

(1999) 12 CAL CK 0048**Calcutta High Court****Case No:** F.M.A. No. 1192 of 1998

Arabinda Ghorai

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Dec. 9, 1999**Citation:** 105 CWN 61**Hon'ble Judges:** Satyabrata Sinha, J; M.H.S. Ansari, J**Bench:** Division Bench**Advocate:** Milan Ch. Bhattacharjee and Nisith Mukherjee, for the Appellant; Keshab Bhattacharjee, Banani Mukherjee and Nityananda Banerjee, for the Respondent**Judgement**

Satyabrata Sinha, J.

This appeal is directed against a judgment and order dated 18th March, 1997 passed by a learned Single Judge of this court, whereby and whereunder the writ application filed by the appellant herein was disposed of directing, "Let this matter be considered and disposed of by the D.I. of Schools in accordance with law and the D. I. of Schools will take appropriate decision in this regard after affording opportunity to the petitioner, school management and to any other person including the teacher-in-charge to whom he thinks fit and proper to take decision accordingly and the approval and the preparation of the panel will take place in accordance with the decision taken by the D.I. of Schools within period of ten weeks from the date of representation and the copy of the order passed today by this court, if no approval for the post has already been given, firstly the D.I. of schools will dispose of the representation of the petitioners and then grant the approval of the panel placed before him, if the approval of the panel has already been given. The decision of the D.I. of Schools will be subject to the final decision taken by the D.I. Schools." As indicated by the learned trial Judge himself the only dispute was as to whether in the matter of selection of the Headmaster of Bhuarah B.N.S. High School, the old Rules or the New Rules would apply. Admittedly, 1995 Rules framed by the Director of School Education in exercise of his power conferred upon him

under Clauses (i) and (ii) of Sub-rule (1) and Clause (I) of Sub-Rule (4) of Rule 28 of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 came into force on 1.12.95. The advertisement for the post of Headmaster was issued on 14.1.96 and the interview had taken place on 26.5.96. The Selection Committee allegedly awarded marks in terms of 1993 Rules. The writ-petitioner-appellant contends that had the new Rules been applied, he would have been at serial no. 1 of the panel.

2. Keeping in view the fact that the selection process started after coming into force of the new Rules, the Selection Committee was bound to observe the norms laid down therein and not in terms of 1993 Rules. We are, therefore, of the opinion that the learned Trial Judge erred in not deciding this question of law and remitting the matter to the District Inspector of Schools.

3. We, therefore, in modification of the impugned order, direct the District Inspector of Schools to consider the matter afresh and see as to whether the panel prepared by the Selection Committee and approved by the Managing Committee requires an interference in view of the fact that such selection would be governed by the provisions of 1995 Rules. If in the event the District Inspector of Schools arrives at a finding that the selection process in terms of 1995 Rules had not been taken recourse to by the Selection Committee, he would refer the matter to the Director of School Education for appropriate orders. The District Inspector of Schools must pass an appropriate order within four weeks from the date of communication of this order.

4. This appeal is disposed of accordingly.

5. Xerox certified copy of this order, if applied for urgently, may be given on priority basis.

M.H.S. Ansari, J.

I agree.