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**(2000) 11 CAL CK 0034**

**Calcutta High Court**

**Case No:** Writ Petition No. 22065 (W) of 1997

Ashima Dey (Dutta)

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** Nov. 30, 2000

**Citation:** 105 CWN 638

**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J

**Bench:** Single Bench

**Advocate:** Sadananda Ganguly and Kaushik Roy, for the Appellant; Sanat Chowdhury, Kalidas Basu, B.K. Das, Amal Basu Chowdhury and Amrita Sinha, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Pronab Kumar Chattopadhyay, J.

Petitioner herein has filed the present writ petition challenging the action of the Respondent Authorities particularly the act of the Respondent No. 4 for non-issuance of the letter of appointment in favour of the petitioner for the post of Assistant Teacher in Physics on the basis of the panel approved by the District Inspector of Schools (SE), Hooghly. The petitioner herein along with other candidates appeared before the Selection Committee for interview for the post of Assistant Teacher in Physics. The Selection Committee initially prepared a panel of a candidates wherein the name of the petitioner figured at the second position and Smt. Susmita Sil who was subsequently added as respondent in the present writ petition, occupied the top position of the panel. The said panel prepared by the Selection Committee was approved by the Managing Committee of the School and thereafter the said panel was forwarded to the District Inspector of Schools, Hooghly, by the Managing Committee of the School for obtaining necessary approval. The District Inspector of Schools (SE), Hooghly before taking a decision in the matter of granting approval of the panel by a communication dated 11th May, 1990 requested the Secretary of the School to re-submit the panel after rectification of the defects as was suggested pursuant to earlier Memo. No. 4943 dt. 18.11.89.

The D.I. Schools in his said communication dated 11th May, 1990 specifically observed that the first empanelled candidate namely Smt. Susmita Sil is not eligible to obtain any mark on extra curricular head of assessment as per recruitment rules, on the basis of the certificates produced by her in this regard. Subsequently, the D.I. of Schools also sought for a clarification from the Director of School Education in respect of awarding of marks on extra curricular activities on the basis of the certificates produced by the said first empanelled candidate. On behalf of Director of School Education, West Bengal necessary clarification was forwarded (by Memo. No. 145-J/4G-163/80) dt. 15.01.1991) to the District Inspector of Schools (SE) Hooghly in respect of awarding of marks on extra curricular activities in connection with certain certificates. In the said written clarification dated 15.01.1991 it has been specifically mentioned that as per recruitment rules Smt. Susmita Sil, the added respondent herein is not eligible for getting marks on the basis of the certificates produced by her and the petitioner herein is eligible for getting 4 marks in extra-curricular activities. It was further mentioned in the said clarification that the panel in question should be modified after deducting marks allotted in favour of the added respondent in extra-curricular activities and adding 4 marks in favour of the petitioner herein for the said extra curricular activities. The School Authorities were directed to be informed about the aforesaid decision communicated on behalf of the Director of School Education to the District Inspector of Schools (SE), Hooghly. Accordingly by a Memo dtd. 1st February, 1991 District Inspector of Schools (SE), Hooghly forwarded a copy of the aforesaid written clarification dated 15.01.1991 to the Secretary, Chinsu-rah Balika Bani Mandir with the request to resubmit the panel after necessary correction as per the clarification and order of the Director of School Education as contained in the said written clarification dated 15.01.1991. In spite of the aforesaid clarification and order of the Director of School Education dated 15.01.1991, no step was taken for re-submission of panel on the basis of guidelines regarding awarding of marks towards extra-curricular activities which is subsequently mentioned in the aforesaid written clarification of the Director of Schools Education dt. 15.01.1991 as well as in the subsequent written communication of the Director of School Education, being Memo No. 1097-GA dt. 04.05.92 and 2377-GA dt. 28.07.94.

2. The Secretary of the School by letter dated 11th February, 1993 forwarded the extract of the resolution of the Managing Committee meeting held on 18.07.93 wherefrom it would appear that Managing Committee of the said School prayed for permission for taking fresh interview with a fresh list of candidates together with the previous candidates. The Director of School Education specifically directed the School Authorities to fill up the post only by regularising the panel already prepared on the basis of the guidelines and qualifications as was intimated earlier on behalf of the Director of School Education, Government of West Bengal. By Memo No. 4222/GA dated 26 March, 1996 Director of School Education informed the District Inspector of Schools (SE), Hooghly, that unless the earlier order of the Director of

School Education in respect of re-submission of panel after necessary correction in the assessment sheet is complied with by regularising the panel already prepared, no permission to fill up the said post will be given afresh.

3. Ultimately, the panel was recast by the Selection Committee on 1st May, 1997 and the Managing Committee of the School approved the said recast panel on 9th May, 1997. Furthermore, the Managing Committee passed a resolution on 9th May, 1997 to the effect that the District Inspector of Schools (SE), Hooghly should be moved to accord his approval on the recast panel. A copy of the extract of the said Resolution of the Managing Committee is annexure "J" to the writ petition. In the recast panel the petitioner herein secured first position and the added respondent secured second position.

