
(2013) 02 CAL CK 0058
In the Calcutta High Court
Case No : Writ Petition No. 13454 (W) of 2007

Swapan Kumar Majhi

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Citation : (2013) 1 LLN 655

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : S.S. Arefin, for the Appellant; Rajdip Roy, for the Respondent

Judgement

Prasenjit Mandal, J.—This Application is at the instance of a candidate for appointment to the post of Group-D staff in the Barakar Sree Marwari Vidyalaya at Barakar, District-Burdwan. The case in short, for the purpose of this Writ Petition is that, the name of the Petitioner was sponsored by the District Employment Exchange, Sitarampur, District-Burdwan for the post of Group-D staff for Scheduled Caste category in Barakar Sree Marwari Vidyalaya. The interview was held by the Selection Committee for the aforesaid post and the Petitioner stood first in the selection process. A panel was prepared accordingly, and the said panel was approved by the then Administrator of the said School and, thereafter, the approved panel was sent to the District Inspector of Schools (S.E.), Burdwan on December 12, 2000 for approval of appointment to the post of Group-D staff as stated above. But the District Inspector of Schools did not approve of the panel as yet, and being dissatisfied with the manner of dealing with matter, the Petitioner filed a Writ Petition being No. 1685 of 2005 before the Hon'ble Court, Calcutta. And, upon hearing, the Hon'ble Court was pleased to pass an order dated August 19, 2005 directing, inter alia, the District Inspector of Schools, Burdwan to approve of the appointment from the panel within a certain time. The order was communicated to the District Inspector of Schools and hearing was made accordingly. But, District Inspector of Schools passed his opinion that unless and until the panel in question was submitted to the office,

no positive action could be taken from his end. Ultimately, the Petitioner had to file another Writ Petition being W.P. No. 168 of 2006 before this Hon''ble Court and the said Petition was disposed of by an order dated August 28, 2006 directing, inter alia, to verify the panel whether the panel produced by the Petitioner was that the panel prepared by the Selection Committee and if the answer was in affirmative then the authority should consider the question of granting approval of the panel in respect of that. The Additional District Inspector of Schools passed the order dated March 7, 2007 holding that the original panel and score-sheet for appointment being not available, he was unable to compare with the paper submitted by the Petitioner. Accordingly, no relief was granted to him. Being aggrieved, this Application has been preferred.

2. The Respondent-State is contesting the said Writ Petition contending, inter alia, since the comparison could not be held by the concerned Additional District Inspector of Schools the impugned order had been duly passed by him and so, there is no scope of interference.

3. The Respondent No. 7, the then Administrator of the said Institute has filed an Affidavit-in-opposition affirming the contention of the Writ Petitioner.

4. Now, the question is whether the prayer for relief's can be granted in favour of the Petitioner.

5. Having heard the learned Advocates of both the sides and on perusal of the materials on record, I find that it is not in dispute that the name of the Writ Petitioner was sponsored by the concerned District Employment Exchange for selection to the post of "D" group under the Scheduled Caste category in the said School. The Petitioner accordingly appeared before the Selection Committee for interview and the Selection Committee had prepared a panel. From the orders passed in the earlier Writ Petition referred to above, it is clear that the said panel prepared by the Selection Committee, was sent to the District Inspector of Schools in the year 2000, but, the said panel had not been approved by the concerned District Inspector of Schools. By the order dated August 28, 2006 passed by this Hon''ble Court in W.P. No. 168 of 2006 it was directed that necessary inquiries would be held to decide who were the members of the Selection Committee and who took part in the preparation of the panel and submission thereof, to the District Inspector of Schools for approval and then upon examination of all such relevant records, the Additional District Inspector of Schools (S.E.) Assansol should decide whether a copy of panel whereof, was submitted by the Petitioner, was the same that was prepared by the Selection Committee. It was also directed that if the answer was in the affirmative then the authority should consider the question of granting approval of the panel within a certain time. Thereafter, the impugned order dated March 7, 2007 was passed by the Additional District Inspector of Schools. Thus, what I find is that the panel prepared by the Selection Committee is not available. Anyway, the Petitioner has produced the necessary papers that his name was sponsored by the University and he appeared at the interview and a panel was prepared after

