

(2018) 02 CAL CK 0021
In the Calcutta High Court
Case No : 453 of 2017

Salil Das

APPELLANT

Vs

The State of West Bengal & Others

RESPONDENT

Date of Decision : 28-02-2018

Acts Referred:

Citation : (2018) 02 CAL CK 0021

Hon'ble Judges : Samapti Chatterjee

Bench : Single Bench

Advocate : Joydeep Kar, Arjun Roy Mukherjee, Suman Sehanabis, Amales Roy, Moushumi Bhowal, P.S. Deb Burman, R.P. Matilal, Sirsanya Bandopadhyay

Final Decision : Disposed oFF

Judgement

1. The following issue is to be determined in this case:- (i) "Whether the appointment of the petitioner after following due selection process could be cancelled by the authority without holding any disciplinary proceedings or without giving any opportunity of hearing ?"

2. The petitioners case in a nutshell is as follows :- On 26th February, 2016 the Secretary, College (Sponsored Branch) Higher Education Department, Government of West Bengal intimated the Director of Public Instruction West Bengal vide Memo No.229- Edn(CS)/4E-5/2014 for creation of one non-teaching post and filling up all four existing vacant non-teaching posts in Vidyasagar college. (hereinafter referred to the said college). The said college on 16th December, 2016 in terms of the recruitment policy being G.O. No. 585-Edn(CS)/10M-20/08 dated 9th September, 2008 requested the concerned employment bank to sponsor the names of the candidate and in addition thereof the college authority has also published the same in daily Bengali newspaper and in daily English newspaper inviting applications from the eligible candidates for recruitment to the said post of non-teaching staff of Vidyasagar College for wide publication.

The Recruitment Policy dated 9th September, 2008 is quoted below :-

"Government of West Bengal

Higher Education Department

C.S. Branch

Bikash Bhavan, Salt lake, Kolkata-91.

No. 585-Edn(CS)/10M-20/08

Kolkata, the 9th Sept. 2008

From :Sri M. Chakraborti,

OSD & Ex-Officio Deputy Secretary to the Govt. of WB

To : The Director of Public Instruction, West Bengal

Sub : Recruitment policy regarding appointment in nonteaching posts in non-govt. colleges.

In cancellation of this Department's G.O. No.830-Edn(CS) dt. 31.10.95, the undersigned is directed by order of the Governor to say that henceforth the following procedure shall be followed for direct recruitment to the non-teaching posts in non-govt. colleges until further orders.

The concerned appointing authorities shall in addition to obtaining names from Employment Exchanges give wide publicity of the vacancies in the newspapers having wide circulation and also display the vacancies on the office notice boards in such a manner as to ensure reasonable opportunity of response from the eligible candidates for due consideration of their candidature in the recruitment process.

This order is issued in accordance with the provision as laid down in Labour Department memorandum no.101-Emp dated 25.7.2008.

OSD & Ex- Officio Dy. Secretary"

It is also stated that college authorities also displayed the vacancies of non-teaching staff on the office notice board. On 6th February, 2017 it was decided in the meeting of the Selection Committee that the recruitment procedure in Group C post would be conducted only through interview of the eligible applicants/candidates. The said committee was constituted in the following manner :-

"3(a) Accordingly the selection committee had been constituted for recruitment to the posts of non-teaching staff in Vidyasagar College in the following manner :-

(i) Dr. Goutam Kundu, Principal and Chairman, Selection Committee, the respondent no.5.

(ii) Dr. Sudipa Bandyopadhyay, Convener (Member from Governing Body-

Teachers" Representative), Selection Committee, the respondent no.6.

(iii) Prof. (Dr.) Gobinda chandra Sadhukhan, member from Governing Body (Government Nominee), the respondent no.7

(iv) Prof. Uday shankar Hazra, member from Governing Body (University Nominee), the respondent no.8

(v) Dr. Alok ghosh Chaudhuri, member from Governing Body (Teacher's Representative), the respondent no.9"

In the said meeting the decision was also taken regarding process of allotment of marks for the said selection . It is stated that on 11th February, 2017 and 21st February, 2017 the petitioner along with other candidates were called for interview before the Selection Committee for recruitment to the post of clerk (unreserved) in the said college. Thereafter, the petitioner duly appeared before the Selection Committee with all testimonials in original and attested copies thereof for interview. On 6th May, 2017 the panel was duly approved in the meeting of the Governing Body. Accordingly, on 8th May, 2017 the petitioner has been appointed to the post of clerk (Un-reserved) on probation for one year subject to the approval of the Director of Public Instruction, Government of West Bengal.

