

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA**

**Constitutional Writ Jurisdiction**

**Appellate Side**

**Present :**

**The Hon'ble Justice Abhijit Gangopadhyay**

**WPA 23034 of 2018**

**Samsul Haque**

**-Versus-**

**The State of West Bengal & Ors.**

For the petitioner	: Mr. Prosenjit Mukherjee
	: Mr. Saptarshi Chakraborty
	: Mr. Arghya Kamal Das
	: Ms. Poulami Dutta
For the State	: Mr. Himadri Sikhar Chakraborty
	: Ms. Debdooti Dutta
For the Respondent No.7	: Md. Sarwar Jahan
	: Mr. Debanshu Ghorai

**Heard On: 30.06.2021, 22.07.2021, 29.07.2021, 13.08.2021 & 23.08.2021**

**Judgment On: 23.08.2021**

**Abhijit Gangopadhyay, J.**

The matter relates to selection and appointment of Mukhya Samprasarak In-charge in Madhyamik Siksha Kendra (In short MSK). The allegation of the petitioner is this he being the seniormost Siksha Samprasarak, should have been given the responsibility of Mukhya Samprasarak In-charge after the retirement of the Mukhya Samprasarak of the MSK on 2<sup>nd</sup> June, 2018.

But from the report submitted today before this court by the Block Development Officer of the Sagardighi Block, it appears that a person who is

junior to the petitioner, namely, Rafikul Islam (Respondent No. 6) was appointed as Mukhya Saprarak by the Administrative Committee of the said MSK. Such decision was taken on 14.12.2018 but there was no guideline or circular or order of the Government of West Bengal as to appointment of Mukhya Samprasarak In-charge at the material point of time as has been disclosed in Annexure 'R-7' at page 17 of the Report which is an order dated 27<sup>th</sup> May, 2019. In the said order dated 27<sup>th</sup> May, 2019 it has been stated that the new Mukhya Shiksha Samprasarak/Samprasarika In-charge or Samprasarak/Samprasarika In-charge will be selected by the Administrative Committee out of the working Samprasarak etc. on the basis of seniority in service and preference would be given to the person who has a B.Ed. Degree.

2. Learned advocate for the petitioner submits that when Mukhya Samprasarak In-charge was selected by the Administrative Committee of the Maliadanga MSK, this order dated 27<sup>th</sup> May, 2019 of the Government of West Bengal was not there and, therefore, in absence of any restropectivity of this order dated 27.05.2019 this cannot be made applicable to the petitioner. In any event, he has made a submission, that even in this order it is a question of giving preference but on the basis of 'seniority in service' in MSK is also mentioned in the order meaning thereby that if there are two similarly situated Samprasaraks in one MSK, then the one of B. Ed. Degree would be considered. The emphasis of this order dated 27.05.2019 also is on the seniority.

3. Learned advocate for the State has submitted that at that point of time when the private respondent being the respondent no.6 was selected as the Mukhya Samprasarak In-charge, there was no guideline as to who could be appointed as Mukhya Samprasarak In charge and, therefore, as per direction of

the concerned Block Development Officer, the Administrative Committee selected the private respondent being the respondent no.6 as the Mukhya Samprasarak In-charge of the concerned MSK.

4. In this respect I hold that when there was no guideline as to who would be appointed as the Mukhya Samprasarak In-charge in MSK, it is the seniority which should be taken into account and not any other thing. From the resolution taken by the Administrative Committee dated 14.12.2018 as found from page 15 of the Report submitted before this court today, it appears that why the respondent no.6 as Samprasarak junior to the petitioner in the said MSK was appointed as the Mukhya Saprarak In-charge of the said MSK is not clarified. The resolution only says, the cooperating attitude and acceptability had been carefully considered and the said person, namely, Rafikul Islam was appointed as the Mukhya Saprarak In-charge of the said MSK. This resolution is actually non-speaking and does not disclose the shortcomings of the petitioner or the specific cooperating attitude and acceptability of the private respondent being the respondent no.6. Therefore, the appointment of the private respondent, I find, is not in accordance with the policy of the State relating to appointment in such posts when a question of selection comes to similarly placed persons, the principle of the State is that the seniority is to be followed and in every known field of service if there is no other conditions laid down in selection of persons for a post wherein a selection is to be made from equally placed candidates seniority is given preference.

5. For the reasons as aforesaid I set aside the appointment of respondent no.6 as the Mukhya Samprasarak In-charge of the said MSK and I direct the concerned authority i.e. B. D. O. of Sagardighi Block to cancel the appointment

of Rafikul Islam as Mukhya Samprasarak In-charge forthwith and to appoint the petitioner, namely, Samsul Haque as the Mukhya Samprasarak In-charge of the MSK forthwith.

6. This writ application is allowed and under no circumstances the BDO shall delay the matter more than two days after receiving a copy of this order passed today.

7. The Report filed by the concerned BDO be kept with the record.

8. All the parties are directed to act on the basis of a website copy/server copy of the order passed today by this court.

9. No costs.

**(Abhijit Gangopadhyay, J.)**