leave to appeal is granted. Having heard the learned counsel for the parties, we

are also satisfied that there was sufficient cause for the appellant in not being able to prefer the appeal within the prescribed time. The application u/s 5 of the Limitation Act is allowed and the delay in filing the appeal is condoned. Let the appeal be now registered if the same is otherwise in form.

Re: CAN 277 of 1998.

When the matter was taken upon learned counsel appearing on behalf of the writ petitioner/respondent has produced before this Court a memo bearing No. 1419 dated 7.10.97, for a perusal whereof it appears that pursuant to the impugned judgment dated 23.9.97 passed by the learned trial Judge, the post has been directed to be treated as unreserved. Learned counsel for the appellant submits that in view of the latest Supreme Court decision, the impugned order cannot be sustained.

The appellant/petitioner herein was not a party in the aforementioned writ application. In that view of the matter, the aforesaid order dated 23.9.97 would not be binding on him. Keeping in view the fact that in this appeal the aforementioned order dated 7.10.97 is not in question, and in fact, cannot be questioned by the appellant. In our opinion, proper course for the appellant would be to file a fresh writ application for quashing the said order dated 7.10.97. In the said application, it goes without saying, the appellant shall be entitled to raise all contentions.

The appeal is treated on day's list and both the appeal and the stay application are disposed of.

Urgent xerox certified copy, if applied for, be supplied on priority basis"

5. In pursuance of the aforesaid order of the Division Bench wherein Tapan Kumar Gangopadhyay was also a party who is respondent No. 7 in this present writ application, this writ application has been filed by the first empanelled candidate relating to the selection for the post of Headmaster In terms of the interview as held on 25th September, 1997. The learned Advocate for the petitioner submits that the post of Headmaster cannot be considered as a single post cadre and thereby the same cannot be kept aside from the hundred point roster. It is further contended that the post of Headmaster is within the teaching category. It is contended that this point has already been decided by this Court in the case of Rtna Dey v. State and Ors,, reported in 2001 WBLR (Cal) 254. It is submitted that in that view of the matter the impugned memo dated 7th October. 1997 passed by the District Inspector of Schools concerned modifying the reservation of the post and thereby to make the post open to all cannot stand. The learned Advocate for the petitioner further submits that since the Selection Committee was not a party in the earlier proceeding as filed by Tapan Kumar Gangopadhyay wherein N.K. Mitra, J. (as His Lordship then was) passed the order on 23rd September, 1997, the interview as was taken by such Selection Committee on 25th September, 1997 cannot be said as illegal and contrary to the order passed by N.K. Mitra, J. (as His Lordship then was). It is

further contended that by the said order dated 23rd September, 1997. N.K. Mitra, J. (as His Lordship then was) though quashed the prior permission order issued by the District Inspector of Schools concerned but the selection process as already started fixing the date and interview was not cancelled and Selection Committee was also not restrained from holding the interview in pursuance of the notice of the interview as already served to the candidates concerned. It is further contended that the Selection Committee was a Body constituted in terms of the Recruitment Rules and got its separate identity in the selection process itself. It is further contended that by the order of the Division Bench dated 28th January, 1993 when the Division Bench had granted leave to the petitioner to file a fresh writ application challenging the Memo dated 7th October, 1997 issued by the District Inspector of Schools concerned modifying the earlier prior permission order by making the post unreserved and when the Division Bench of this Court granted leave to the petitioner to take all the points in such fresh writ application, the order of N.K. Mitra, J. (as His Lordship then was) dated 23rd September, 1997 also accordingly merged and modified to the extent of the order as passed by the Division Bench of this Court. It is further submitted that by the order, the Division Bench never cancelled the selection process as was already completed by holding the interview though in the memorandum of appeal and stay application, the present writ petitioner being the appellant, categorically urged about all those points namely, completion of the interview and the selection process. The learned Advocate for the private respondent, Tapan Kumar Gangopadhyay being the respondent No. 7, however, submits that no relief can be granted in favour of the petitioner in this writ application directing the District Inspector of Schools concerned to accord approval of the panel dated 25th September, 1997 since such panel was prepared in violation of the order dated 23rd September, 1997 passed by N.K. Mitra, J. (as His Lordship then was). It is further contended that since N.K. Mitra, J. (as His Lordship then was) by the order dated 23rd September, 1997 quashed the prior permission order of the District Inspector of Schools concerned dated 22nd August, 1996 whereby the post was declared as reserved for scheduled caste category, the Selection Committee had no power and Jurisdiction to select a candidate of scheduled caste category on the basis of the prior permission order which was already quashed. It is further contended that the order of N.K. Mitra, J. (as His Lordship then was) dated 23rd September, 1997 was duly communicated to the Teacher-in-Charge of the school as well as the Secretary of the Managing Committee of the school and in compliance with the order, the interview dated 25th September, 1997 as was fixed, was required to be kept in abeyance and or cancelled by them. It is further contended by the respondents that in view of coming into force of the School Service Commission, now the vacancy to be filled up by the said authority and without making them as a party, this writ application also is not maintainable. Considering the rival contention of the parties the points as are emerge out for decision are as follows ;

(a) Whether the post for Headmaster can be considered as single post" cadre

and reservation rule will not be applicable in such post and in that view of the matter whether the impugned memo of the District Inspector of Schools concerned by declaring the post unreserved on modification of the earlier prior permission order is legally sustain-able.