On 11th May, 2017 the petitioner duly jointed the college and resumed his duties to the post of clerk (Un-reserved). All on a sudden on 31st July, 2017 the Principal of the said college communicated that the petitioner's appointment has been cancelled by the Joint Secretary, Higher Education Science and Technology and Biotechnology Department (C.S) Branch, Government of West Bengal vide letter dated 11th July, 2017. The extract of the letter dated 11th July, 2017 is quoted below :-

"From: Joint Secretary to the Govt. of West Bengal,

To : The President, Governing Body,

Vidyasagar College,

39, Sankar Ghosh Lane,

Kolkata-700 006.

Subject : Allegation on the selection process of nonteaching staff in the college.

Ref : Report of inspection held on 13.6.2017 by the State Government.

Sir,

In reference to the above mentioned subject, I am directed to say that the Enquiry Committee has in its report dated 23.6.2017 (copy enclosed) observed several illegalities and irregularities in conducting the selection process by the Governing Body for appointment to the five posts of non-teaching employees. It

is also observed by the Enquiry committee that relevant recruitment rules/order was not followed and Reservation Roster (ROA) was not regularized prior to conducting of selection process. Hence, in this connection, I am directed to say that the overall selection process is considered as irregular and illegal by the State Government and therefore, the Governor is hereby, pleased to declare the selection process as null and void and to direct the college authority to start the selection process afresh by following all rules and orders in this regard as early as possible, with intimation to the State Government.

Yours faithfully,

(Debal Kumar Hazra)

Joint Secretary

Date : 11.07.2017"

Assailing the said cancellation order dated 11th July, 2017 issued by the Joint Secretary, the petitioner has filed the present writ petition.

3. Mr. Joydeep Kar, learned senior Advocate appearing for the petitioner strongly submitted that petitioner was working as Assistant in the said college on a temporary basis. He was aspirant to appear in the selection process for the un-reserved post of clerk since he was not allowed to participate in the selection process due to overage, the petitioner earlier filed a writ petition before this Hon"ble High Court being WP No.68 (W) of 2017. The Hon"ble High Court was pleased to dispose of the said matter on 6th February, 2017 thereby directing the college authorities to consider the application of the petitioner in accordance with law upon relaxation of the age bar and on fulfillment of the eligibility criteria inclusive of continuous temporary service in the vacancy against a sanctioned post. The petitioner possessed the requisite qualification for recruitment to the post of clerk (un-reserved).

4. It was further vehemently argued by Mr. Kar that though the petitioner repeatedly requested the Principal of the said college to supply the copy of the enquiry report dated 23rd July, 2017 for perusal but unfortunately Principal of the said college verbally informed the petitioner that no copy of the enquiry report dated 23rd June, 2017 has ever been supplied to the President of the Governing Body or to the Principal of the said college along with the cancellation letter dated 11th July, 2017. As a result thereof the petitioner failed to obtain any copy of the said enquiry report dated 23rd June, 2017.

5. Mr. Kar further strongly argued that without giving any opportunity of hearing to the petitioner or to the respective members of the Selection committee the ex-parte decision like cancellation of service passed by the Joint Secretary, Higher Education, Science and Technology and Biotechnology Department (C.S Branch) , Government of West Bengal vide an impugned order dated 11th July, 2017 is bad, illegal, un-fair, unjust and at the same time very much contrary to the natural justice.

6. Therefore, before parting with his argument Mr. Kar submitted that Court should allow the petitioner to join his service by quashing the impugned cancellation order dated 11th July, 2017 issued by the Joint Secretary, Higher Education, Science and Technology and Biotechnology Department (C.S Branch) Government of West Bengal and the purported communication of the cancellation order by the said college dated 31st July, 2017.

7. Mr. Amal Roy, learned Advocate appearing for the Respondent Nos. 5, 6, 8 & 9 stated that the Governing body had been newly constituted and its first meeting was held on 05.01.2016. The answering respondents as well as the respondent no.7 were the members of the newly constituted Governing body. In the said meeting, several decisions were adopted by the Governing body pertaining to the management of the college. The selection committee had been formally constituted mainly at the instance of the Government nominees namely Dr. Madhusudan De and Dr. Gobinda Chandra Sadhukhan.

