

(2009) 12 CAL CK 0031

Calcutta High Court

Case No: M.A.T. No. 1595 of 2001

Teacher-In-Charge, Uttar  
Chandipur B.P. High School

APPELLANT

Vs

Binoy Kumar Mondal and Others

RESPONDENT

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**Date of Decision:** Dec. 21, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2010) 124 FLR 973**Hon'ble Judges:** Subhro Kamal Mukherjee, J; Partha Sakha Datta, J**Bench:** Division Bench**Advocate:** Amal Baran Chatterjee and Ms. Mita Biswas, for the Appellant; Jayanta Kumar Mitra, Srikumar Sinha, Falguni Sarkar and Supriya Chatterjee, for the Respondent

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**Judgement**

Subhro Kamal Mukherjee, J.

This is an appeal against the judgment and order dated April 30, 1999 passed by the Hon'ble Single Judge in W.P. No. 10404 (W) of 1999.

2. One post of Assistant Teacher in Mathematics fell vacant in the Uttar Chandipur B.P. High School (the said school in short). The said school obtained prior permission from the office of the District Inspector of Schools (Secondary Education), Malda, to fill up the said post. Consequently, the school requested the local employment exchange for sponsoring names of the eligible candidates. The employment exchange sponsored names of 19 (nineteen) candidates to the said school.

3. The said school was in the charge of the Administrator up to August 11 1997; the said Administrator assumed his charge on January 17, 1997. Thereafter, the duly constituted managing committee took charge of the school.

4. The school authorities fixed March 16, 1997 for holding the interview for the said post. 11 (eleven) candidates appeared the said interview and the selection

committee purportedly prepared a panel of 3 (three) persons. The writ petitioner was placed at the top of the said purported panel.

5. The Administrator of the said school, who was an Assistant Inspector of the Schools, on March 27, 1997, forwarded the said panel to the District Inspector concerned for favour of his approval.

6. On May 5, 1997 the Panchayat Nominee in the selection committee wrote a letter to the District Inspector of Schools that he did not sign the panel prepared and submitted by the Administrator of the school. Another member of the said selection committee, that is, the Teachers' Representative, also, complained to the said District Inspector of Schools that, after holding of the interview, the Administrator took away the score-sheets and no panel of the candidates was ever prepared; the Administrator, subsequently, prepared a panel according to his whims without consulting the other members of the selection committee and submitted the said panel for approval. Both of them, therefore, requested the District Inspector of Schools not to approve the said panel.

7. The District Inspector of Schools on September 9, 1997 informed the school that the said panel could not be approved, as the members of the selection committee did not sign the panel.

8. The writ petitioner challenged the said action of the District Inspector of Schools by moving an application under Article 226 of the Constitution of India (the writ petition in short). The Hon'ble Single Judge by order dated September 30, 1997 allowed the said writ petition by directing the District Inspector of Schools to approve the panel submitted to him positively by November 15, 1997.

9. A Division Bench of this Court by order dated January 12, 1998 passed in MA.T. No. 3761 of 1997, quashed the said order dated September 9, 1997 and directed the District Inspector of Schools to consider the matter afresh and to pass an appropriate order in accordance with the recruitment rules upon considering the records maintained by the school authority and upon giving opportunities of hearing to the said writ petitioner as also the representative of the Managing Committee of the School.

10. The District Inspector of Schools on March 30, 1998 declined to approve the panel holding, inter alia, that the panel was not prepared on the date of interview in clear violation of the recruitment rules. He, also, found that no meeting for preparation of the panel was held on the date of interview.

11. The writ petitioner challenged the said order dated March 30, 1998 by filing yet another writ petition being W.P. No. 7477 (W) of 1998. The Hon'ble Single Judge disposed the said writ petition by directing the Director of School Education to make an enquiry as to whether the interview was held and the panel was prepared in accordance with law. In the event the panel was prepared in accordance with law,

the Director should send the panel to the District Inspector of Schools for taking necessary steps in the matter in accordance with law.

12. A Division Bench of this Court by order dated July 6, 1998 in M.A.T. No. 1910 of 1998, inter alia, modified the order of the Hon"ble Single Bench and directed the said Director of School Education to consider the matter strictly on the basis of the materials on record and in terms of the recruitment rules.

13. The Director of School Education in his order dated April 21, 1999 found that:-

(a) The Panel was not prepared by the members of the selection committee on the date of interview;

(b) The panel was not approved by the Managing Committee of the school;

(c) The individual score-sheets awarding marks to the candidates were not original in nature;

(d) The consolidated statement of marks of the candidates did not bear the signature of any member of the selection committee excepting the signature of the Administrator only.

14. He held that the panel, therefore, could not be accepted. He directed the District Inspector of Schools to ask the school authority to hold fresh interview of the candidates already sponsored by the employment exchange by constituting a new selection committee and to prepare a panel in strict observance of the rules and Regulations as laid down by the Government at the material point of time.

