
State of West Bengal & Ors @APPELLANT@Hash Nihar Biswas & Ors

Can 10110, 12023, 10109, 12277, 705, 7067, 00, 4579 Of 2017, 3206 Of 2018, Fma 1615 Of 2018, Mat 1412, 78, 1889, 1906 Of 2017

Court: Calcutta High Court

Date of Decision: Oct. 12, 2018

Acts Referred:

National Council for Teacher Education Act, 1993 " Section 12(d), 32(2)(d)(i)#Right of Children to Free and Compulsory Education Act, 2009 " Section 2, 428(E)#West Bengal Primary Teachers Recruitment Rules, 2001 — Rule 4, 9(2), 10#Constitution of India, 1950 " Article 14, 16, 19(1)(a), 21A, 226

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Kishore Dutta, Saugata Bhattacharya, Biswarup Biswas, Laxmi Kumar Gupta, Biswaroop Bhattacharya, Sudeshna Das Mazumder, Ali Ahsan Alamgir, Saugata Bhattacharya, Saugata Bhattacharya, Biswarup Biswas, Bhaskar Prasad Vaisya, Pinaki Bhattacharyya

Final Decision: Dismissed

Judgement

Dipankar Datta, J.

1. There is a batch of five intra-court writ appeals before us, having a common genesis; hence the same were heard together. There is also an intra-

court writ appeal at the instance of strangers to one of the proceedings before the writ court. An application seeking leave to file such appeal is on

record. Since the strangers' appeal is directed against one of the orders which is already under challenge in the said batch of appeals, we propose

to dispose of all these appeals by this common judgment and order.

2. The District Primary Schools Councils of Howrah, Malda, 24-Parganas (South) and 24-Parganas (North) (hereafter "the Councils", wherever

referred to jointly) in the year 2009 intended to fill up vacant posts of Assistant Teachers in primary schools within their respective jurisdiction. With

that in view, due process was initiated. Advertisements were published at the instance of the Councils inviting applications from eligible candidates.

The West Bengal Primary Teachers Recruitment Rules, 2001 (hereafter "the 2001 Rules"), as it stood on the day of publication of the

advertisements, were the governing rules that each of the Councils was required to abide by. Insofar as academic qualifications are concerned, rule 6

of the 2001 Rules stipulated that an aspiring candidate must have passed the School Final/Madhyamik examination conducted by the West Bengal

Board of Secondary Education or equivalent with training, or erstwhile Higher Secondary Examination (Class XI) conducted by the West Bengal

Council of Higher Secondary Education or equivalent with training; however, a trained candidate would be entitled to extra marks in the manner

prescribed under clause (d) of sub-rule (2) of rule 9. Several candidates offered their candidature. Written examinations were also conducted by the

Councils whereafter panels were prepared and forwarded to the Director of School Education, West Bengal together with all relevant documents for

approval. However, the panels were not approved due to detection of serious flaws in the process that was initiated. An order dated January 21, 2012

was issued by the School Education Department, Government of West Bengal (hereafter "the said G.O."), whereby the process of selection

initiated by the Councils stood cancelled; however, the Councils were permitted to restart the selection process by holding written examinations. It was

indicated in the said G.O. that only those who had taken the earlier written examinations would be entitled to take the fresh written examinations. For

facility of reference, the said G.O. is quoted below:

No.255-SSE/12/ES/P/10M-141/2010 (Pt) dated, Kolkata, the 21st June, 2012

ORDER

WHEREAS under Section 60(1) of the West Bengal Primary Education Act, 1973 (Act XI, III of 1973) it is the duty of District Primary School

Council in each District to appoint Teachers of Primary Schools under the jurisdiction of the respective Council subject to the prescribed conditions;

AND WHEREAS process of recruitment of Primary School Teachers against the vacancies was initiated by all District Primary School Councils in

West Bengal accordingly in 2009 and most of them had completed the same;

AND WHEREAS the District Primary Schools Councils of North 24 Parganas, South 24 Parganas, Howrah and Malda had failed to complete the

recruitment process till now due to some unavoidable reasons;

AND WHEREAS the Chairmen, DPSCs of North 24 Parganas, Howrah and Malda have detected serious irregularities in the recruitment

examination;

AND WHEREAS the aforesaid Chairmen, District Primary School Councils have informed this Department severally that the irregularities found in

the recruitment process are irreparable at this point of time;

AND WHEREAS the aforesaid Chairmen, District Primary School Councils have further observed that if the earlier process of recruitment of

Primary School Teachers is allowed to be completed a large number deserving candidates will be prejudiced in the selection process and some under

merited and undeserved candidates may be appointed which may cause serious loss to the development of Primary Education in the aforesaid four

Districts and will be against the Government policy towards maintenance of transparency in the recruitment process of Primary Teachers and may

accordingly cause serious public harm;

NOW THEREFORE, exercise of the powers given under Section 107 of the West Bengal Primary Education Act, 1973 (Act XLIII of 1973) the

Governor is pleased to order that the aforesaid recruitment examinations conducted by the District Primary School Councils of North 24 Parganas,

Malda and Howrah be cancelled and directs the respective chairman of the concerned District Primary School Councils to conduct the recruitment

examination de novo provided that only the eligible candidates who had applied for recruitment against the advertisement issued by the concerned

District Primary School Council and had appeared in the written examination are allowed to appear in the de novo examination and so separate fees

are collected from them for appearing in such examinations. No other candidates except those who were allowed to appear in the earlier recruitment

examination conducted for the same purpose will be allowed to appear in the de novo written examination. The entire process must be completed and

the final panel published by the respective District Primary School Councils within a period of 90 (ninety) days from the date of issue of this order.