8. Mr. Roy further contended that the Secretary, College (Sponsored Branch), Higher Education Department, Government of West Bengal intimated the Director of Public Instruction, West Bengal vide memo no. 229-Edn (CS)/E-5/2014 dated 26th February, 2016 with regard to creation of one non-teaching post and filling up of four existing vacant non-teaching post in Vidyasagar College.

9. Mr. Roy also stated that in the backdrop, further resolution has been adopted in the meeting of the Governing body, held on 31.08.2016 that the selection committee, duly constituted be requested to proceed with the matter of recruitment of 5 non-teaching staff in 5 vacant posts as soon as possible.

10. Mr Roy submitted that accordingly, the Principal of the College, being the Secretary of the Governing body and the appointing authority requested the concerned authority of the Employment Bank to sponsor the names of the eligible candidates and in addition thereto for wide publication the Principal of the College also published in the daily Bengali news paper dated 16.12.2016 and in the daily English Newspaper dated 17.12.2016 thus inviting applications from the eligible candidates for recruitment to the said post of non-teaching staff of Vidyasagar College. The Principal of the College also displayed the vacancies of non-teaching staffs on the notice board of the college. It was also contended that names of the applicants from Employment Bank, Government of West Bengal has been sponsored and forwarded to the college authority.

11. It is further submitted that the convenor of the selection committee called a meeting on 06.02.2017 by a notice dated 30.01.2017. As all the members of the selection committee are the members of the Governing body, they have been informed verbally over telephone. Dr. Gobinda Chandra Sadhukhan, respondent no.7, has also been informed over telephone. All the members of the selection committee except Dr. Gobinda Chandra Sadhukhan put their signatures in the said notice dated 30.01.2017. Mr Roy also submitted that while the convenor of the selection committee requested Dr. Gobinda Chandra Sadhukhan to put his

signature on the notice to acknowledge the receipt of the same, Dr. Sadhukhan casually said he would put signature afterwards. Thereafter he left in the midst of the meeting for his personal work. However, other members of the selection committee were present in the said meeting held on 06.02.2017 and laid down the mode of distribution of marks during interview and fixation of the date and time of the interview. Further, call letters for interview were served upon the applicants/eligible candidates for recruitment to the posts of nonteaching staff. Accordingly, interview was held on 21.02.2017 and 22.02.2017. In respect of the post of clerk (unreserved), out of 30 candidates, sponsored by Employment Bank, 20 candidates came for interview before the Selection Committee. 15 candidates duly applied on the basis of the vacancy published in Bengali newspaper and 12 candidates turned up for interview before the Selection Committee. 20 candidates duly applied on the basis of vacancy published in the English newspaper and 18 candidates turned up for interview before the Selection Committee. 9 candidates applied on the basis of college notice board and 8 candidates came for interview. On the dates of interview i.e. on 21.02.2017 and 22.02.2017 the respondent no.7 being one of the members of the selection committee was present and awarded marks in favour of the candidates who came to participate in the interview and recorded the same in his individual score sheet. Other members of the selection committee also awarded marks in favour of the candidates and recorded on their individual score sheets. Those score sheets have been seized by the Administrator.

12. Mr Roy further stated that Dr. Gobinda chandra Sadhukhan received the conveyance charge from the college for attending the selection committee meetings, held on 21.02.2017 and 22.02.2017. One Salil Das, the writ petitioner and one Pulak Kumar Das who were working as the casual workers in Vidyasagar College filed writ petitions before the Hon"ble High Court for participation in the recruitment process for appointment to the post of non-teaching staff after condonation of their over-age. The State of West Bengal, the director of Public Instruction, West Bengal, the Governing body and the Principal of the college were the parties to the said writ petitions. The Hon"ble High Court was pleased to direct the college authority to consider the application of both the candidates in accordance with law upon relaxation of the age bar and on fulfillment of the eligibility criteria, as also continuous temporary service against a substantive post. Copies of the order of the Hon"ble High Court was served on the selection committee before the date of interview. Neither the State Government nor the Director of Public Instruction had challenged the legality of the aforesaid orders of the Hon"ble High Court. As such, the said order of the Hon"ble High Court had already attained to its finality. It was further submitted that Sri Salil Das was allowed to participate in the interview, held on 21.02.2017 for the post of Clerk (unreserved) after condonation of his age in compliance with the judgment and order of the Hon"ble High Court, Calcutta. Each member of the selection committee awarded marks in favour of Sri Salil Das and recorded it in their individual score sheets. Salil Das got the weightage for his continuous temporary