(b) Whether the selection process as was completed by holding interview on 25th September, 1997 would be declared as null and void in view of the order passed by N.K. Mitra, J. (as His Lordship then was) on 23rd September, 1997 on the reflection of the subsequent order of the Division Bench dated 28th January, 1998 in M.A.T. 4214 of 1997.

6. So far as the point No. (a) is concerned, this point is not at all res-integra. This issue has already been considered by the said Judgment in the case of Rina Dey v. State and Ors., reported in 2001 WBLR (Cal) 254 whereby it is held that the post of Headmaster/Headmistress is within the post of teaching category and Reservation Rules is applicable. Such decision has been passed relying upon the memo No. 40-TW/EC/Cal. dated 22nd January, 1996, whereby it was prescribed that in the school there would be two categories of staff, one teaching category and another non-teaching category. Applicability of rule on reservation of vacancy in terms of hundred point roster Rule, hence on the reflection of the said Judgment passed by me earlier is sustainable. Hence, the impugned memo No. 1419 dated 7th October, 1997 issued by the District Inspector of Schools concerned cannot sustain.

7. Now so far as the second point is concerned namely, impact of the order dated 23rd September, 1997 passed by N.K. Mitra, J. (as His Lordship then was) upon the interview as held on 25th September, 1997 and the panel as prepared in such interview to be considered. From the writ application of W.P. No. 26114(W) of 1997 filed by Tapan Kumar Gangopadhyay respondent No. 7 challenging the prior permission order of the District Inspector of Schools concerned issued under memo No. 737 dated 22nd August, 1996 whereby the post was declared as reserved for scheduled caste category being the first post of hundred point roster, it appears that the selection process was not challenged by making the Selection Committee as party in the said writ proceeding. The prior permission order in terms of the Recruitment Rules only specified category of vacancy, the qualification of the post and also the mode of appointment. After the prior permission order was issued, the school authority exhausted the entire process inviting the names from the Employment Exchange on sending requisition in terms of the Rule applicable in the field regarding notification of the vacancy to the Employment Exchange and also by advertisement of the post in the daily Newspaper. The Managing Committee of the school in the meeting constituted a Selection Committee for such purpose and as soon as the Selection Committee was constituted the entire selection process vested in the hands of Selection Committee and the Managing Committee had nothing to say in the said matter. After the selection when the Selection Committee refers the panel to the Managing Committee, the Managing Committee again gets its power for

subsequent action of referring the same to the District Inspector of Schools concerned for necessary approval. Hence, in terms of the Recruitment Rules issued by the Director of School Education, West Bengal which is binding to the School Authority, the Selection Committee was bound to complete the selection process.

8. Admittedly. Tapan Kumar Gangopadhyay, the respondent No. 7 in his writ application while challenging the prior permission order did not make the members of the Selection Committee as Parties though the prayer was made for not holding any interview of scheduled caste candidates on 25th September, 1997. In the earlier writ application Tapan Kumar Gangopadhyay in prayer (b) prayed the following reliefs :--

2(b) A writ of and/or in the nature of Mandamus commanding the Respondents more particularly the Managing Committee of Tilon High School, P.O. Tilon, District--Dakshin Dinajpur from holding interview of the candidate on 25.9.97 for recruitment to the post of Headmaster in the said school as per Memo No. 737 dated 22.8.96 as contained in annexure "B" hereto and further commanding the Respondents to allow the petitioner to appear for interview for the post of Headmaster in the said school by ignoring the Memo No. 737 dated 22.8.96 as contained in annexure "B" hereto."

9. Hence, from this writ petition of Tapan Kumar Gangopadhyay it appears that he was aware of the date of interview and hence in absence of the Selection Committee in the writ application the order passed by N.K. Mitra, J. (As His Lordship then was) on 23rd September, 1997 had no binding effect upon such Selection Committee, The Secretary and/or the Teacher-in-Charge are not the Selection Committee. The Selection Committee had a separate entity and identity in terms of the Recruitment Rules as issued by the Director of School Education, West Bengal. Hence, the Managing Committee when by taking a resolution constituted a Selection Committee, the entire selection process then vested to the Selection Committee and Managing Committee had nothing to say in such matter. The Managing Committee had no power either to stop the interview or to cancel the interview and/or to take any action relating to such selection process until and unless the Selection Committee would pass such decision.

