

WPA 2652 of 2018

**Smt. Tanuja Santra (Parai)
Vs.
The State of West Bengal & Ors.**

Mr. Sadananda Ganguli,
Ms. Usha Maiti,
Ms. Anita Khatri,
Mr. Sakhya Maity.
... for the Petitioner.

Mr. Bhaskar Prasad Vaisya,
Mr. Gour Das.
..... for the State.

Mr. Sajal Kanti Bhattacharya,
Mr. Sarthak Barman.
... for the respondent No. 7.

Mr. Sudeep Sanyal,
Mr. Snehasis Jana,
Mrs. Tutun Das,
Mr. Chandrachur Lahiri,
...for the respondent Nos. 4 & 5.

Mr. Sarwar Jahan,
Ms. Sumita Sen,
Mr. Sayantan Hazra.
... for the respondent No.9/school authority.

1. The process of selection of the Assistant Headmaster in the respondent school namely, Raghunathbari Ramtarak High School (H.S.) [hereinafter referred to as "*the said school*"], has been questioned and challenged in this writ petition. The petitioner being an Assistant Teacher of the said school and a contender for the said post, has prayed for the relief that, the score sheet and the panel prepared in the impugned process of recruitment may be cancelled and fresh panel be prepared on the basis of the cumulative marks allotted by the majority members of the selection committee in interview and on the basis of the academic qualification. According to the

petitioner, in that way, she would emerge to be at the first place. Hence, she may be granted appointment as the Assistant Headmaster/mistress of the school, is her other prayer in this case.

2. The petitioner has also challenged the constitution of the selection committee which she says is not in accordance with the prescribed rules. She has challenged the score sheet, alleging malafide, motivated and biased evaluation of performance of the contenders, by the two members of the selection committee.
3. Mr. Ganguli has appeared for the writ petitioner. He has argued that the selection committee was comprised of five members, that is, (i) the administrator, (ii) the headmaster, (iii) the expert, (iv) a panchayat nominee and (v) a teacher's representative. He says that the panchayat nominee and the teacher's representative have acted in a biased manner, in the process. He would say that the number allotted by them to the petitioner is unnaturally low, in comparison to the number allotted to her by the other three members of the committee. There would not be any rationale for this, is what the petitioner would indicate, excepting an element of bias and mala fide motive. It has been submitted further that the petitioner being the senior most amongst all the contenders and having better academic results than them, should have been logically granted the highest aggregate of marks. To manipulate this position of the petitioner, those two selection committee members have acted in a biased manner, thereby jeopardising the entire process and rendering that to be unsustainable, he says.
4. Mr. Ganguli would submit that the entire selection process would be liable to be vitiated, if there is even a likelihood of bias affecting the process of selection. For this he has relied on a judgment of the Supreme Court, that is, ***Ashok Kumar Yadav & Others vs State of Haryana & Others [(1985) 4 SCC 417]***.

He would further rely on this to submit that the Supreme Court has held the viva-voce test to be a determining factor in the selection process. Mr. Ganguli has thus emphasised upon the fairness required to be followed in the viva-voce test.

5. Mr. Ganguli would rely on a memo being No. 1628-GA dated July 10, 2002 [hereinafter referred to as “No.1628”], to submit that the same provides the guidelines for recruitment of the Assistant Headmaster. Amongst all the provisions mentioned thereunder, the process of constitution of the selection committee has also been provided in the said memo No. 1628. It is stated that, so far as the teacher’s representative member of selection committee is concerned, according to No. 3 (c) in memo No. 1628, it is the power and responsibility of the school managing committee to select him and recommend. However, allegedly this time, there has been a departure from the said prescribed rule and the teacher’s representative has been elected from amongst the teachers. To substantiate this contention the petitioner would rely on the copy of the resolution dated December 27, 2017, by dint of which the teacher’s representative is said to have been elected. In this way there has been a gross violation of the prescribed rule, Mr. Ganguli would say. Since a binding rule has been contravened in the process, the same would be liable to be vitiated. On this he has relied on the decision of a Division Bench of this Court in ***Md. Zakir Hossain vs State of West Bengal [2019 (3) CHN (Cal) 383]***.
6. He would say further that if the selection is found to be tainted in any manner, it would be open for the concerned authority to annul such selection for the sake of fairness and transparency. Also that a decision to cancel a selection process at a pre-appointment stage, would be a bonafide exercise of discretion by the concerned authority, liable to be interfered into or terminable only in case the same is

patently arbitrary, malafide or illegal. For this he would rely on a judgment of the Supreme Court dated April 4, 2018, in **SLP (C) Nos. 7166-7178 of 2018 [Avinash C. & Ors. Vs State of Karnataka & Ors]** reported in **(2018) 6 SCC 614**.