service against a substantive vacant post as observed by the Hon''ble High Court. On calculation of the marks, awarded by each member of the selection committee, Sri Salil Das was placed in the first position according to merit in the panel for recruitment to the post of clerk (unreserved). Dr. Gobinda chandra Sadhukhan however pressurized the other members of the selection committee to exclude the candidature of Sri Salil Das at the time of interview by ignoring the copy of the judgment and order of the Hon''ble High Court. But, the other members of the selection committee did not agree to such improper proposal of Dr. Gobinda Chandra Sadhukhan .

13. Mr. Roy further contended that all allegations made by Dr. Gobinda Chandra Sadhukhan in his complint in respect of the validity of the selection process lost its value in the eye of law and stood redundant as Dr. Gobinda Chandra Sadhukhan attended the interview held on 21.02.2017 and 22.02.2017. Furthermore, he received the conveyance charges and awarded marks in favour of the candidates in his individual score sheet. Dr. Gobinda Chandra Sadhukhan did not put his signature on the panel. But other members of the selection committee put their signatures on the panel and placed before the Governing body. The said panel was duly approved in the meeting of the Governing body held on 06.05.2017. Accordingly Sri Salil Das and other candidates who have been placed in the respective position according to merit in the panel, have been appointed in the respective posts of nonteaching staff on 08.05.2017 on probation for one year subject to the approval of the Director of Public Instruction (DPI), Government of West Bengal.

14. Mr. Roy urged that the college authorities already sent all the papers and documents to the office of the DPI for fixation of their scale of pay i.e. for necessary approval of their appointment by a forwarding letter bearing Ref No.V.C/PF/NTS/2017/17 dated 05.07.2017. Furthermore, Mr. Roy submitted that Sri Pulak Kumar Das, an over-aged candidate was also allowed to participate in the interview on the basis of the order of the High court, but he was not placed in the first position in order of merit.

15. Mr. Roy further urged that the selection committee did not authenticate the roster position of the vacancies of the non-teaching staff by the competent authority, but subsequently, those were authenticated by the Assistant Commissioner of Reservation and Ex-officio Assistant Secretary, Backward Classes Welfare Department, Government of West Bengal.

16. Mr. Roy also submitted that the enquiry committee was constituted by the Government of West Bengal on the basis of the complaint of Dr. Gobinda Chandra Sadhukhan. The enquiry committee visited the college and inspected the documents on 13.06.2017. The Joint Secretary intimated the President of the Governing body of Vidyasagar College by an order dated 11.07.2017 that selection process was irregular and illegal , accordingly, the same was cancelled on the basis of the report dated 23.06.2017 of the enquiry committee. However, the report of the enquiry committee dated 23.06.2017 was never supplied to the

college authorities. In this context an enquiry committee, constituted by the University of Calcutta also visited the college and inspected the documents and eventually they were satisfied with the validity of the selection process.

17. Par Contra, Mr. Sirsanya Bandopadhyay, Learned Jr. Standing Counsel appearing for the state submitted that the advertisement for recruitment of Non-Teaching staff was done on 16th December, 2016 unilaterally by the Principal and the convenor of the selection committee, much before holding meeting of the selection committee which was actually held on 6th February, 2017 in which the date and other criteria regarding publication of the advertisement was to be discussed. The maximum age limit for the applicant as per the advertisement was 40 years from General category and 45 years for SC/ST. But over aged applicants up to the age of 55 years were shortlisted and called for interview on 21st and 22nd February, 2017.

18. It is also stated by Mr. Bandopadhyay that the section 10 of the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017 lays down the provision for the appointment of the Employees of Colleges. The said section clearly states that "Notwithstanding anything contained in any law for the time being in force or in any custom or usage to the contrary, appointment of all teachers, librarians and other employees of every college, except the colleges run by minorities, shall be made by the Governing Body, on the recommendation of the Service Commission".

