

(1997) 06 CAL CK 0024**Calcutta High Court****Case No:** Writ Petition No. 2350 of 1996 (Original Side)

Shyama Nand Jha

APPELLANT

Vs

The Director of School Education

RESPONDENT

Date of Decision: June 18, 1997**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (1998) 1 ILR (Cal) 535**Hon'ble Judges:** Basudev Panigrahi, J**Bench:** Single Bench**Advocate:** Jaharlal Dey, for the Appellant; Prasanta Banerjee, for the Respondent**Final Decision:** Allowed**Judgement**

Basudev Panigrahi, J.

Heard Mr. Dey, learned Advocate for the writ Petitioner and also Mr. Prasanta Banerjee, learned Advocate for the State of West Bengal.

2. This is an application under Article 226 of the Constitution of India filed by the writ Petitioner for issuing a writ in the nature of mandamus for according approval to the panel of the English Teacher on the basis of the result of the interview dated March 12, 1996 held on the basis of the new Recruitment Rules with effect from December 1, 1995.

3. The writ Petitioner has stated, *inter alia*, that the District Inspector of Schools, namely opposite party No. 2 has accorded permission for filling up the post of History Teacher, Work Education Teacher and English Teacher. The local Employment Exchange on the basis of the requisition sent by the school authorities forwarded a panel of names to them on December 19, 1995. Thereafter the school authorities had sent intimation to the respective candidates to appear before the interview which was scheduled to be held on March 12, 1996. In response to the said notice the Petitioner was said to have appeared before the interview and stood

against Sl. No. 1 prepared by the Selection Committee of the management. Subsequently the Managing Committee forwarded the names of the panel to the District Inspector of Schools, the Respondent No. 2 for approval but the District Inspector of Schools thereafter without approving the said panel had again sent a letter to the school which is enclosed as Annexure "B" wherein he directed the management to hold a fresh interview in accordance with the Recruitment Rules No. 1049 (19-GA) dated May 20, 1993 instead of DSE WB No. 2066-GA dated October 27, 1995. The Petitioner being aggrieved by such letter of the Respondent No. 2, the District Inspector of Schools has filed the instant writ petition.

4. The Respondents have not filed any affidavit-in-opposition controverting the factual back ground stated by the Petitioner. Therefore, in the absence of affidavit-in-opposition the averments made in the writ petition have to be accepted.

5. The question arises in this case is whether the interview as conducted by the Managing Committee ought to be held in accordance with the old Recruitment Rules or under the procedure laid down in new Recruitment Rules. Although the Managing Committee had sent a letter to the District Inspector of Schools for approval to fill up the post prior to coming into force of the new Recruitment Rules but the School Authorities sent requisition to the Employment Exchange after the new Recruitment Rules came into force that is after December 1, 1995. The Employment Exchange sponsored the names of candidates on December 19, 1995. Thus, in this background it has to be visualised that the selection process had started only after the new Recruitment Rules came into force i.e. December 1, 1995. In the new Recruitment Rules it has been indicated that all previous orders passed by the Directorate in respect of the procedure for recruitment of teaching and non-teaching staff of the Government Secondary Schools would be cancelled. Thus, after the new Recruitment Rules have come into force all such previous Notification for recruitment of teaching and non-teaching staff would stand cancelled.

6. Mr. Dey, learned Advocate appearing for the Petitioner has cited a decision of N.T. Bevin Katti v. Karnataka Public Service Commission AIR 1990 1233. In the aforementioned case the Apex Court held that the determination of this question whether the new or old Rules shall be applicable widely depends upon the facts of each case having due regard to the terms and conditions set out in the advertisement and the relevant rules and orders relating thereto. In order to avoid confusion I must hold that it should be borne in mind that a candidate on making the application for a post pursuant to an advertisement does not acquire any vested right for being selected but if he is eligible otherwise in terms of the relevant rules, he has a right to be considered along with other candidates.

7. In the instant case, all the candidates had appeared before the interview and the Petitioner seems to have stood first in the panel which was prepared by the Selection Committee and the same was forwarded by the management to the District Inspector of Schools. Therefore, by the time the interview was conducted

and even before when the names were sought from the Employment Exchange the provisions of new Recruitment Rules were in force. Therefore, the District Inspector of Schools under a misconception issued the said letter which is enclosed as Annexure "B" to the writ petition to the management calling upon them to reconsider and reassess the marks in accordance with the old Rules. Thus, I hereby quashed the letter issued by the District Inspector of Schools vide Annexure "B" and direct him to consider the panel dated March 12, 1996 which was prepared by the management in terms of the new Recruitment Rules which was effective from December 1, 1995. Mr. Dey has further contended that during the pendency of the writ petition, the school authorities on the basis of the letter which is under challenged has further prepared a panel in accordance with the old Rules on October 18, 1996 which was challenged by the writ Petitioner by filing an injunction application and this Court directed the management to keep the second panel under suspension and the same shall not be given effect to without the orders from the Court. Since I have already observed that the letter issued by the District Inspector of Schools calling upon the management to consider and prepare the panel in terms of the old Rules is illegal, so, therefore, the second panel prepared by the school authorities is thus invalid and inoperative.

8. Accordingly, the District Inspector of Schools is hereby directed to consider the first panel dated March 12, 1996 in terms of the new Recruitment Rules dated December 1, 1995 and communicate the same to the management within 4 months from the date.

9. Thus, this writ petition succeeds and it is allowed but in the circumstances without costs.

10. All parties are to act on a signed copy of the operative part of this judgment on the usual undertakings.