7. He would say further that in this case, there has been patent material irregularity, in the process of recruitment. It has started from the constitution of the recruitment committee and continued till biased evaluation by the said two committee members. Result of such patent irregularity is the alleged panel where the petitioner could not find the first place in spite of her being the most deserving amongst all incumbents. In view of such patent irregularity in the constitution of the committee the Court can interfere and vitiate the entire process. On this he would rely on a judgment of the Supreme Court, that is, **Dalpat Abasaheb Solunke & Others vs Dr. B.S.Mahajan & Others [(1990) 1 SCC 305]**.
8. Another judgment of this Court has also been relied on by the petitioner, that is, **Jadab Chandra Mukhopadhyay vs State of West Bengal & Ors [1998 2 CHN 121]**, on the similar proposition of law, that is, the Court has jurisdiction to interfere with the decision of the selection committee and the appointment process in cases where there is mala fide, illegality, irrationality or procedural irregularity. That power of judicial review can be exercised to ensure fairness, objectivity and legality of the selection process.
9. Mr. Ganguli would submit that the Supreme Court has held in **Madan Lal & Ors vs The State of Jammu Kashmir & Ors [(1995) 3 SCC 486]**, that the persons who are appointed to conduct oral interview test are to be the men of high integrity, calibre and qualification. The reverse has happened in the instant case. The person appointed through an illegal and improper procedure, as the said biased members of the selection committee, cannot satisfy the standards

of the examiners, so said. Following the ratio thereof, he says that the selection committee would not be proper to emphasise much upon the outcome of the oral interview only as that would not be a very satisfactory test for assessing and evaluating the capacity and calibre of the candidates.

10. The petitioner would seek that the writ petition be allowed by granting her appropriate remedy in this case.
11. The school authority/ respondents No. 4, 5 and 11, have contested the instant case by filing affidavit-in-opposition. There they have denied petitioner's allegations and supported the process undertaken by the school, for appointment of the Assistant Headmaster. They have rather deprecated the petitioner's stand by addressing the same as a calculated endeavour of an unsuccessful candidate to frustrate the process. On the other hand, it is stated that after approval of the said panel by the concerned District Inspector of the Schools (Secondary Education), Purba Medinipur, the first empaneled candidate, that is respondent No.9 in this writ petition, has already been given appointment, to the post of the Assistant Headmaster of the said school. The school authority is of the opinion that the members of the selection committee has duly exercised its discretion and the panel has been prepared pursuant to a fair and transparent recruitment process. Hence, according to the school authority the writ petition would be liable to be dismissed.
12. So far as the contention of the said respondent, that once participated in the process and became unsuccessful, the petitioner would no further be competent to raise question as to the legality and validity of the said process of selection. The petitioner would deny the said contention by relying on a judgment of this Court, that is, ***Jayashri Ghosh vs The State of West Bengal* [(2013) 4 Cal LT 542**

(HC)]. There the Court has held that in view of the glaring illegality in the selection procedure the principle of estoppel by conduct or acquiescence would have no application in the facts of the case. The Court has held that an unsuccessful candidate can legitimately question a concluded selection process, if a glaring illegality therein can be demonstrated. Another judgment of the Division Bench of this Court has also been referred to in this regard, that is, ***Mriganka Mondal vs Dr. Asitabha Das and Others* [(2019) 1 WBLR (Cal) 211]**, where the Court has held that an unsuccessful candidate has the *locus standi* to challenge the selection and the appointment of a successful candidate in case the process is seen to have suffered from the vices of illegality, irrationality and procedural irregularity.

- 13.** The newly appointed Assistant Headmaster/the first empanelled candidate/respondent No. 9, has also filed his affidavit-in-opposition. He would reiterate the stand taken by the school authority, as discussed above. He also would pray for dismissal of the writ petition.
- 14.** Mr. Jahan would represent the respondent/ school authority. He would submit that the selection committee is a specialised body to assess the level of capability and expertise of candidate. Therefore, adequate discretion is vested with the selection committee to apply its mind in judging the performance of the respective candidates in terms of their academic qualification as well as personality. He says that only the selection committee will be a competent body to scrutinise the relative merits of the candidates taking part in the process of selection. Such expertise and firsthand access to the candidates are available to none other than the selection committee itself. Therefore, the court shall be slow in interfering with the decision of the selection committee with regard to the respective merits of the candidates. He would also indicate that a very limited

number of grounds would be available to the court on the basis of which it can interfere into the decision of the selection committee. On this Mr. Jahan would refer to the Supreme Court judgment of ***Dalpat Abasheb Solunke (supra)***, to say that such limited grounds would be as to the illegality or patent material irregularity in the construction of the committee or its procedure and proved malafides affecting the selection et etc.