19. Mr. Bandopadhyay further contended that entire procedure of recruitment of the non-teaching staff and their appointment thereof is bad in law. The recruitment procedure initiated by the college is absolutely on its own motion and the respondents herein have no role to play in such illegal procedure.

20. Mr. Bandopadhyay also submitted that without authenticating the hundred point roster for non-teaching staff by the Back Ward Class Department of the Government of West Bengal, the advertisement for such recruitment process was published. Such authentication process was initiated only after it came to the notice of the Governing Body members when the members of the Governing Body strictly opposed such conduct of the Principal in the meeting dated 30th March, 2017.

21. Mr. Bandopadhyay further stated on 6th February, 2017 the selection committee conducted a secret meeting with reference to the recruitment process as stated above. It is stated that such meeting of the selection committee is absolutely illegal as the Government Nominee was not invited or even intimated of any such meeting. The meeting was held in absolute secrecy keeping the Government nominee in dark.

22. Mr. Bandopadhyay further stated that in the meeting dated 5th January, 2016 i.e. before receipt of permission from the concerned department, the college constituted a selection committee for the recruitment of the non-teaching posts in anticipation of getting approval of the government and taking note of the

aforesaid anomalies, His Excellency the Governor through the Joint Secretary vide letter dated 30th May, 2017 had been pleased to constitute an enquiry committee to investigate about such irregularities and violation of the Government Rules for recruitment of non-teaching staff in various Government approved posts in Group C and Group D categories in respect of the Vidyasagar College, Kolkata.

23. Mr. Bandopadhyay also stated that pursuant to the order dated 30th May, 2017 an enquiry was conducted by forming an inquiry committee and subsequently an inspection report was submitted whereby it was revealed that the college authority was involved in many illegal and illegitimate processes. Meanwhile, the Joint Secretary, Higher Education, science and Technology and Biotechnology (C.S Branch) issued an order bearing memo no.1396-Edn (CS)/9R-30/2017 dated 17th July, 2017 wherein and whereby His Excellency the Governor was pleased to dissolve the Governing Body of the Vidyasagar College with immediate effect and His excellency the Governor was pleased to appoint Dr. Sanjiban Sengupta, the Joint DPI as Administrator replacing the existing Governing Body with a view to administer the college.

24. Mr. Bandopadhyay also stated that the appointment of the petitioner and also the other non-teaching staffs standing in the same footing like that of the petitioner is void and illegal. However the administrator did not terminate appointment of the petitioner. The administrator only sought opinion of the Department concerned and it is the Principal who on his own terminated the petitioner after his joining in the concerned post. It is pertinent to mention that while the Government has cancelled the whole selection process, appointment given by the Principal to the petitioner is absolutely illegal.

25. Mr. P.S. Deb Burman, learned Advocate appearing for the respondent no.7 after endorsing the submission of Mr. Bandyopadhyay submitted that the advertisement for recruitment of non-teaching staff was done on 16.12.2016 unilaterally by the Principal and convenor of selection committee well before meeting of the Governing Body and selection committee taking resolutions about fixing criteria and date of advertisements for such recruitment. Thereafter a secret meeting was held on 6.2.2017 being the first and only selection committee meeting.

26. Mr. Deb Burman also stated that the maximum age limit for the applicant was 40 years for general category and 45 years for SC/ST. However in the selection process over aged candidate upto 55 years old were short listed and called for interview on 21-22nd February, 2017.

27. Mr. Deb Burman further contended that without authentication of the 100 point roster for non-teaching staff by the backward class and welfare department of government of West Bengal, the advertisement for such recruitment process was purportedly published in a least circulated daily, Aajkal Patrika. Thus selection process was done without confirming the nature of these posts whether

for SC/ST category or General category.

28. Mr. Deb Burman further urged that the authentication process was initiated only after it came to the notice of the governing body members and following strong protest by most of the governing body members at the Meeting dated 30.3.2017 recommending that the college should first go in for authentication of those posts and then initiate the proposed recruitment process afresh in accordance with law. However the Principal unilaterally went in for roster authentication and the authentication was done after the interview of the recruitment process was over.

29. Mr. Deb Burman further stated that normally there should be 100 point roster for each of the Group C and Group D non-teaching staff, as the Principal is the only Drawing and Disbursing Officer in a college. However in this case it has been violated because they cleverly recommended names beyond 100 point roster for Group-C department wise in order to manipulate, alteration of the merit of the post in the roster from normal SC/ST category to general category.