Sd/- (Vikram Sen)

Principal Secretary to the Government of West Bengal

3. Issuance of the said G.O. resulted in a spate of litigation at the instance of candidates who had acquired eligibility, post 2009, to participate in any

selection process for recruitment of Assistant Teachers in primary schools within the jurisdiction of the Councils. Interim orders were passed by

learned single Judges restraining the Councils from holding the written examinations. Appeals having been carried before Division Benches, the same

were disposed of with directions. It is not necessary for the present purpose to refer to the orders passed in each of such writ petitions or writ appeals,

but we propose to refer to some of them which have a material bearing on the issues raised in these appeals a little later.

4. We place on record that although writ petitions were presented by candidates hailing from the districts of Howrah and South 24-Parganas

challenging the written examinations sought to be held by the District Primary School Council, Howrah (hereafter "the Howrah DPSC") and the

District Primary School Council, South 24-Parganas (hereafter "the South DPSC"), presently there is no dispute insofar as appointments made

by such councils are concerned. Fresh written examinations were conducted by the Howrah DPSC and the South DPSC in terms of the said G.O.

and the selected candidates have been offered appointment. Pertinently, the candidates so appointed do not necessarily belong to the category of

trained candidates because training qualification was not an essential qualification in terms of the 2001 Rules as it existed in 2009 when the process for

recruitment commenced initially. In this batch of writ appeals, we are concerned with grievances of candidates hailing from Malda and North 24-

Parganas districts only.

5. In WP 18325 (W) of 2011 (Mohitosh Jana v. the State of West Bengal), candidates from South 24-Parganas district were the writ petitioners. They

had questioned the de novo written examination that was scheduled to be held on August 26, 2012 by the South DPSC in compliance with the said

G.O. That apart, the authority of the State Government to issue the said G.O. was also questioned in such writ petition. By an interim order dated 24th

August, 2012, a learned Judge restrained the South DPSC from conducting the written examination till the disposal of the writ petition; liberty was,

however, granted to the respondents to apply for vacating, variation and/or modification of such interim order upon notice to the other side. Similar

order, as above, was passed by the learned Judge on the same date in WP 18609 (W) of 2012 (Amiya Kumar Sarkar and ors. v. The State of West

Bengal and ors.), pertaining to the process initiated in pursuance of the said G.O. by the District Primary School Council, Malda (hereafter "the

Malda DPSC").

6. The State of West Bengal carried 3 (three) appeals to the appellate court from such orders. MAT 1697 of 12 and MAT 1174 of 13 were presented

pertaining to the order concerning the South DPSC and the Malda DPSC, respectively. The third appeal, MAT 1175 of 13, was directed against the

order passed in WP 18325 (W) of 2012 (Mohitosh Jana and ors. v. The State of West Bengal and ors.), mentioning the district as North 24-Parganas

on the first page of the memorandum of appeal although the respondents 1 to 13 in such appeal (being the writ petitioners) hailed from the district of

South 24-Parganas.

7. The applications for stay in connection with the aforesaid appeals were listed for consideration before the appellate court on 18th September, 2013.

The order of the appellate court dated 18th September, 2013, to the extent relevant, is set out below:

"And on that basis an interim order was passed staying the operation of the order dated 21st June, 2012 as also staying the re-examination

scheduled to be held on 26th August, 2012. The Learned Trial Court had in fact issued direction for filing affidavits. But the affidavits do not appear to

have been exchanged because the present appeal was filed. Due to the aforesaid interim order passed by the Learned Trial Court re-examination

could not be held and the process of selection has been stalled, which is likely to affect the candidates adversely because they may in the meantime

get age barred. Loss arising out of delay in appointment is another prejudice, which is likely to affect all eligible candidates. The facts and

circumstances in which the order dated 21st June, 2012 appears to have been passed by the State of West Bengal is alarming to say that the least.

The only point which found favour with the Learned Trial Court was the authority of the State of West Bengal to pass the order dated 21st June, 2012

and the decision to hold re-examination of the candidates. Prima-facie it appears that in the facts of the case re-examination is the only way out.

Whether the State had the competence or not to pass the order dated 21st June, 2012 may be debatable.

Considering the balance of convenience we are of the opinion that the re-examination should not have been stopped. Consequently the order under

challenge is set aside. The authorities shall be at liberty to conduct the re-examination or fresh examination as the case may be as early as possible.

They shall also be entitled to prepare the panel but the panel shall not be given effect to during the pendency of the writ petition without leave of

Court. The parties shall be at liberty to file their affidavit-in-opposition to the pending writ petition within a week after the Puja vacation. Reply, if any,

be filed within two weeks thereafter. It will be open to the parties to mention the writ petition for hearing before the appropriate Bench. The learned

Trial Court is requested to use expedition as far as possible and to dispose of the matter at an early date.