4. The District Inspector of Schools (SE), Hooghly approved the said recast panel and communicated the same to the School Authorities by Memo. No. 465/SE dt. 30.06.97. In spite of receipt of the said approved panel the School Authorities did not issue any letter of appointment in favour of the petitioner herein who admittedly secured first position in the said approved panel. Accordingly, the petitioner herein filed the present writ petition challenging the aforesaid action of the respondents-authorities particularly of the respondent no. 4 for non-issuance of letter of appointment in favour of the petitioner.

5. Mr. Sadananda Ganguly, learned senior counsel appearing on behalf of the petitioner submitted that the panel having been approved by the District Inspector of Schools (SE), Hooghly on June 30, 1997 and the same has since not been challenged either by the School Authority or by the added respondent herein, it was incumbent upon the School Authority to issue a letter of appointment to the petitioner.

6. Mr. Ganguly, further, submitted that Smt. Susmita Sil, added respondent herein had filed a writ petition before this Hon"ble Court being W.P. No. 10511 (W) of 1997 which was finally decided by the Hon"ble Justice G.R. Bhattacharjee (as his Lordship then was).

7. According to the petitioner it is no longer open to the added respondent to raise any objection either with regard to the allotment of marks by the Selection Committee or with regard to the decision of the District Inspector of Schools (SE), Hooghly at the time of hearing of the subsequent writ petition as the said added respondent did not raise any question in this regard in her earlier writ petition being W.P. No. 10511(W) of 1997 which has already been finally disposed of and it has also been submitted that the principle of constructive res judicata would be applicable in this regard.

8. It has further been submitted on behalf of the petitioner that according to the Recruitment Rules, prevailing at the relevant point of time, the Managing Committee was under an obligation to forward the panel to the District Inspector of

Schools (SE), Hooghly and thereupon the District Inspector of Schools (SE), Hooghly was to communicate his decision in the matter. In the instant case, according to the petitioner, the District Inspector of Schools (SE), Hooghly asked the School Authority to re-submit the panel in the line of the instructions given in the matter and the Director of School Education also concurred with the said view of the District Inspector of Schools (SE), Hooghly.

9. Mr. Ganguly, further contended that the added respondent herein cannot question the authority of the District Inspector of Schools (SE), Hooghly, to arrive at a decision in respect of the panel as the said added respondent invited a specific direction from this Hon'ble Court in her earlier writ petition being W.P. No. 10511(W) of 1997 for consideration of the question of according approval to the panel sent by the School Authority by the District Inspector of Schools (SE), Hooghly in connection with the said post of the Assistant Teacher in Physics.

10. Mr. Sanat Chowdhury, learned Advocate appearing on behalf of the respondents-School Authorities filed an affidavit and opposed the claim of the petitioner herein on the ground that the petitioner is already serving in a School namely Adi- Saptagram High School and the said fact has been suppressed by the petitioner before the Selection Committee and the Managing Committee was also not aware of the aforesaid fact as the petitioner deliberately suppressed the same. Mr. Chowdhury submitted that teachers employed in any recognised school should not be encouraged for appointment in another School.

11. According to Mr. Chowdhury, petitioner herein has not approached this court with clean hands and as such does not deserve any consideration from the court. Mr. Chowdhury referred to a decision of this Hon'ble Court reported in 1993 CWN 924 (Secretary, Salkia Sri Krishna Vidyalaya vs. Kailash Nath Rai). Mr. Chowdhury also submitted that principle of res judicata is not at all applicable in this case as G. R. Bhattacharjee, J. while disposing of the writ petition of the added respondent being W.P. No. 10511(W) of 1997 merely directed the District Inspector of Schools (SE), Hooghly to consider the question of according approval to the panel forwarding by the School Authority and did not decide the writ petition on merits.

12. Mr. Kalidas Basu appearing on behalf of the added respondents sought to challenge the decision of the District Inspector of Schools (SE), Hooghly dated 11th May, 1990 regarding the request made to the Managing Committee for re-submission of the panel after rectification of the defects. Mr. Basu questioned the validity and/or legality of the aforesaid decision of the District Inspector of Schools (SE), Hooghly, Mr. Basu referred to Recruitment Rules and submitted that District Inspector of Schools should not have asked the School Authorities to re-submit the panel.

13. Mr. Ganguly learned senior counsel appearing on behalf of the petitioner submitted that at the material point of time when the petitioner appeared before the

Selection Committee she was absolutely out of employment and got the appointment in the post of Assistant Teacher at Adi Saptagram High School afterwards and as such it cannot be said that the petitioner did not come before this court with clean hands.