30. Mr. Deb Burman also contended that the selection committee meeting held secretly on 6.2.2017 was illegal as it was held without circulating notice of the meeting to all the members. However, a copy of the resolutions/minutes was given from the college authorities. Later it was found that the same has been tampered/forged and unilaterally changed by the Principal after it came to notice of governing body members on 3.6.2017.

31. It was also submitted by Mr. Deb Burman that appointments of such non-teaching staff were issued unilaterally and inhaste by the Principal on 8.5.2017 following the governing body meeting dated 6.5.2017 without confirmation of the minute of this governing body meeting and ignoring notes of dissent by at least six of the GB members protesting against such illegal appointment of non-teaching staffs. The salary of these unauthorized recruited staff was unilaterally released by the Principal without informing and/or seeking recommendation/approval of the Finance Committee of the college and the governing body meeting. Before parting with his argument Mr. Deb Barman submitted that there is no illegality, infirmity or ambiguity in the impugned orders which deserve any interference with this Court. Therefore, this writ petition should be dismissed.

Decision with Reasons

32. Considering the rival submissions advanced by the learned Advocates appearing for the respective parties and after perusing the record I find that the impugned enquiry report first time disclosed in the affidavit-in-opposition filed by the respondent no.1,2,3 & 10. The said enquiry report never expressed that the process of selection of the nonteaching staff was irregular and illegal nor ever suggested that appointments should be cancelled. On the other hand it was observed in the enquiry report dated 23rd June, 2017 that there were some procedural lapses. Enquiry report dated 23rd June, 2017 also recommended that condonation of overage of the selected candidate might also be looked into

before giving approval by the Government but in the impugned order dated 11th July, 2017 issued by the respondent authority considered the said selection process of the non-teaching staff as irregular and illegal, thus travelling beyond the scope and intent of the enquiry committee report dated 23rd June 2017.

33. I also cannot accept the observation of the enquiry committee to the effect that there were certain procedural lapses in the selection process.. It is evident from records that there were existing vacant posts of non-teaching staff at the said College. According to the college authority they already published in the daily newspaper for filling up those vacant posts of non-teaching staff.

34. It is also evident on record that in the first meeting of newly constituted governing body dated 5th January, 2016 the selection committee was formed on the basis of proposal of Dr. Madhusudan Dey and Dr. Gobinda Chandra Sadhukhan (respondent No.7 herein). The recruitment policy being no.585-Edn(CS)/10M-20/08 dated 9th September, 2010 prescribed that the selection committee must be formed after receipt of the government order of the recruitment of non-teaching staff in the college.

35. I also cannot ignore the fact that one post of Laboratory Assistant (physics) was created after formation of the selection committee but other vacancies were already existing. In regard to the ground that no resolution was adopted either by the governing body /selection committee before making advertisement for filling up of the said post of non-teaching staffs, it is reflected from the records that in the governing body meeting dated 31st August, 2016 it was adopted that duly constituted selection committee is to proceed with the matter of selection of five vacant non-teaching staff post. Accordingly, the Principal of college being the Chairperson of selection committee requested the concerned authority of the Employment Bank to sponsor the names of the eligible candidates and it was also published in the daily Bengali newspaper on 16th December, 2016 and in the daily English newspaper on 17th December, 2016 thereby inviting applications from the eligible candidates for recruitment to the said post of non-teaching staffs of the said college. Notice of the said vacancies of non-teaching staff was also hung up in the office notice board of the said college.

36. It is also evident that from the enquiry report that all the members of the selection committee were informed verbally and except respondent no.7 all members put their signature in the notice dated 30th January, 2017. Non presence of respondent no.7 in the meeting of selection committee held on 6th February, 2017 is not a big issue as other members of the selection committee were very much present in the said meeting and adopted resolution with regard to the procedure of selection process of non-teaching staffs.

37. It is also on record that the respondent no.7 was very much present at the time of interview held on 21st February, 2017 and 22nd February, 2017. I also find that though there is no scope in the recruitment rules to call the over-aged candidate in the interview but the candidates who obtained order from the

Hon"ble High Court on 6th February, 2017 they were allowed to appear before the selection committee after condonation of their age.