8. The essence of the aforesaid order of the appellate court was that the process of selection by conducting fresh examinations could proceed till

finalisation of the panel but no effect of such panel could be given during the pendency of WP 18325(W) of 2011 (Mohitosh Jana and ors. v. The

State of West Bengal and ors.) and WP 18609 (W) of 2012 (Amiya Kumar Sarkar and ors.v. The State of West Bengal and ors.).

9. WP 9739(W) of 2012 (Sri Atanu Chakraborty and ors. v. State of West Bengal and ors.) was a writ petition presented by candidates hailing from

the district of Howrah, in which the said G.O. was not under challenge. It was, however, placed in course of hearing before the writ court. His

Lordship held that since the petitioners had been given the opportunity to participate in the written examination, no prejudice would be caused by

reason of the same (i.e., the said G.O.). while granting liberty to the petitioners to challenge the said G.O., the writ petition was dismissed by

judgment and order dated 22nd June, 2012. An appeal was carried to the Division Bench (FMA 3116 of 2013). The appeal stood dismissed on 9th

June, 2014 with a direction upon the Howrah DPSC to complete the selection process in terms of the said G.O. within the time mentioned therein.

10. This was followed by another judgment and order dated 2nd December, 2014 of the Division Bench in AST 419 of 2014 (The District Primary

School Council, Howrah & anr. v. Himanshu Mondal & ors.). While setting aside an interim order passed on WP 31563(W) of 2014 (Himangshu

Mondal and ors. v. State of West Bengal and ors.) restraining the Howrah DPSC from making any appointment on the posts of Assistant Teachers

for which the written examination was conducted in September, 2014, the appellate court observed that since the said G.O. had been approved by a

coordinate bench (meaning thereby, the order dated 9th June, 2014), the learned single Judge ought not to have been invited to consider the legality of

the said G.O.

11. Be that as it may, the Malda DPSC and the District Primary School Council, North 24-Parganas (hereafter the North DPSC) too proceeded to

conduct fresh examinations and thereafter prepared panels of candidates for appointment as Assistant Teachers in primary schools within its

respective jurisdiction. In terms of rule 10 of the 2001 Rules, the panels were forwarded to the Director of School Education, West Bengal for his

approval.

12. The panel prepared by the Malda DPSC exercised due consideration of the Directorate of School Education. The Deputy Director of School

Education, West Bengal (hereafter the Deputy Director), by his memo dated 11th June, 2015, approved the panel provisionally for a year (twelve

months) with the observation that such panel shall abide by the result of the final order and judgment of the Hon'ble Division Bench, High Court at

Calcutta in WP 31563 (W) of 2014 (Himangshu Mondal and ors. v. State of West Bengal and ors.) and other writ petitions.

13. Insofar as the panel prepared by the North DPSC is concerned, the Deputy Director by his memo dated 17th June, 2015 provisionally approved

the same for 1 (one) year (twelve months) with an observation that approval of the panels "shall be abide by the leave of the Hon'ble Division

Bench, High Court, Calcutta and result of the final order and judgment of the Hon'ble Division Bench, High Court, Calcutta in the Court cases

W.P. no. 30510(w) of 2014 (Rafikul Mondal vs. State of West Bengal and others) and W.P. no. 30744(w) of 2014 (Mithun Aich & Others vs. State

of West Bengal and Others) and other writ petitions, if any.

14. Despite such provisional approval, the panels prepared by the Malda DPSC and the North DPSC were not worked out and hence appointments

were not made therefrom.

15. This again resulted in presentation of four writ petitions before this Court, ~ two writ petitions were moved by candidates hailing from North 24-

Parganas district and two by those hailing from Malda district.

16. WP 1686 (W) of 2017 (Chiranjit Mondal and ors. v. State of West Bengal and ors.) (hereafter WP-I) and WP 15128 (W) of 17 (Nihar Biswas

and ors. v. State of West Bengal and ors.) (hereafter WP-II), were presented before the learned Judge of the writ court by some of the candidates

empanelled by the North DPSC. WP-I and WP-II were disposed of by a learned Judge of the writ court by a common order 19th July, 2017. His

Lordship was of the considered opinion that "the life of a panel does not commence until its publication" and that "provisional approval of the

panel by the memo dated 17th June, 2015 would not mean that the life of the panel started on 17th June, 2015. Since it was reported to His Lordship

that the writ petitions referred to in the panel approving order of the Deputy Director were dismissed and there was no order restraining effect being

given to the panel, the North DPSC and its chairman were directed by such order to take necessary steps for issuing appointment letters to the

empanelled candidates in accordance with law.

17. The order dated 19th July, 2017 passed on WP-II is the subject matter of challenge in FMA 1615 of 2018, at the instance of the State, the

Commissioner of School Education, West Bengal, the District Inspector of Schools (P.E.), North 24-Parganas, the North DPSC and its chairman. The

order dated 19th July, 2017, disposing of WP-I, is also under challenge in MAT 1412 of 2017 at the instance of the self-same appellants in FMA 1615

of 2018.