the interview. The Petitioner has been successful in producing the mark-sheets of all the Candidates appearing for the Selection Test as indicated Annexure P-5 at Page Nos. 39, 40, 41 & 42. The Respondent-Authorities have contended that the said panel had been lost. Whatever may be the reasons or whatever may be the findings that may come to light in respect of missing by appropriate proceedings, I am of the view that the matter shall proceed from the angle in which the Petitioner is proceeding with the matter. He had to file three Writ Petitions for getting an appointment in the Group-D post in the said school under the Scheduled Caste category. He has produced the Xerox copy of the panel showing that he topped the list. Such fact of topping the list has been corroborated by the impugned order dated March 7, 2007.

6. After getting a clear picture of the same, the findings of the Additional District Inspector of Schools (S.E.) have been made and the same are quoted below:

Original Order Book of the then Administrator of the School has been found out in which reflected (Order No. 23 dated 28.11.2000 and 24 dated 28.11.2000) it is clearly mentioned that the panel position made by selection committee is as follows:

1. Swapan Kumar Majhi, M.P., 12.8-1st
2. Ambika Charan Majhi, VIII, 8.5-2nd
3. Saktipada Majhi, VIII, 8-3rd

and the above panel was prepared and signed in original by the selection committee members and the same was approved by the then Administrator of the School.

7. By filing an Affidavit-in-opposition the Respondent No. 7 i.e. the then Administrator of the said School has supported such findings and the contention of the Petitioner. There being no contrary materials available on behalf of the Respondent-Authority, the materials produced by the Petitioner, in my view, can well be acted upon. The Respondent No. 7 has filed the aforesaid Affidavit-in-opposition and his basis is not on sympathetic ground, but, on the basis of materials kept by him. He has clearly stated that being an Administrator of the said school he kept a Xerox copy of the said panel. So, I do not feel any hesitation to act upon his Affidavit-in-opposition, which supports the contention of the Writ Petitioner also. Anyway, the Writ Petitioner cannot be allowed to suffer from not getting appointment for not any fault of his, but, for the fault/laches/irregularities or inaction on the part of the Respondents. Therefore, I am of the view that there is no bar to proceed with the observations as made in the order dated March 7, 2007 by the Additional District Inspector, Assansol relating to the panel and the Xerox copy produced by the Petitioner, i.e., Annexure P-5. I have no hesitation to come to a conclusion that the original Order Book of the then Administrator of the School has been traced out wherefrom, it has revealed that the Writ Petitioner topped the list. So, in absence of any other materials

contrary to what was found in the original Order Book of the then Administrator of the School, the same should be accepted as true.

8. Accordingly, I am of the view that the Additional District Inspector of Schools (S.E.) Assansol Sub-Division was not justified in turning down the prayer of the Writ Petitioner for approval of the panel. The order passed by the Additional District Inspector of Schools is not in conformity with the order dated August 22, 2006 passed by this Hon"ble Court in W.P. No. 168 of 2006 appearing at Page No. 49. Accordingly, I am of the view that the Respondent-Authority has failed to take appropriate measures in giving appointment by approving of the panel as produced by the then Administrator of the School. The concluding portion of the impugned order cannot be supported. With a view to ending the legal battle over the issue stated in 2005, in my view, certain positive directions should be given to the Respondents. The Application is, therefore, allowed. The Order dated March 7, 2007 passed by the Additional District Inspector of Schools (S.E.) Assansol Sub-Division is hereby set aside. The Respondents are, and particularly the Respondent No. 4 is directed to act upon for approval of the panel appearing as Annexure P-5 at page Nos. 39 onwards of the Writ Petition for appointment of Group-D Staff under the Scheduled Caste category in Barakar Sree Marwari Vidyalyaya, within four weeks from the date of communication of this order. After the approval of the panel by the Respondent No. 4 within the aforesaid period, the other Respondents shall do the needful for appointment of the Writ Petitioner to the aforesaid post within six weeks from the date of the approval of the panel by the Additional District Inspector of Schools. However, there will be no order as to costs.

Urgent Xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.