10. In the instant case Tapan Kumar Gangopadhyay in his petition did not make the Selection Committee as a party. Accordingly, there was no embargo before the Selection Committee to hold the interview on 25th September, 1997. Besides, the order of the Division Bench dated 28th January, 1998 has made it abundantly clear that the present writ petitioner would be entitled to take all the points in the fresh writ application while assailing the subsequent modification order as issued by the District Inspector of Schools concerned dated 7th October, 1997, modifying the reservation of the post from scheduled caste to general. Applying the doctrine of merger the order dated 23rd September, 1997 of N.K. Mitra, J. (as His Lordship then was) merged in the order of the Division Bench dated 28th January, 1998. Hence, the order of the Division Bench dated 28th

January, 1998 in M.A.T. 4214 of 1997, which arose out of challenge of the order dated 23rd September, 1997 passed by N.K. Mitra, J. (as His Lordship then was) is the guiding and binding order to adjudicate the present application. On mere scrutiny of the said order of the Division Bench it appears that the Division Bench had kept all the points open and granted leave to the present writ petitioner to file a fresh writ application for quashing the order dated 7th October, 1997 passed by the District Inspector of Schools concerned modifying his earlier decision reserving the post for schedule caste which was also the outcome of order passed by N.K. Mitra, J. (as His Lordship then was) dated 23rd September, 1997. Since the Division Bench allowed leave to the petitioner to challenge such modification order as issued by the District Inspector of Schools concerned modifying the earlier prior permission order whereby the post was ear-marked as scheduled caste category, the order of N.K. Mitra, J. (as His Lordship then was) dated 23rd September, 1997 practically was made ineffective. Further by the order dated 28th January, 1998 the Division Bench of this Court held that the order of N.K. Mitra, J. (as His Lordship then was) dated 23rd September, 1997 was not binding to the present petitioner.

11. In that view of the matter, the selection of the petitioner in the interview held on 25th September, 1997 cannot be said as a decision which is required to be nullified by this Court in view of the order dated 23rd September, 1997 passed by N.K. Mitra, J. (as His Lordship then was). Hence, it is held by this Court that the Selection Committee had the Jurisdiction and power to complete the Selection process as there was no embargo to complete such and the selection process as was completed by preparing a panel was legal and valid, Further from the documents it appears that the Managing Committee of the school has already referred the panel by its memo dated 25th September, 1997, to the District Inspector of Schools concerned for necessary approval and the matter is awaiting for approval before the said authority.

12. Hence, in view of my findings in respect of the points as urged, it is held once again that the post of the Headmaster being within the teaching category would attract the hundred point roster Rules regarding reservation of the post and the impugned order passed by the District Inspector of Schools concerned dated 7th October, 1997 in this writ application is accordingly set aside and quashed and as a resultant effect the Memo No. 737 dated 22nd August, 1996 whereby prior permission was accorded reserving the post for schedule caste candidates is being declared as legal and valid. Since the Court has already held that the selection process was rightly completed, there would be no embargo now for according approval of panel by the District Inspector of Schools concerned. Since, prior to coming into force of the School Service Commission Act and the procedure for selection in terms of the said Act, the Selection process was completed by forming a panel in the interview held on 25th September, 1997, the School Service Commission is not a necessary party in this proceeding. The New Act namely. School Service Commission Act and the Rules thereto have no applicability so far as the present case is concerned. In the

instant case, the selection process was completed by the Selection Committee on 25th September, 1997. When the School Service Commission Act did not see the light of the day at that time. Hence, it is declared that the selection as made by holding interview on 25th September, 1997 by the Selection Committee following the Recruitment Rules issued by the Director of School Education, West Bengal was legal and valid.

13. This point has already been settled by the Division Bench Judgment of this Court passed in the case *Snehansu Jas v. State of West Bengal*, reported in 2001(11) CLJ 558, affirming the view of *Abdul Mannan Laskar* case, reported in 2000 (1) CHN 435 and the view of *Narayan Badya's* case, reported in 2000 (1) CL T 487. It is already settled by the Division Bench Judgment *Snehansu Jas* (supra) that before coming into effect of West Bengal School Service Commission Act and Rules there-under if the selection process was already started in terms of the Rules of Recruitment issued by the Director of School. West Bengal, such selection would be legal and valid in terms of recruitment rule of DSE. The said judgment squarely applicable in this case also and accordingly the contention of the learned Advocate that the post to be filled up by selection of School Service Commission is not legally sustainable.

14. In that view of the matter, this writ application succeeds. Since the panel is awaiting approval of the District Inspector of Schools concerned, the said authority is directed to accord approval of the panel within one week from the date of communication of this order and the Managing Committee of the school is directed to issue appointment letter within a week from the date of communication of such approval order by the District Inspector of Schools concerned. The writ petitioner is also entitled to get post appointment approval and all service benefits. In the event for any reason it appears that the Panel dated 25th September, 1997 as yet has not been referred to the District Inspector of Schools concerned, under such situation the Managing Committee of the School is directed to refer such panel within a week from the date of communication of the order to the District Inspector of Schools, who in turn would accord approval of the panel within a week thereafter and communicate such decision immediately by two weeks and the Managing Committee would issue appointment letter in favour of the petitioner within a week from the date of communication of such approval by the District Inspector of Schools concerned.

This writ application accordingly succeeds.

There will be no order as to costs.

Let xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties expeditionary.