

(2009) 11 CAL CK 0001

Calcutta High Court

Case No: Writ Petition No. 32061 (W) of 2008

Sri Subhendu Kundu

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Nov. 25, 2009**Citation:** 114 CWN 638**Hon'ble Judges:** Jayanta Kumar Biswas, J**Bench:** Single Bench**Advocate:** Tapan Kumar Chakraborty and Tapan Kumar Roy, for the Appellant;
Nandadulal Banerjee, Sahasrangshu Bhattacharjee and Ananta Mohan Pain, for the
Respondent

Judgement

Jayanta Kumar Biswas, J.

The petitioner in this writ petition dated December 19, 2008 is questioning the undated decision of the District Inspector of Schools (SE), Burdwan, Annexure P3 at p.27. The decision was communicated to all concerned including the petitioner and the sixth respondent, Sourindra Nath Hajra, by a memo dated November 21, 2008. According to the prescribed procedure, for recruitment to a group "D" post in a non-government recognized aided secondary school, in 1996 the institute was the employer and it could initiate the recruitment process only after obtaining prior permission from the District Inspector of Schools concerned.

2. In this case, one Kishorekona N.A. Vidyalaya in Khana Junction of the District of Burdwan obtained prior permission from the District Inspector of Schools (SG), Burdwan in 1996 for appointing a group "D" staff in the institute. In the recruitment process Sourindra participated as a candidate. The list of select candidates prepared by the selection committee and in which Sourindra was reportedly included was not approved by the District Inspector of Schools. Sourindra moved this Court and in his writ petition final order was made directing the District Inspector of Schools to reconsider the matter. By a decision dated September 12, 2001 the District Inspector of Schools again refused to approve the list. The selection process rested there, and

in 2006 the institute initiated a fresh process for recruitment to the post.

3. Under the circumstances, challenging the decision of the District Inspector of Schools dated September 12, 2001 Sourindra moved W.P. No. 12434 (W) of 2006 in which an order dated June 16, 2006 was made. The order dated June 16, 2006 is set out below:

Let the affidavit of service filed in Court today be kept with the records.

In the writ petition the petitioner has prayed for a direction upon the school authority to allow the petitioner to appear in the interview for the post of Group "D" staff earmarked for unreserved category along with other sponsored candidates.

It is submitted that the name of the petitioner was sponsored for the said post in the year 1996 and, thereafter, he had participated in the interview. After the interview a panel was prepared and the name of the petitioner appeared at the top. However, the District Inspector of Schools (SE), Burdwan did not approve the panel. A writ petition was moved and the said writ petition was disposed of by directing the District Inspector of Schools concerned to reconsider the matter. The matter was reconsidered and the prayer of the petitioner was turned down. It is submitted that due to the pendency of the proceedings the petitioner could not participate in the interview and a direction should be issued upon the authorities to allow him to appear at the interview.

The learned Advocate appearing on behalf of the respondent submits that since the petitioner has crossed the age limit, no direction should be issued.

Heard learned Advocates for the parties.

Considering the facts and circumstances of the case and perusing the materials on record, I direct the respondent authorities to allow the petitioner to appear at the interview for the post of Group "D" earmarked for unreserved category, if he is found otherwise eligible, possesses requisite qualifications and fulfills all other criteria. Prior to the interview the respondent authorities shall verify the mark-sheets and the testimonials to be furnished by the petitioner.

After the interview, the mark-sheet of the petitioner shall be kept in a sealed cover separately.

This order is passed without prejudice to the rights and contentions of the parties and subject to further orders that may be passed.

Let affidavit-in-opposition be filed by 17th July, 2006. Reply, if any, by 24th July, 2006. Thereafter, the parties are at liberty to mention the matter for hearing upon notice.

The learned Advocates for the parties are permitted to take down the gist of this order and communicate the same to the respondents and the respondents shall act on the basis of such communication without insisting on the production of certified

copy of the order.

Let urgent xerox certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.

4. In compliance with the order dated June 16, 2006 the institute permitted Sourindra to participate in the selection process as a candidate with the candidates including the petitioner whose names were sponsored by the employment exchange concerned by a memo dated July 10, 2006. It is to be noted that Sourindra's name was not included in the list of sponsored candidates. By an order dated August 2, 2007 Sourindra's W.P. No. 12434 (W) of 2006, to which the petitioner was not made a party, was disposed of. According to the procedure for recruitment the selection committee was required to prepare a select candidate list naming the three best candidates according to merit. Sourindra did not take any steps for adding the select candidates to his pending writ petition in which he took out an interlocutory application seeking an order directing the district inspector of schools to approve the list.

5. The order dated August 2, 2007 disposing of Sourindra's writ petition and the interlocutory application taken out by him is set out below :

Both the writ petition and the CAN application being CAN 5854 of 2007 are taken up together and disposed of as follows:

It appears that by an earlier order dated 16.06.06 passed by Soumitra Pal J., the writ petitioner was permitted to appear at the interview for the post of "Group-D" subject to the directions contained in the said order.