38. It is also apparent from record that the Commissioner of Reservation and Ex Officio Assistant and Backward Classes Welfare Department authenticated position of such recruitment of non-teaching staff without raising any objection even after completion of the said selection process. Therefore, in my considered view the impugned order was issued thereby travelling beyond the scope and intent of the enquiry committee's report dated 23rd June, 2017. Furthermore, it is most vital and essential issue that the enquiry report dated 23rd June, 2017 was never served upon the petitioner. It is only disclosed in the affidavit-inopposition. Therefore, petitioner had no opportunity to controvert that enquiry report.

39. It is also evident from record that the Governing body meeting was held on 31st August, 2016. Accordingly the advertisement in the newspapers was published as well as the notice was also hung up in the notice board of the said college pertaining to the interview. It is not out of place to mention here that respondent no.7 put his signature in the notice dated 30th January, 2017 therefore, it is not material whether respondent no.7 one of the members of selection committee was present in the meeting of the selection committee held on 6th February, 2017, as majority members of the selection committee were very much present in the said meeting held on 6th February, 2017 and adopted a resolution pertaining to the procedure of selection process of non-teaching staffs.

40. I also cannot shut my eyes on the fact that the respondent no.7 without any objection was present at the time of interview held on 21st February, 2017 as well as on 22nd February, 2017 respectively. In my considered view the impugned order dated 11th July, 2017 issued by the Joint Secretary Higher Education, Science & Technology and Biotechnology Department (CS Branch) and the purported cancellation of the appointment of the petitioner to the post of clerk (un-reserved) Vidyasagar College dated 31st July, 2017 have not been issued on the basis of the spirit, essence and intent of the enquiry committee's report dated 23rd June, 2017. In the letter dated 11th July, 2017 followed by cancellation letter dated 31st July, 2017 the authorities spring up a new case which is beyond the scope and essence of the impugned enquiry report dated 23rd June, 2017. In that score in my considered view respondent authority cannot develop or improve their case beyond the scope of the impugned order (here it is mentioned as enquiry report). On that issue this Court relies on the Hon"ble Apex Court decision reported in AIR 1978 Supreme Court Page-851,Para-8 (Mohinder Singh Gill and Another vs The chief election Commissioner, New Delhi and Others) which is quoted below :- "Para-8-The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or other. Otherwise, an order bad in the beginning may, by the time it

comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at .18).

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older."

(Emphasis supplied)

41. In the backdrop of the above discussions and after meticulously perusing the record in my considered view the impugned order clearly suffers from violation of natural justice. Without giving any opportunity of hearing to controvert the enquiry report to the petitioner who has been appointed by duly following the selection process, the impugned order dated 11th July, 2017 issued by the Joint Secretary, Higher Education and the cancellation of appointment of the petitioner dated 31st July, 2017 cannot be sustained in the eye of law as well as in the facts and circumstances of the case, further no case was made out that the petitioner practicing fraud got that appointment. Therefore, the appointment of the petitioner cannot be cancelled without following due process of law, thereby, holding a regular disciplinary proceeding.

42. That being the scenario I have no hesitation to hold that the impugned order dated 11th July, 2017 passed by the Joint Secretary, Higher Education cannot be sustained in the eye of law as well as the facts and circumstances of the case.

43. Accordingly, the impugned order dated 11th July, 2017 passed by the Joint Secretary, Higher Education as well as the cancellation order dated 31st July, 2017 issued by the Principal, Vidyasagar College are hereby quashed and set aside. I direct the authority to allow the petitioner to join his service without any further delay, but positively within one week for the date of communication of this order.

44. I also direct the respondent authority to serve a copy of the enquiry report dated 23rd June, 2017 to the petitioner after communication of this order. The petitioner after receiving such enquiry report will file a comprehensive written reply against such report within a fortnight. Thereafter if the respondent authority is not satisfied with the written reply then the respondent authority would be at liberty to initiate disciplinary proceeding against the petitioner and complete the entire disciplinary proceeding within six (6) weeks without giving any unnecessary adjournment to the parties and thereafter serve the reasoned decision to the petitioner within one week. Needless to mention that for the

interest of the Disciplinary Proceeding if it is required by the authority to put the petitioner under suspension, then the authority is at liberty to do so.

45. With the aforesaid directions the writ petition is disposed of .

46. No order as to costs.

47. Urgent photostat certified copy of this judgment, if applied for be supplied to the parties after fulfilling all the formalities.