

(2011) 06 CAL CK 0009

Calcutta High Court**Case No:** W. P. No. 19279 (W) of 2009, (CAN 4591 of 2010) and W.P. 5430 (W) of 2010

Paban Kumar Dutta

APPELLANT

Vs

The State of West Bengal and
OthersRESPONDENT

Date of Decision: June 21, 2011**Hon'ble Judges:** Jyotirmay Bhattacharya, J**Bench:** Single Bench**Advocate:** Kishore Datta, in W.P. No. 19279W/2009, Saibal Acharya and Vivekananda Bauri, in W.P. No. 5430W of 2010, for the Appellant; Tarun Kumar Das in Respondent No.9 in W.P. 5430(W) of 2010, Subir Sanyal, Kamal Mishra, Tamal Taru Panda, Subhrata Dutta and Bratati Roy Chowdhury, for State in W.P. No. 19279(W)/2009, for the Respondent**Final Decision:** Dismissed

Judgement

Jyotirmay Bhattacharya, J.

Two writ petitions were filed by different writ Petitioners challenging a common selection process initiated by the school authority of Porachingra G.A. Vidyapith (H.S.) in the District of Purba Medinipur for filling up one vacancy in the post of Librarian in the said school. One of such writ petitions being W.P. No. 19279(W) of 2009 was filed by the Panchayat nominee, who was a member of the Selection Committee. The other writ petition being W.P. No. 5430(W) of 2010 was filed by an unsuccessful candidate. Since both the writ petitions were filed concerning a common selection process, this Court feels that both the writ petitions should be heard analogously and should be decided by a common order so that possibility of conflict of decisions may be avoided. Accordingly, both the writ petitions were heard analogously.

2. Let me now give the brief history of the case for which the Petitioners of the respective writ petitions had to file the aforesaid writ petitions.

3. As a matter of fact, the concerned District Inspector of School granted prior permission for filling up two vacancies in non-teaching posts in the said Schools.

One of such posts was the post of Librarian and the other post was the post of Clerk. The Panchayat nominee, who is the Petitioner in the first writ petition, was a common member in both the Selection Committees which were constituted by the school authority for selection of suitable candidates for both the aforesaid posts. Since there was no dispute with regard to the selection of the candidates for filling up the post of Clerk in the said school and further since the selected candidate has already been appointed in the said post without any dispute, this Court does not feel it necessary to discuss the selection process concerning the post of Clerk in the said school in detail.

4. This Court, thus, concentrates on the selection process for the post of Librarian which is under challenge in both the writ petitions.

5. Pursuant to the prior permission granted by the concerned District Inspector of School on 8th February, 2009, names of the suitable candidates were requisitioned from the local Employment Exchange. The Employment Exchange has also forwarded the names of the suitable candidates for the said post. An advertisement was also published inviting applications from the suitable candidates for the said post. Some candidates have also applied for the said post in pursuance of the said advertisement. A Selection Committee was constituted for conducting the selection process for the said post. The Panchayat nominee, who is the Petitioner of the first writ petition, was one of the members of the said Selection Committee besides four other members. Interview of the eligible candidates was held on 19th September, 2009. All the five members of the Selection Committee were present on the date when the interview of the eligible candidates was taken on 19th September, 2009. After holding the said interview, all the five members of the Selection Committee awarded marks to the participating candidates but individual score sheets were submitted by four of them. The Panchayat nominee did not submit his individual score sheet. He also did not sign the panel which was prepared by the Selection Committee for the said post by taking into account the individual score sheet submitted by four members of the Selection Committee. It is alleged by the Panchayat nominee that since he did not award more marks to a favoured candidate of the school authority, the individual score sheet which was prepared by him was not accepted by them. It is further alleged by him that the selection process was practically a farce and an eye-wash as the Headmaster and the Secretary of the said school decided to give appointment to their favoured candidate in the said post even before holding the selection test. The Petitioner, thus, contends that the said selection process should be cancelled.

6. No interim order was passed in the said writ petition. However, while entertaining the second writ petition, a learned Single Judge of this Court passed an interim order on 17th September, 2010 by directing that pendency of the writ Petitioner shall not preclude the District Inspector of Schools to decide the question of approval of the panel strictly in accordance with law. Keeping in mind the aforesaid

interim order, the panel which was submitted to the concerned District Inspector of Schools by the school authority was approved by the concerned District Inspector of Schools with a condition that appointment shall abide by the result of the writ petition being W.P. No. 4591(W) of 2010.

7. Let me now consider as to how far the concerned District Inspector of Schools was justified in approving the said panel in the facts of the instant case.