Subsequently, he appeared in the interview and the panel has been forwarded to the District Inspector of Schools (SE) Burdwan to take final decision regarding grant of approval of the said panel.

In the circumstances, I am of the opinion that no useful purpose will be served in keeping the writ application pending and I direct the said District Inspector of Schools (SE) Burdwan to take a final decision regarding approval of the said panel submitted by Kishore Kona N.A. Vidyalaya, Village Kirshore Kona, P.O. Khana Junction, District-Burdwan as expeditiously as possible preferably within a period of three months from the date of communication of this order. With the above direction, both the writ application and the CAN application are disposed of without any order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties as early as possible.

6. In compliance with the order dated August 2, 2007 the District Inspector of Schools gave a decision dated December 13, 2007, the relevant part whereof has been quoted in the fifth para of the impugned decision. The fifth para of the

impugned decision is set out below:

"In compliance with the order passed on 2.8.2007 by Hon"ble Justice B. Samadder in the matter of W.P. No. 124 34 (W) of. 2006 with C.A.N. No 5854 of 2007, District Inspector of Schools (S.E.), Burdwan issued a Memo No. 163/L.S., dt. 13/12/07 with his decision ""..... After verification it is found that the date of birth of Sri Hazra (Petitioner) is 31.08.1961. He has crossed the age limit of 37 yrs. in 2006. As such he is not eligible for the post of Group "D" The School Authority is to recast the panel and to submit the same deleting the name of the petitioner."

7. The decision of the district inspector of schools dated December 13, 2007 that Sourindra being overage was not eligible to participate in the process as a candidate, and that the institute would recast the select candidate list deleting his name, was not challenged by anyone including Sourindra, and thus it attained finality. According to the decision, the petitioner previously occupying the second position in the select candidate list, became entitled to the first position in the recast list. Alleging that the institute was not carrying out the directions of the district inspector of schools, the petitioner moved W.P. No. 16891 (W) of 2007. Sourindra was the sixth respondent in this writ petition.

8. After hearing the petitioner, the state and Sourindra W.P. No. 16891 (W) of 2007 was disposed of by an order dated September 8, 2008, which is as follows:

Having heard the Learned Counsel appearing for the parties and considering the facts and circumstances of this case, I dispose of this petition by directing the respondent no.3 to consider the grievances of the petitioner as mentioned in the representation, being Annexure "P3" of this writ petition, at an early date but positively within a period of four weeks from the date of communication of this order after giving an opportunity of hearing to all the interested parties including the writ petitioner and the respondent No. 6.

The said District Inspector of Schools (SE), Burdwan, while deciding the matter in terms of this order, shall take note of the earlier order passed by this Court at the instance of the respondent No. 6

Needless to mention that the said respondent No.3 will pass a reasoned order in the matter and communicate a copy of the same to the petitioner as well as the respondent No.6 within a week from the date of passing such order.

The learned advocate of the petitioner is directed to communicate the gist of this order together with the copy of the aforesaid representation, being annexure "P3" of this writ petition, to the said respondent No 3 immediately.

The respondent No 6 will be at liberty to produce the relevant order passed earlier by this Court in his favour at the time of hearing before the respondent No.3.

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

Affidavit of service filed in Court today be kept with the records.

Let a xerox plain copy of this order, duly countersigned by the Assistant Registrar (Court), be given to the petitioner on usual undertaking.

9. In compliance with the order dated September 8, 2008 the District Inspector of Schools gave the impugned decision holding as follows:

"But in my view Sri Sourindra Nath Hazra, respondent No.6 of this case and the petitioner of W.P. No. 12434(W) of 2006 appeared at the interview on the strength of the order of the Hon"ble High Court, Calcutta passed on 16.6.06 and 12.7.06 and in terms of DI/S(SE), Burdwan No. 232/L S., dt. 8 8.06 when Hon"ble Justice passed his solemn order on 16.6.06 and 12.7.06 in the matter of W.P. No. 12434(W) of 2006, he had taken into consideration that the petitioner Sourindra Nath Hazra crossed his age limit. So the decision in the D.I/S(SE), Bdn"s Memo No. 163/L. S., dated 13.12.07 is hereby reviewed and the panel in question is hereby accorded approval in the following manner, "subject to the condonation of age from higher authority. (1) Sourindra Nath Hazra.... 1st (2) Suvendu Kundu.... 2nd and (3) Shyamal Kr. Ta.... 3rd Thus the matter is disposed of."