18. The other appeal, MAT 78 of 2018, is at the instance of strangers to the proceedings and is directed against the order dated 19th July, 2017

disposing of WP-II. They have applied for leave to appeal (CAN 706 of 2018), condonation of delay in presentation of the appeal (CAN 700 of 18)

and stay (CAN 705 of 2018).

19. These are the appeals concerning the process of recruitment initiated by the North DPSC.

20. The other appeals, MAT 1889 of 2017, MAT 1906 of 2017 and MAT 1999 of 2017 pertain to the recruitment process initiated by the Malda

DPSC. WP 21533 (W) of 2017 (Sri Ranjit Kumar Jha and ors. v. State of West Bengal and ors.) (hereafter WP-III) and WP 21997 (W) of 2017

(Murtuja Ali and ors. v. State of West Bengal and ors.) (hereafter WP-IV) pertained to identical grievance of some of the candidates who figured in

the panel prepared by the Malda DPSC. The said writ petitions were disposed of by the self-same learned Judge (who disposed of WP-I and WP-II

by order dated 19th July, 2017) by a common order dated 7th September, 2017, the contents whereof bear close resemblance to the order dated 19th

July, 2017, noticed above. The North DPSC and its chairman were directed to offer appointments to the empanelled candidates for the same reasons

appearing in the order dated 19th July, 2017.

21. The aforesaid order dated 7th September, 2017 disposing of WP-III and WP-IV has been challenged by the District Inspector of Schools (P.E.),

Malda by presenting MAT 1889 of 2017 and MAT 1906 of 2017, respectively, whereas the order dated 7th September, 2017 in WP-IV is questioned

by the Malda DPSC and its chairman in MAT 1999 of 2017. We have heard Mr. Dutta, the learned Advocate General for the State and its officers as

well as the North DPSC and its chairman, Mr. Vaisya, learned advocate for the appellant in MAT 1889 of 2017 and MAT 1906 of 2017, Mr. Kalyan

Kumar Chakraborty, learned advocate for the Malda DPSC, Mr. Gupta, learned senior advocate for the writ petitioners (respondents in FMA 1615 of

2018), Mr. Bhattacharya, learned advocate for the writ petitioners (respondents in MAT 1412 of 2017), Mr. Arnab Saha, learned advocate for the

writ petitioners (respondents in MAT 1999 of MAT 1906 of 2017), Mr. Basu, learned senior advocate for the added respondents as well as learned

advocates representing the applicants seeking addition of party, at length.

22. At the outset, Mr. Dutta took exception to the writ petitions being disposed of with mandatory directions on the first day the same were moved

without even extending opportunity to the State to place its stand. According to him, the writ petitioners had not pleaded full facts and the complex

issues involved in the writ petitions could not have been decided without affidavits.

23. However, the main point canvassed by Mr. Dutta (which, he submitted, could not be placed before the learned Judge) is that the writ petitions, out

of which these appeals arise, were not maintainable in law. Two points were urged by him in this regard. The first relates to belated presentation of

the writ petitions and the second to the absence of any legal right of the writ petitioners.

24. It was contended by Mr. Dutta that a panel gets its life from the date of approval thereof by the Director of School Education and there being no

provision in the 2001 Rules for publication, as observed by the learned Judge, the panel lost its life upon expiry of a year of such approval; and the writ

petitions having been presented after expiry of the relevant provisionally approved panels, the writ petitions should not have been entertained on the

ground of unexplained delay and laches.

25. Next, by chanting "mere empanelment does not create an indefeasible right of appointment" like a mantra, it has been contended by Mr.

Datta that the writ petitioners had no legal right to invoke the writ jurisdiction of this Court. Several decisions of the Supreme Court have been cited in

support thereof.

26. Mr. Dutta further contended that with the enactment of the Right of Children to Free and Compulsory Education Act, 2009 and the National

Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001, leading to

amendment of qualifications in the 2001 Rules, there has been a sea change in the qualifications which candidates aspiring to be primary teachers are

required to possess and none can be appointed as a teacher unless he possesses training qualifications. According to him, none of the writ petitioners

who had been empanelled pursuant to the process of selection that was resumed in terms of the said G.O. have such qualifications and, therefore, are

not qualified for appointment. It was also the contention that if such untrained candidates are appointed, that would not only be contrary to the statutory

scheme but would also be prejudicial to the interests of the younger generations attending the primary schools for lessons.

27. It was brought to our notice by Mr. Dutta that the 2001 Rules were amended vide notification dated 24th July, 2012, published in the Kolkata

Gazette dated 13th August, 2012, to bring the same in conformity with the 2011 Regulations of the National Council for Teacher Education (hereafter

the NCTE). In terms thereof, the responsibility of preparing a panel has been entrusted upon the West Bengal Board of Primary Education (hereafter

the Board).

28. Carrying his argument forward, Mr. Dutta placed before us an advertisement dated 26th September, 2016 issued by the Board. By such

advertisement, the Board had invited applications from candidates interested to offer their candidature for appointment as primary teachers in schools

within the jurisdiction of, inter alia, the North DPSC and the Malda DPSC, and proceeded to fill up all the vacancies that were advertised which

included all the vacancies in primary schools under the jurisdiction of the Malda DPSC and the North DPSC. Drawing our attention to the cause-titles

of the writ petitions, it was contended that the same did not have in the array of respondents the Board and, therefore, such petitions were defective

for non-joinder of a necessary party.

