

21. 02. 2022
BP
Sl. 14
Court No. 17

WPA 13701 of 2021

(Via Video Conference)

Md. Abdul Gani Ansari
Vs.
State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Firdous Samim
Ms. Gopa Biswas
..for the petitioner.

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
..for the SSC.

Mr. Raja Saha
Mr. Shamim ul Bari
..for the State.

This is an application filed by the petitioner who, according to the West Bengal Central School Service Commission, obtained total marks 66.67. He has pointed out that though he was not called for counseling as an wait-listed candidate and was not issued any recommendation and appointment letters, at least six candidates, who are below to the rank of him in the said wait list, got opportunity to appear for counseling and subsequently received recommendation letters, appointment letters and have joined different schools where they are presently working as Assistant

Teachers.

This court directed the School Service Commission to file a report in the form of an affidavit as to the allegations of the petitioner. Such an affidavit, affirmed on 03.11.2021, has been filed.

From the said affidavit, it is found that the allegation of the writ petitioner is wholly correct. The private respondents, being respondent nos. 6, 7, 8, 9, 10 and 11, were recommended for the post of teachers and all of them got marks below the petitioner and the marks have been disclosed by none other than the West Bengal Central School Service Commission in their said affidavit.

The School Service Commission has submitted in the last four lines of paragraph 5 in the said affidavit that the writ petitioner was not coming in the zone of consideration as he obtained lesser marks than the last candidate recommended by the Commission for the same category.

This court fails to understand if the petitioner was not coming in the zone of consideration as he obtained lesser marks than the last candidate recommended how the candidates obtaining marks lesser than the petitioner, as has been disclosed by the Commission itself in their said affidavit, could be

recommended in different schools. This shows that those candidates also did not come within the zone of consideration but they were given recommendations and appointments. It is an admitted position when we read paragraphs 5 and 6 of the said affidavit of the Commission conjointly. It is clear that the private respondents did not come in the zone of consideration. Despite that the private respondents were recommended, appointed and joined in different schools where they were recommended by the Commission.

The Commission has taken shelter under the expression 'mistake' by admitting that 'private respondents were by **'mistake'** recommended by the Commission even though he (sic.) had lower marks'. Therefore, these six private respondents do not have any legal right to work as assistant teachers in the schools as appears from Annexure P-6 to the writ application (at page 71) which is a letter written by the District Inspector of Schools(S.E.), Murshidabad dated 18.02.2021 to the President of West Bengal Board of Secondary Education. The following are the schools where the private respondents have been appointed:-

Sl.	Candidate's Name	School Name
i.	Manjurul Sarkar	Panchagram I.S.A.High School
ii.	Md. Amir Hossain	Nazirpur Esserpara High School

- iii. Md. Shariyatullah Dharmadanga High School (H.S.)**
- iv. Ramjan Ali Laskarpur High School (H.S.)**
- v. Md. Jasimuddin Sk. Kazipara Haridas Vidyabhaban (H.S.)**
- vi. Meherul Haque Dighri High School (MSD)**

Therefore, the above named persons shall not be allowed to work in the above named schools as assistant teachers any further and they shall not get any salary from the State exchequer. The salaries they have received till date shall be refunded to the Government immediately. If they fail to refund the received salary against such illegal appointments, the District Inspector of Schools (SE), Murshidabad shall have every liberty to initiate steps against them both under civil and criminal laws to realise the salary received by them.

The matter is not disposed of.

The District Inspector of Schools (SE) Murshidabad is directed to communicate this order immediately to those schools and to stop the salary of the above named persons who were appointed illegally by illegal recommendations made by the School Service Commission. Though the School Service Commission has taken shelter under the expression '**mistake**', this

court wholly disbelieves such shroud of the Commission now placed on its face. This cannot be a mistake. These are deliberate illegal action otherwise the wait-listed candidates in serial nos. 229, 242, 250, 265, 289 and 302 could not have been recommended selectively by the Commission as appears from Annexure R-1 at page 9 of the affidavit of the School Service Commission itself.

Appropriate order in this regard will be passed at a later stage of this matter.

In the meantime, the said District Inspector of Schools (SE), Murshidabad shall file a report in the form of affidavit on 28th February, 2022 disclosing when the vacancies of the schools named above in the table were reported to him/his office and when those vacancies were sent to the next higher authority by the District Inspector of Schools and to the West Bengal Central School Service Commission. The particulars in the said report in the form of an affidavit as directed above is to be disclosed with memo numbers and dates and should be taken from the records of the District Inspector of Schools.

This matter is adjourned till 28th February, 2022 when it will appear under the heading 'Specially Fixed Matter' at 12 noon.

As I have heard this matter extensively and as I have dealt with the matter in the manner as aforesaid, this matter is marked as heard in part.

The exception to the report filed by the School Service Commission today by the petitioner is kept on record.

(Abhijit Gangopadhyay, J.)