The order dated July 12, 2006 made in Sourindra"s W.P. No. 12434(W) of 2006 and referred to by the District Inspector of Schools in his decision impugned in this case, is as follows:

"In the 5th line in the 2nd page of the order dated 16th June, 2006 it appears instead of "unreserved" the word "reserved" has been recorded by mistake. Let the word "unreserved" be recorded in the 5th line in the 2nd page of the order dated 16th June, 2006 in place and stead of "reserved". Let this order be incorporated in the order dated 16th June, 2006."

10. Mr Chakraborty, counsel for the petitioner, relying on [Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji](#), has argued that the impugned decision is vitiated by total lack of jurisdiction in that the District Inspector of Schools possessing no power of review, has unauthorisedly reviewed the decision of the previous District Inspector of Schools dated December 13, 2007. Mr Banerjee, counsel for the state, has submitted that he has not received any instructions. Mr. Bhattacharjee, Sourindra"s counsel, has submitted that in view of the order of this Court dated September 8, 2008 directing the District Inspector of Schools to decide the matter taking "note of the earlier order" of this Court made at Sourindra"s instance, the District Inspector of Schools was competent to review the whole matter and give a fresh decision.

11. The procedure for recruitment under which the recruitment process was initiated and the District Inspector of Schools was to decide the question of approval of the select candidate list prepared by the selection committee, did not confer any power on the District Inspector of Schools to review a decision such as the one

dated December 13, 2007. It is also to be noted that the procedure was not a statutory one, and that no provision of law conferred any power on the District Inspector of Schools to review such a decision as the one dated December 13, 2007. Hence the question is whether in view of the order of this Court dated September 8, 2008 directing the District Inspector of Schools to give a decision dealing with the petitioner's grievances stated in his representation, and to give such decision taking "note of the earlier order" passed by this Court at Sourindra's instance, the District Inspector of Schools giving the impugned decision could review the decision of his predecessor in office dated December 13, 2007.

12. There is no dispute that the District Inspector of Schools giving the impugned decision has actually reviewed the decision of his predecessor in office dated December 13, 2007. While the District Inspector of Schools giving the decision dated December 13, 2007 held that Sourindra, being overage, was not eligible to participate in the selection process as a candidate, the District Inspector of Schools giving the impugned decision, communicated to all concerned by his memo dated November 21, 2008, has actually held that in view of the orders of this Court dated June 16, 2006 and July 12, 2006, the question whether Sourindra was overage could not be examined by his predecessor in office. In *Patel Narshi* their Lordships of the Supreme Court said (para 4)

"It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored."

13. As I have already said there is no provision of law conferring any power on the District Inspector of Schools giving the impugned decision to review the decision of his predecessor in office dated December 13, 2007. By the order dated September 8, 2008 this Court did not confer on him the power to review the decision of his predecessor in office dated December 13, 2007. As a matter of fact, this Court cannot confer a power on the District Inspector of Schools to review his decision such as the one dated December 13, 2007. W.P. No. 16891(W) of 2007 was taken out by the petitioner alleging that the institute was not acting in compliance with the decision of the District Inspector of Schools dated December 1, 2007.

14. The decision dated December 13, 2007, attaining finality long ago, since none including Sourindra questioned it before any forum or court, was not under challenge in any manner whatsoever in the petitioner's W.P. No. 16891 (W) of 2007. Whether it was given rightly or wrongly is a different matter, but, admittedly, it, having remained unchallenged, attained finality; and everyone including the District

Inspector of Schools giving the impugned decision, the institute, and Sourindra was bound by it. Hence I am unable to see how the District Inspector of Schools giving the impugned decision could exercise the power to review the decision of his predecessor in office dated December 13, 2007.

15. The District Inspector of Schools giving the impugned decision has quite unauthorisedly assumed the power of review which, having never been conferred on him by any means, he never possessed. The petitioner is fully justified in contending that the impugned decision is totally vitiated by lack of jurisdiction, authority and power.

16. The impugned decision is liable to be quashed otherwise as well. It is evident from the three orders of this Court dated June 16, 2006, July 12, 2006 and August 2, 2007, all passed in Sourindra's W.P. No. 12434(W) of 2006, that the question whether Sourindra, admittedly overage at the relevant date and hence not eligible for the post, could at all participate in the selection process, was never decided by this Court. Hence there was no reason for the District Inspector of Schools giving the impugned decision to say, in effect, that the question, having been decided by the court, could not have been decided by his predecessor in office.

17. For these reasons, I allow the writ petition, set aside the impugned undated decision. Annexure P3 at p. 27, of the District Inspector of Schools (SE), Burdwan and order as follows. All steps taken on the basis of the impugned decision shall be deemed to be quashed. The District Inspector of Schools and the institute shall carry out the directions given by the decision of the District Inspector of Schools dated December 13, 2007 within a fortnight from the date of communication of this order to them. No costs.

18. Mr. Bhattacharjee prays for stay for four weeks on the ground that Sourindra has been working in the institute for last two years. On the facts, I find no reason to grant a stay. Hence the prayer is refused. Certified xerox according to law.