29. The next contention of Mr. Dutta, flowing from the above contention, is that there are no vacancies to accommodate the writ petitioners pursuant

to the directions of the learned Judge under challenge in these appeals. According to him, by not inviting the State, the Malda DPSC and the North

DPSC to file counter affidavits, the entire picture had not emerged before the learned Judge and the writ petitions were practically disposed of by His

Lordship so to say, on half-baked facts.

30. From the affidavit-in-reply dealing with the counter affidavit to the application for stay in MAT 1412 of 2017, it was revealed that upon

entrustment of the responsibilities on the Board, the procedure for conducting Teacher Eligibility Test (TET) was introduced. A vacancy list was

obtained from the North DPSC on 30th September, 2016 which stood at 5143 and all such vacancies had been filled up (including the 2639 vacancies

for which recruitment process had been initiated in 2009).

31. Mr. Dutta, accordingly, prayed that the orders under appeal may be set aside and the appeals allowed.

32. Instead of recording the contentions advanced by the learned advocates opposing the appellants separately, we consider it appropriate to note the

essence of the same below.

(i). In proceedings under Article 226 of the Constitution, the laws of limitation do not apply. All that is required for invocation of the extraordinary writ

jurisdiction is to approach the Court without undue delay and laches. Although the panels (prepared by Malda DPSC and North DPSC) had been

approved provisionally for one year in June 2015, the Malda DPSC and the North DPSC were enjoined from making appointments therefrom by

reason of the order dated 18th September, 2013 of the appellate court till such time the writ petitions referred to therein were disposed of. Such writ

petitions were disposed of, and effectively the injunction granted by the appellate court stood lifted, only after presentation of WP-I, WP-II, WP-III,

and WP-IV. Question of delayed approach, therefore, does not arise.

(ii). That apart, the writ petitioners were not informed by the Malda DPSC and the North DPSC the real reason as to why the panels prepared by it

were not being worked out. The writ petitioners had a right to know. This is their fundamental right flowing from Article 19(1)(a) of the Constitution.

It was an absolutely illegal act on the part of the Malda DPSC and the North DPSC to maintain silence beforehand and subsequently to question the

orders passed by the learned Judge after the concerned writ petitions were dismissed thereby paving the way for appointment. The impression that the

writ petitioners carried was that the panels were not being worked out because of the pending writ petitions. Now that such writ petitions stood

dismissed and the learned Judge had directed offers of appointment to be issued by working out the said panels, it ill behoves the State to raise the

objection of belated approach.

(iii) The writ petitioners had not approached the writ court after expiry of the panels; in fact, life was not infused in the panels so long the writ

petitions, referred to in the order dated 18th September, 2013 of the appellate court and the panel approving orders, were pending before this Court.

The time during which a panel though prepared and approved could not be worked out has to be excluded for the purpose of computation of the life of

such panel. For the same reasons, it is illogical to contend that the writ petitioners had approached the Court after the life of the panels had expired.

(iv). Although, mere empanelment does not create an indefeasible right of appointment in the empanelled candidates, the authorities are precluded

from giving a go-bye to a panel, which is duly and validly prepared, without plausible justification. The justification advanced for not working out the

panels prepared by the Malda DPSC and the North DPSC, i.e., there has been a change in the essential qualifications, is not tenable at all having

regard to the fact that the panels prepared by the Howrah DPSC and the South DPSC have been given effect and/or worked out at a point of time

when the changed qualifications had come into existence. Since fresh written examinations were conducted in the districts of Howrah and South 24-

Parganas in pursuance of the said G.O., it is not open to the State to say that the changed qualifications would not apply to the candidates hailing from

such districts (i.e., Howrah and South 24 Parganas) but would be applicable so far as the candidates hailing from the districts of Malda and North 24

Parganas, are concerned. Considering the contents of the said G.O., the fresh examinations conducted by the Councils (Howrah, Malda, North 24-

Parganas and South 24-Parganas) must be treated to be an integrated whole process; if the changed qualifications are made applicable to two districts

and not made applicable to the other two districts, that would amount to invidious discrimination which is contrary to the provisions of equality

guaranteed by the Constitution.

(v). The argument that presently there are no vacancies to accommodate the writ petitioners because such vacancies have been filled up in pursuance

of the process initiated by the Board amounts to a fraud not only on those who were earnestly and legitimately expecting an offer of appointment after

having been duly empaneled, but also on the Court. The State by carrying an appeal from one of the orders passed by the writ court had the validity of

the said G.O. upheld; not only that, there is an observation in one of the orders of the appellate court that the said G.O. had merged in a previous

appellate court's judicial order. That being the position, the said G.O. having been consciously issued to fill up an identified number of vacancies,

such vacancies should have been allowed to be filled up through the process that followed in pursuance of the said G.O. and the changed rules would

not apply to such vacancies.

(vi). The Board in its advertisement dated 26th September, 2016 did not even make a whisper that the vacancies for which the fresh examinations

were conducted, would be filled by the process initiated by it; as a result thereof, it was a blow below the belt to the writ petitioners and similarly

placed candidates in the panel. Since the writ petitioners had no knowledge that the Board had filled up the vacancies in respect whereof they were

aspiring for appointment, question of impleading the Board in the writ petitions did not and cannot arise. The contention urged that the writ petitions

were defective for non-joinder of a necessary party is, thus, without basis.