15. He would further say that an exercise which is for determination by experts, that is the selection committee, is not to be interfered on every drop of a hat unless there is proven or obvious public motives. He would refer to another judgment of the Supreme Court that is, ***Manish Kumar Shah vs. State of Bihar and Others [(2010) 12 SCC 576]***, to buttress his argument as above.
16. His further argument would be that the provisions under clause 3 (c) of the memo No. 1628 would not be mandatory, but only a directory provision. Therefore, failure to comply therewith, as alleged and if at all, would not render the entire process as vitiated. He would indicate that selection of the teacher's representative as a member of the selection committee would not be in conflict with or contradiction to the scope and objective of the said memo No. 1628. For this reason, the procedure for selection of one of the members of the selection committee, that is, the teacher's representative, cannot be challenged by the writ petitioner. On this, Mr. Jahan would refer to a decision of the Supreme Court in ***L.Hazari Mal Kuthiala vs Income Tax Officer, Special Circle, Ambala Cantt. [1960 SCC Online SC 92]***. Such directory provision of the statute, though would normally be required to be complied with, if ignored and no prejudice is pleaded even if it has been ignored, a process pursuant thereunder would not be considered as tainted with any illegality. According to the said respondent, the petitioner has failed to plead

any prejudice to have been caused to her due to such alleged non-compliance with the prescribed procedure for selection of the teacher's representative. Therefore, finding the process of recruitment to be vitiated due to alleged non-compliance of the said prescribed provision, directory in nature, would not be in conformity with the settled legal principles. In support of this contention, Mr. Jahan has referred to the judgment of Supreme Court in ***Dove Investments (P) Ltd & Others vs. Gujarat Industrial Investment Corporation & Another* [(2006) 2 SCC 619]**.

17. Therefore, the respondents would seek dismissal of the present writ petition.
18. On careful reading of the judgments referred to by the parties, as mentioned above, it is evident that the Courts have time and again held that the selection committee being an expert body, is empowered to assess the merits of the incumbents objectively and there would not be any reason under normal circumstances, for a Court in judicial review of such decision of the selection committee, to interfere into the same, unless any illegality or patent material irregularity in the construction of the committee or its procedure and proved malafides affecting the selection etc, are demonstrated. This being the law, now this Court, in this case is to assess if such limited grounds for interfering into the decision of the selection committee, are available in this case or not.
19. The Memo No. 1628 has provided the guidelines as to how a selection committee for appointment of Assistant Headmasters, is to be constituted. Let the said provision be extracted hereunder for benefit of discussion.

“3. A) The School Authority shall for a Selection Committee for selection of Assistant Headmaster /Assistant Headmistress with the following persons:-

- (a) Secretary of the Managing Committee/Ad-hoc Committee Administrator of the concerned Institution, if the Headmaster/Headmistress and the Secretary of the School are one and the same person, the President of the Committee shall be included as a Member.***

- (b) The Headmaster/Headmistress/Teacher-in-charge/Superintendent of the concerned institution.**
- (c) One Teachers' Representative to be selected by the Managing Committee; in case of Govt. Sponsored Schools where there is no Teachers' Representative in the Managing Committee, one of the approved Assistant Teachers of the School to be selected by the Managing Committee. In Schools having Administrator/Ad-hoc Committee, Teachers' Representative shall be selected by the Teaching Staff in a meeting convened by the Head of the Institution.**
- (d) One nominee of the Panchayet Samity for Institution situated in Rural Area to be nominated by the Sabhapati, for other areas, one Member of the Managing Committee, other than representative of the Teachers or Non-Teaching Staff to be selected by the Managing Committee. The nominee of the Panchayet Samity, however, shall not be a member of the staff or that school.**
- (e) EXTERNAL EXPERT:- An approved Head of a Recognised High and Higher Secondary School/High Madrasah having at least 5 years' continuous teaching experience as Head of the said Institution situated within the Sub-Division where the school is situated."**

20. Hence, the selection committee would consist of the following five members, (i) the administrator, (ii) the headmaster, (iii) the expert, (iv) a panchayat nominee and (v) a teacher's representative. The petitioner has raised question as to the appointment of the teacher's representative to the selection committee. According to her, appointment of the teacher's representative has not been done in compliance with the clause 3 (A) (c) of the said memo No. 1628, since he has not been selected by the school managing committee, as prescribed, but has been elected from amongst the teachers.