8. I have already indicated above that there were five members in the Selection Committee. After holding the interview four members submitted their individual score sheets. Since the Panchayat nominee who was one of the members of the said Selection Committee, did not submit his score sheet, the panel was ultimately prepared on the basis of the marks given by the other four members, as aforesaid. In this context, a question has come up for consideration before this Court as to whether the panel which was so prepared without taking into account the marks which were allotted by the Panchayat nominee, can be regarded as a valid and legal panel. I have already mentioned above that though the Panchayat nominee remained present all throughout but he did not submit his score sheet. Though he claims that he wanted to submit the said score sheet and the same was not accepted by the other members of the Selection Committee but no reliance can be placed on such allegation of the said Panchayat nominee as it appears from the record that instead of making any complain with regard to such alleged irregularities in the process of such selection before the panel was prepared or immediately thereafter, the said Panchayat nominee waited for more than one and half month for submitting a complaint about such irregularities in the process of such selection before the concerned District Inspector of Schools. This long delay in submission of such complaint remains unexplained. This Court also does not find any justification to place any reliance upon the said complaint of the Panchayat nominee to the effect that he wanted to submit the panel but the same was refused by the other members of the said Committee as this Court finds that the score sheet which he prepared for the other post i.e. the post of Clerk was accepted from him by the members of the said selection Committee immediately on the very following day when the selection test for the post of Clerk was held. Had there really been any animosity between the Panchayat nominee and the other members of the Selection Committee then the members of the said Selection Committee who were mostly common in both the Selection Committees, would have obstructed the Panchayat nominee either to participate in the selection process for the post of Clerk which was held on the very next date following the date of holding the selection test for the post of Librarian or from submitting the individual score sheet prepared by said Panchayat nominee for the post of Clerk.

9. That apart in this particular case an allegation was made against two of the members of the Selection Committee, namely, Headmaster and the Secretary. Apart from the Headmaster and the Secretary there were two other external members in

the Selection Committee. No allegation has been made against those two external members. Even those two external members also have not made any complain with regard to any irregularity in the process of awarding of marks to the participating candidates either by the Headmaster or by the Secretary. As such this Court holds that the allegations made by the Panchayat nominee against the Headmaster and the Secretary of the said school are absolutely unfounded and baseless.

10. Though it is true that the Panchayat nominee was present in course of holding such selection test but he did not ultimately submit the score sheet. Thus, this Court can safely conclude that though the Panchayat nominee was physically present but his participation in the selection process was meaningless as he practically withdrew himself from the selection process by not submitting his score sheet.

11. Let me now consider as to how far the selection process was vitiated by not taking into account the marks allegedly awarded by the Panchayat nominee.

12. Rule 9(5) of the Recruitment of Non-Teaching Staff Rules of 2005 provides that the total marks awarded to each candidate by each member of the Selection Committee shall be computed and then the average of all the total marks awarded to each candidate by all the members of the Selection Committee shall be computed and finally a panel of three candidates who have secured the highest total marks in average shall with the names of such candidates arrange in order of merit, be prepared. Here the total marks awarded by four of the members of the Selection Committee were taken into account. Since the Panchayat nominee did not submit the score sheet, his marks which was allegedly given by him could not be taken into account. The Division Bench of this Hon'ble Court, in the case of District Inspector of School, Murshidabad and Ors. v. Samsul Huda and Ors., reported in 1987 (2) CriLJ 144 held that if the selection is made on the basis of the marks given by 50% of the members of the Selection Committee, the object of the Rule cannot be held to be frustrated simple because of the fact that the remaining 50% of the members of the Selection Committee did not participate in the process of selection of the candidates. In the present case more than 50% members of the Selection Committee participated in the process of selecting candidate for the said post and the panel was prepared on the basis of the marks given by four members out of five members of the Selection Committee. As such this Court holds that the panel which was prepared by the said Selection Committee cannot be held to be invalid. The allegation made by the Petitioners regarding awarding of more marks to a favoured candidate in the viva-voce test cannot a ground for setting aside the said panel as per the decision of the Hon'ble Supreme Court in the case of [Sri Jyotish Kaiborta and Others Vs. The State of Assam and Others](#), .

13. That apart, here is the case where this Court finds that the Panchayat nominee and the unsuccessful candidate acted in hands in globs. The unsuccessful candidate admitted in his writ petition that the information regarding alleged irregularities in the process of preparation of said panel were all supplied to him by the Panchayat

nominee. Such admission on the part of the said unsuccessful candidate creates suspicion in the minds of the Court about the seriousness of the allegation made by them in their respective writ petitions. Such closeness and intimacy between the Panchayat nominee and the said unsuccessful candidate clearly indicates that the said Panchayat nominee, in fact, had the intention to promote the said unsuccessful candidate and since he failed to do so, he filed a complaint almost one and half month after the preparation of panel only with an intention to vitiate the selection process for no just and genuine cause, so that he can create pressure upon the school authority to select his favoured candidate for the said post. Accordingly, this Court holds that the writ petitions deserve no merit of consideration.

14. Both the writ petitions, thus, stand rejected. The concerned District Inspector of Schools is now free to consider the issue regarding grant of approval to the appointment of the selected candidate in accordance with law.

15. Urgent xerox certified copy of this judgment, if applied for, be given to the parties as expeditiously as possible.