14. Considered the rival contentions made on behalf of the respective parties in respect of the claims of the petitioner in the present writ petition. Learned Advocate of the School Authorities contended that the petitioner is already employed in another school. In my opinion, the same does not put absolute restriction on the appointment of petitioner who is already employed in another recognised school. As a matter of fact specific circular being circular no. 7/63 dated 7th February, 1963 had already been issued by the Board of Secondary Education wherein it has been mentioned that it is necessary for a school to see before appointing any teacher whether he/she has been duly released by the school he/she previously served. It has also been mentioned in the said circular that while forwarding the case of the teacher concerned for approval of the appointment a copy of the release certificate from the school where the said teacher last served should be enclosed along with particulars of the teacher. In view of the aforesaid circular the petitioner upon obtaining a release certificate from the previous school can join the service of the present school.

15. Surprisingly, though Mr. Chowdhury vehemently opposed the claims of the petitioner made in the writ petition but failed to explain why the School Authorities did not issue letter of appointment in favour of the petitioner who secured first position in the approved panel particularly when the panel was recast by the Selection Committee and was approved by the Managing Committee of the School. Furthermore, the Managing Committee of the School subsequently specifically resolved that the District Inspector of Schools (SE), Hooghly should be moved to accord his approval for the said recast panel by a specific resolution dated 9th May, 1997. Accordingly, the School Authority is now estopped from raising any objection in respect of the panel which was approved by the Managing Committee of the School and was also forwarded by the said Managing Committee of the School to the District Inspector of Schools for according necessary approval. There cannot be any valid reason for refusing to issue letter of appointment in favour of the petitioner herein on the basis of the approved panel.

16. Now, regarding consideration of the panel. I find that the District Inspector of Schools (SE), Hooghly communicated his decision as far back as in the year 1990 pointing out the defect in the panel initially prepared by the School Authority and the Director of School Education also supported the view of the D.I. as has been mentioned in the communication dated 15th January, 1991. The added respondent herein admittedly filed a separate writ petition in the year 1997 which was numbered as W.P. 10511(W) of 1997 wherein the added respondent put forward her claim for appointment on the basis of the previous panel which was directed to be

amended and/or modified by the District Inspector of Schools (SE), Hooghly by his aforesaid communication dated 11th May, 1990. Justice Bhattacharjee directed the District Inspector of Schools (SE), Hooghly to consider the question of according approval to the panel forwarded by the School Authority in respect of the said post of Assistant Teacher and pursuant to the said direction, D.I. of Schools considered the matter and passed an appropriate order on the panel in question. It has been admitted by the learned Advocate appearing on behalf of the said respondent that D.I. of Schools (SE), Hooghly even after considering the entire aspect of the matter and upon hearing the respective parties pursuant to the aforesaid direction by G. R. Bhattacharjee, J. stuck to the earlier decision in respect of the panel which was duly approved by him.

17. Unfortunately, even thereafter no letter of appointment was issued in favour of the petitioner. Admittedly, neither the said panel approved by the D.I. and communicated to the School Authority by Memo dated 30.06.97 being annexure "L" to the writ petition, nor even the decision of the D.I. dated 11th May, 1990 for re-submission of the panel after rectification of defect being Annexure "B" to the writ petition had been challenged by the added respondent in an appropriate independent pro-ceeding and as such added respondent is not entitled now to question the validity and/ or legality of the aforesaid panel approved by the District Inspector of Schools or the decision of the D.I. which was communicated on 11th May, 1990 regarding re-submission of panel after rectification of the defects by the Managing Committee.

18. In my opinion principle of constructive res judicata applicable in the instant case as the added respondent in her earlier writ petition being W.P. No. 10511(W) of 1997 did not raise any question in respect of validity and/or legality of the decision of the District Inspector of Schools (SE), Hooghly dated 11th May, 1990 for re-submission of panel after rectification. It is also not open to the added respondent to contend now that the District Inspector of Schools (SE), Hooghly had no authority to consider the matter and take a decision in respect of the panel and ought to have referred the matter to the Director of School Education on Mr. Basu referred to and relied on the decision reported in AIR 196 Cal 240. Said decision has no manner of application in the facts of the present case.

19. The objection raised by Mr. Basu on behalf of the added respondent are devoid of merits. In my opinion, the panel is final and valid and the Managing Committee of the School is duty bound to act on the basis of the said approved panel as no order prohibiting the implementation of the said panel has been passed by any Court of Law. The Managing Committee by not issuing formal letter of appointment to the petitioner herein acted unreasonably and illegally and such action of the Managing Committee cannot be permitted to continue any longer particularly when the interest of the students of the school are being prejudiced for want of a teacher in Physics. The Managing Committee of the School did not act in the instant case in a

bonafide manner and accordingly, I do not approve their conduct.

20. For the foregoing reasons the writ petition succeeds. The Managing Committee of the School is directed to issue a formal letter of appointment in favour of the petitioner herein positively within a period of 7 days from the date of communication of this order.

21. This writ petition is, thus, allowed with costs which I assess at 200 Gms. to be paid by the respondents school authorities. Urgent xerox certified copy of this order, if applied for, be supplied on priority basis.