(vii). It would appear from the orders passed by learned Judges presiding over the writ courts immediately after the said G.O. was issued that Their

Lordships had expressed surprise as to why candidates who are not trained were solely being given the opportunity to participate in the fresh

examinations, and other candidates having training qualifications (acquired post 2009) were being deprived. The State did not accept the orders of the

learned Judges, instead, it presented appeals so that the said G.O. is upheld and further process in terms thereof could be taken to its logical

conclusion. The appellate court had approved the said G.O.

whereafter the fresh examinations were held, the panels were prepared and then approved, but it is really astonishing that sometime in 2016, all on a

sudden, the State changed its policy to dump the empanelled candidates and head for a fresh recruitment process conducted by the Board. By this, the

State has played fast and loose with the empanelled candidates' future career and no Court, far less this Court, should allow the State to

approve and reprobate.

33. While the thrust of Mr. Dutta's arguments is on public interest that would be impaired by appointing the writ petitioners, the focus of the writ

petitioners has been to demonstrate how the State has given them a raw deal.

34. The rival contentions throw up several vital questions, some of which we formulate as follows:

1. Were the writ petitions belatedly filed without any explanation warranting dismissal?

2. Did the writ petitioners not have any legal right to claim that the panels prepared by the Malda DPSC and the North DPSC be worked out, on the

date the writ petitions were presented?

3. What would be the effect of the order of the appellate court dated 18th September, 2013 qua the objection relating to maintainability of the writ

petitions?

4. Was there sufficient justification for the Malda DPSC and the North DPSC not to make appointments from the panels prepared by them, which

were approved (albeit provisionally) by the Deputy Director in June, 2015?

5. Are the writ petitioners not entitled to claim that the period, during which the panels could not be worked out owing to pendency of certain writ

petitions (referred to in the panel approving orders of the Deputy Director), should be excluded for the purpose of computing the life of the panels?

6. Was the State, having expressed serious concern about the future interests of the candidates who had participated in the process for recruitment

initiated by the Councils initially in 2009 and again by conducting written examinations pursuant to the said G.O., justified in abruptly changing its policy

in 2016?

7. Was the Board justified in filling up the vacancies in respect whereof the writ petitioners were aspiring for appointment, without even putting them

on notice?

8. Could the writ petitions be held to be defective for not impleading the Board as a respondent on the face of omission on the part of the Board to

indicate in the advertisement dated 26th September, 2016 that the process initiated thereby would also include the vacancies for which advertisements

had been issued in 2009?

9. Does the action of the Board amount to fraud on the aspiring candidates as well as the Court, particularly when litigation was pending in this Court

concerning such vacancies?

10. How far is the change of policy of the State justified after having allowed the panels prepared by the Howrah, DPSC and the South DPSC to be

worked out, despite the 2001 Rules having been amended and training qualification made an essential qualification for appointment as an Assistant

Teacher in a Primary School prior to making appointments in such districts?

11. Having regard to the terms and scope of the said G.O., do the appointments made by the Howrah DPSC and the South DPSC from the panels

prepared pursuant to the written examinations conducted on the basis of the said G.O. on the one hand and refusal to allow appointments to be made

from the panels prepared by the Malda DPSC and the North DPSC based on the said G.O. on the other, not amount to invidious discrimination

offending Articles 14 and 16 of the Constitution?

12. Can the State be allowed to approbate and reprobate, and is there valid reason not to operate the panels that were prepared by the Malda DPSC

and the North DPSC?

35. The contentions of Mr. Dutta are no doubt attractive but the same have to be examined in the light of the incidents post issuance of the said G.O.,

the conduct of the parties and the plethora of precedents on the legal front.

36. The point which Mr. Dutta has chanted that mere empanelment does not create an indefeasible right of appointment is a principle of law that has

been reiterated in a catena of decisions of the Supreme Court. However, that is not an absolute principle. There are decisions which admit of limited

protection of rights sought to be enforced by the empanelled candidates. We may refer to a couple of decisions that are germane for the present

purpose.

37. The first is the Constitution Bench decision in Shankarshan Das v. Union of India, (1991) 3 SCC 47. Paragraph 7 of the decision is relevant and

hence, quoted below:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the

successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to

an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant

recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the

licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the

vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and

no discrimination can be permitted. ***

38. Rule 4 of the 2001 Rules deals with “filling up vacancies”. While restraining filling up of vacancies in excess of sanctioned posts, it requires

each District Primary School Council to determine number of vacancies in accordance with the preceding rule (i.e., rule 3) and to fill up the vacancies

as and when necessary. Once a vacancy has been advertised, it presupposes the necessity that the relevant school council felt in the interest of

primary education. It is, therefore, debatable that such council is under no legal duty to fill up the vacancy having taken the process to the stage of

approval of the panel. That apart, it could also amount to a discrimination of sorts that the panels prepared by the Howrah DPSC and the South

DPSC, in pursuance of the said G.O. were allowed to be worked out but not the panels prepared by the Malda DPSC and the North DPSC, which

were also prepared in pursuance of the said G.O.