15. The writ petitioner again moved another writ petition being W.P No. 10404 (W) of 2002 and the Hon"ble Single Judge by the impugned order dated April 30, 2001 disposed of the said writ petition directing the erstwhile Administrator of the school to produce all the relevant records before the District Inspector of Schools concerned and the District Inspector of Schools would approve the panel according to the marks following the rules. The School authority was directed to give consequential appointment following such approval by the District Inspector of Schools. The Hon"ble Single Judge recorded that the learned advocate for the erstwhile Administrator of the school produced the original records before the Court and it was found that the writ petitioner stood first in the panel.

16. Being aggrieved by and dissatisfied with the said judgment and order dated April 30, 2001, the Teacher-in-Charge of the school prefers this appeal.

17. Mr. Amal Baran Chatterjee, learned advocate for the appellant submits that the erstwhile Administrator of the schools prepared a panel according to his whims and in complete violation of the recruitment rules. Therefore, the Hon"ble Single Judge ought not to have passed the directions on the District Inspector of the Schools to approve the panel and on the school authorities to give appointment to the writ petitioner.

Mr. Supriya Chatterjee, learned advocate for the Managing Committee of the school, adopted the submissions of Mr. Chatterjee. He submits that only a properly selected candidate could be appointed in the post of Assistant Teacher of the school.

18. Mr. Jayanta Mitra, learned Senior Advocate for the writ petitioner, however, submits that a panel was properly prepared and when the administrator of the school forwarded the panel to the District Inspector of Schools for his approval, the panel should have been approved by the District Inspector of Schools and the writ petitioner should have been appointed in the school. Mr. Mitra emphasises that there was no requirement in law that all the members should sign the panel after it is prepared in the meeting of the selection committee.

19. Mr. Falguni Sarkar, learned advocate, appearing for the erstwhile Administrator of the school, however, candidly admits that the original papers were never sent to the office of the District Inspector of Schools. In fact, he produced the relevant records before the Hon"ble Single Judge at the time of hearing of the writ petition.

20. The appointment of teacher in a non-Government secondary school, under the relevant recruitment rules, could be made only with prior permission of the District Inspector of Schools (Secondary Education), against sanctioned post. The said school was under the control of an Administrator, who was an Assistant Inspector of Schools (Secondary Education). The Administrator sought for the permission from the District Inspector of Schools (Secondary Education) to fill up the post of Assistant Teacher in Mathematics for the said school. The District Inspector of Schools (Secondary Education) conveyed his permission in the matter. The Administrator obtained 19 (nineteen) names from the local employment exchange. The interview letters were sent to those candidates, but 11 candidates appeared in the interview. The candidates were interviewed by a selection committee consisting of the Headmaster, the Administrator, one Teachers' Representative, one nominee of the Panchayat Samity, as the school was in rural area, and an External Expert. After the interview was held, the Administrator surprisingly took away the score-sheets and no panel was prepared. Two of the members of the Managing Committee, that is, the Panchayat Nominee and the Teachers' Representative, lodged complaints before the District Inspector of Schools (Secondary Education) that the Administrator took away the score-sheets and no panel of the candidates was ever prepared on the date of interview.

21. The Administrator, according to his whims and without taking the other members of the selection committee into confidence, prepared a purported panel. The said panel was submitted before the District Inspector of Schools for approval. The District Inspector of School declined approve the panel.

22. Ultimately, the matter reached the Director of School Education, West Bengal. The Director of School Education found, as findings of fact, that the purported panel was not prepared by the members of the selection committee on the date of

interview; the individual score-sheets awarding marks to the candidates were not original in nature and the consolidated statement of marks of the candidates did bear the signature of the Administrator only. He, therefore, thought that the school authority should hold a fresh interview.

23. It is a matter of regret that the Administrator, who was, also, a Government official, could indulge in such unfair practice and we believe that he must have done so to acquire unlawful gain and certainly not in the interest of the school.

24. The Administrator empanelled the writ petitioner as the first person in the panel prepared by him. A selection committee, which has been empowered to make the selection, cannot delegate its function of selection to a single member of the committee. It is true that it is not necessary that the decision of the selection committee should be unanimous, but each member of the selection committee has a right as also the duty to give his impartial and independent considered opinion in respect of the candidates interviewed by them.

25. Therefore, the panel prepared by the Administrator alone is wholly illegal. The process of selection was totally vitiated by reason of adoption of large scale of unfair practice by the then Administrator of the school.

26. Moreover, the inclusion in the select list does not confer a vested right to the candidate to be appointed merely on account of being so empanelled, particularly when we are convinced that the panel was prepared in an unfair manner.

27. We are of the opinion that the Hon"ble Single Judge was not justified in directing the District Inspector of Schools (Secondary Education), Malda, to approve the panel and on the school authority to issue a letter of appointment to the writ petitioner. It appears to us that the Hon"ble Single Judge usurped the jurisdiction of the statutory authority referred to in the recruitment rules when the Hon"ble Single Judge examined the purported records filed by the erstwhile Administrator to find if the writ petitioner stood first in the panel.

28. Therefore, the order impugned in this appeal is set aside.

29. The application under Article 226 of the Constitution of India, filed by the writ petitioner, is dismissed.

The appeal is, thus, allowed.

There will be no order as to costs.

Urgent Xerox certified copy of this order, if applied for, is to be supplied expeditiously.