21. In this regard the Court may refer to the resolution dated December 27, 2017, of the staff council comprised with the approved permanent teachers. It shows that two names were proposed and from those one has been chosen in the said meeting, to be the teacher's representative in the selection committee.

Pertinent is to note that the petitioner has also been present in the said meeting on December 27, 2017.

22. This being the process to finalise the name of the teacher's representative, the Court is unable to find any process of election to ultimately reach to the decision for finalising the name of the teacher's representative. The process of election would predominantly include casting votes and the person being elected on the basis of the highest votes being granted in his favour. However, contrarily, from the two recommended names, staff council in the said meeting has chosen one, to be the teacher's representative in the selection committee. Though the agenda obviously mentions the word election (nirbachan), however the Court must not only go to the nomenclature mentioned therein but should look into the process undertaken by the council to come to a decision. As discussed above, there has not been any process of election undertaken to finalise the name of the teacher's representative but from amongst the two proposed names one was chosen. This process undoubtedly amounts to selecting a person to be the teacher's representative. Under such circumstances the Court cannot find it to be beyond the purview of the guidelines for selection of teacher's representative as per memo No. 1628, which has provided that the teacher's representative to the selection committee has to be selected.

23. The writ petitioner has been present in the said meeting. Regarding the decision of the Council, the petitioner has not raised any objection. Later on, she has appeared before the selection committee which comprised with the teacher's representative, in whose selection she herself has taken part. In view of these circumstances, her raising any dispute as to the veracity of appointment of the teacher's representative to the selection committee should be considered to be barred by estoppel by conduct of the petitioner. Since, on the basis of the discussion as above, the court is

unable to find any patent material irregularity in construction of the selection committee as alleged. The ratio of the judgment of ***Jayashri Ghosh (supra)*** and ***Mriganka Mondal (supra)***, would not be applicable in this case for the petitioner. Awareness of the petitioner of the manner in which the selection process would be conducted and completed, debars her at a subsequent stage, to challenge its legality and propriety.

24. Malafide and biasness are the other allegations of the petitioner, in the process of allotting marks. The law is well settled, as discussed above that objective consideration by the selection committee would not normally be gone into by the court in a judicial review, unless the same is enough gross to lead to a patent illegality in the process. In this case, the petitioner, instead of bringing on record any proof of alleged malafide being exercised by the teacher's representative and panchayat member of the committee, has expressed her anguish and apprehension, that since the other three members have granted her higher marks, the lower marks granted to her by the said two members would not only be disproportionate but also would bring forth their malafide intention to victimise the petitioner. She would say that marks allotted to her by the said two members of the selection committee is unnaturally disproportionate than the marks allotted to her by the other three members. However, mere apprehension of the petitioner without any demonstration of malafide or expressed biasness of the said members of the selection committee, would not lead this Court to interfere into the objective considerations by the selection committee as a whole, of the merits and performance of the petitioner.
25. Further, the Court can notice from the prayers made in this writ petition, by the petitioner that she desires a result on the basis of the marks allotted by the majority member of the selection committee. As a

matter of fact, the prayer of the petitioner is not for setting aside the entire selection process on the ground of illegality or malafide, but to recast the panel, on the basis of the marks allotted by the majority members of the selection committee, against whom she has not raised any grievance in this case. However, the memo No. 1628 has not provided for any such majority decision to be sufficient for preparation and publication of the panel of the successful candidates. Such prayer of the petitioner would not be maintainable being dehors the prescribed rules.

- 26.** Secondly, it is the trite law that he who seeks equity, must also do equity. The writ petitioner cannot seek resolution of her grievance in a way as favourable to her. The process as a whole has to be fair, unbiased, transparent and in accordance with the law. Prayer of the petitioner for accepting the result of the selection process in a piecemeal, would not be in conformity with the settled law, if granted.
- 27.** Hence, on the basis of the discussion as above, the Court is unable to find any illegality or patent material irregularity in the construction of the committee or its procedure and proved malafides affecting the selection etc., in this case. Therefore, according to the settled law as discussed above, there would not be any reason for this Court to interfere into the decision of the selection committee and the panel prepared, in this case.
- 28.** The writ petition being WPA No. 2652 of 2018 is dismissed.
- 29.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)