39. The next decision is the one in R.S. Mittal v. Union of India, 1995 Supp (2) SCC 230, wherein it was held as follows:

“10. *** It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He

has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the

appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in

view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint

a person who is on the select panel. ***

(underlining for emphasis)

40. Yet again, the Supreme Court in *Manoj Manu v. Union of India*, (2013) 12 SCC 171, the Court held:

“12. It is, thus, manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may

decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies

should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once it is found that the decision of

the Government is based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies.”

41. In the light of the law laid down in such decisions, it is clear that an empanelled candidate has no right to claim mandamus for appointment if the

employer has valid reason not to make an appointment; but, at the same time, such employer has no authority to act in an arbitrary or unreasonable

manner. In order to deprive a candidate of the fruits of empanelment on an approach being made by such candidate aggrieved by the action of the

employer in not offering him appointment, there has to be justification based on valid reasons recorded upon proper application of mind for such

deprivation and the same ought to be acceptable to the Court. Denial, therefore, has to be the exception and not the rule. Each case, therefore, has to

be examined having regard to the facts and circumstances as well as the justification provided for non-appointment.

42. The other point argued by Mr. Dutta that there has been a sea change with enactment of the 2009 Act and introduction of the 2011 Regulations,

culminating in amendment of the 2001 Rules, touches public interest in general and the interests of the students in particular. However, such point

cannot be examined without due regard to the stand taken by the State Government in the course of contesting the writ petitions that had been

presented by candidates who felt aggrieved by the said G.O. and in proceedings where it was sought to be justified. Such justification is not available

in any of the pleadings filed in connection with the appeals; but, the State’s justification is contained in an affidavit dated 8th December, 2014 filed

in connection with WP 31563 (W) of 14 (*Himangshu Mondal and ors. v. The State of West Bengal and ors.*). Such an affidavit was filed pursuant to

an order passed by the learned Judge in seisin of such writ petition.

It was pleaded in paragraphs 3 to 5 and 8 to 17 as follows:

“3. I say that-

(a) In the year 2009 a recruitment process was initiated for appointment of primary teachers by District Primary School Council in all Districts of

West Bengal, except Siliguri and Darjeeling. In the districts of Howrah, South 24 Parganas, North 24 Parganas and Maldah an employment

advertisement and/or notice was issued by the respondent Council. In the said employment advertisement and/or notice applications were invited for

appointment of primary teachers in terms of the eligibility criteria for appointment of primary teachers was specified as Madhyamik/equivalent

examination.

(b) In terms of the said advertisement several candidates participated in the recruitment process. Applications submitted by such candidates were duly

screened and the eligible candidates were selected for the purpose of written test and interview in the said four Districts, viz., Howrah, South 24

Parganas, North 24 Parganas and Maldah. Select list and the necessary documents were submitted to the Directorate of School Education in

accordance with law. Upon examination and/or scrutiny of select list and the accompanying documents, the Directorate of School Education detected

gross irregularities in the selections process.

(c) Since irregularities in finalising the list of candidates of final panel for primary teachers were detected, a file was initiated at the instance of the

Minister-in-Charge, School Education Department, on August 20, 2010. The process of finalization of the panel was kept in abeyance and an enquiry

Committee was set up to investigate the matter relating to irregularities in the selection process.

(d) On June 21, 2011 an enquiry report was submitted which indicate gross irregularities in the selection process in the District of Howrah. In the

meantime another enquiry Committee was set up to make further investigation into the matter. On July 21, 2011 the said enquiry Committee also

submitted a report which also indicated that gross irregularities in the selection process were writ large on the face of record.

(e) Similarly the Chairman of District Primary School Council in the Districts of Maldah, South 24 Parganas and North 24 Parganas represented

before the Education Department that the selection process held in those Districts were also marred by gross irregularities. The instances of gross

irregularities committed in the selection process were pointed out in the representations submitted by the Chairman of the respective District Primary

School Councils.

(f) The Government thereafter took a conscious decision to cancel the recruitment process from the stage of written test and interview and hold the

recruitment process i.e. written test and interview afresh and afford an opportunity to the candidates screened for interview to participate in the

written test and interview which were to be held de novo.

(g) Accordingly, in exercise of powers conferred under Section 107 of the West Bengal Primary Education Act, 1993, the State Government issued a

Government Order dated July 21, 2012 for holding the recruitment process de novo from the stage of written test and interview and affording the

candidates who were selected for the purpose of written test and interview an opportunity to participate in the written test and interview which were

to be held afresh.

(h) The decision to afford the said selected candidates another opportunity to participate in the written test and interview, which were to be held

afresh, was taken keeping in view the fact that most of the selected candidates became victim of circumstances and could not be held responsible for

gross irregularities which had crept into the selection process.

(i) Hence, the State has taken a conscious decision to afford the said candidates one more chance to participate in the selection process, viz., written

test and interview which were to be held afresh. The said decision so taken is just, fair and reasonable.

(j) The validity of the Government Order dated June 21, 2012 was considered by this Hon'ble Court in W.P. No. 9739 (W) of 2012 - Atanu

Chakraborty & Ors. Vs. State of West Bengal & Ors. The Hon'ble Single Judge disposed of the writ application by holding by a judgment and order

dated June 22, 2012, inter alia, as follows:-

“Therefore, as rightly held by order dated 21st June, 2012 that the said written test and interview be treated as cancelled and from amongst the

candidates who had pursuant to the advertisement, the selection process of 2009 be conducted de novo. The petitioners had participated in the

selection process. Therefore, they will also be entitled to participate. As admittedly the process is not complete, no prejudice will be caused to the

petitioners.”

(k) The said judgment and order dated June 22, 2012 was carried to the Hon'ble Division Bench of this Hon'ble Court. The Hon'ble Division Bench in

dismissing the appeal held as follows:-

“We thus, hold that the State Government did not commit any illegality in canceling the recruitment examination for the reasons as mentioned in the

order dated 21st June, 2012 and also in the light of the report of the Investigating Team as mentioned above. As such, we do not find any reason to

interfere with the impugned order. The impugned order thus stands affirmed. Interim order, if there be any, stands vacated. The Council is thus,

directed to complete the entire selection process in terms of the order passed by the Principal Secretary to the Government of West Bengal on 21st

June, 2012 as early as possible and positively within a period of three months from the date of communication of this order, so that the selection

process can be completed without any further delay.”

4. In the present writ application the question of validity of the order dated June 21, 2012 has been sought to be reopened for the reason that the

Hon'ble Division Bench did not have the occasion to consider the effect of change in eligibility criteria as prescribed by National Council for Teacher

Education Act, 1993 (hereinafter referred to as "NCTE"), an academic authority appointed by the Central Government, under Section 23(1) of the

Right of Children to Free and Compulsory Education Act, 2009 for the purpose of selection of candidates for the post of primary teachers in the said

four districts, viz., Howrah, South 24 Parganas, North 24 parganas and Maldah. The petitioners have also sought to make out a case that the selection

process should have been held afresh and fresh advertisement ought to have been issued prescribing laying down minimum qualifications as prescribe

by NCTE in the notification dated August 23, 2010, published in the Official Gazette on August 25, 2010. The minimum qualification prescribed by

NCTE for appointment of primary teachers are as follows:-

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2 years Diploma in Elementary Education (whatever named known) OR

(b) Senior Secondary (or its equivalent) with at least 45% marks and 2 years Diploma in Elementary Education (whatever named known) in

accordance with the NCTE (Recommendation Norms and Procedure) Regulations, 2002; OR

(c) Senior Secondary (or its equivalent) with at least 50% marks and 4 years Bachelor of Elementary Education (B.El.Ed.)

5. The Union Parliament enacted NCTE Act, 1993 to provide for the establishment of a National Council for Teacher Education with a view to

achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of

norms and standards in the teacher education system and for matters connected therewith. In exercise of the powers conferred under Section 32(2)

(d)(i) read with Section 12(d) of the National Council for Teacher Education Act, 1993, the said National Council made National Council for Teacher

Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001.

8. In the meantime, the Union Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "RTE

Act"). By a notification being No. S.O. 428(E) dated 16th February, 2010, the Central Government appointed April 1, 2010 as the date on which the

provision of RTE would come into force. By a notification being S.O 750(E) dated March 31, 2010 the Central Government, in exercise of powers

conferred under Section 23(1) of RTE Act, authorised the National Council for Teacher Education as the academic authority to lay down the

minimum qualifications for a person to be eligible for appointment as a teacher.

9. Accordingly by a Notification dated August 23, 2010 (published in the Official Gazette on August 25, 2010) the NCTE laid down the minimum

qualifications for a person to be eligible for appointment as a teacher in class I to VIII in a school referred to in clause (n) of Section 2 of the RTE Act

with effect from the date of the Notification. Para 5 of the said Notification provided that where an appropriate Government, or local authority or a

school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be

made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as

amended from time to time).

10. On a combined reading of NCTE's notification dated August 23, 2010 (both in Hindi and English) and the aforesaid other notifications it would

be abundantly clear that State Government was left with the discretion to adopt the minimum qualifications for recruitment of teachers in schools as

prescribed by NCTE Regulations of 2001. The said regulations of 2001 were not binding upon the State Government.

11. The Union Parliament amended the NCTE Act in 2011. Sub-section(4) was inserted in Section 1 whereby it was made clear that the provisions of

NCTE Act would apply to students and teachers of institutions and schools imparting pre-primary, primary, upper primary, senior or senior secondary

education. The definition of "school" was also defined in Section clause (ka) of Section 2 of the Act. Section 12A was inserted after Section 12

vesting the council with the power to determine minimum standard of education of school teachers. In Section 32(2) after clause (d) clause (dd) was

inserted whereby the Council is vested with the authority to make Rules prescribing the qualifications of teachers under Section 12A. Section 1(2) of

the Amendment Act made it clear that the Amendment Act would come into force on such date as the Central Govt. may, by notification in the

Official Gazette, appoint.

12. That by an order dated January 13, 2014 the Larger Bench held that the questions which had been referred to a Larger Bench had become

academic in view of the NCTE (Amendment) Act, 2011.

13. The following position emerges upon analysing the different Amendments, Regulations and Rules:

(a) Article 21A was inserted in the Constitution (by 86th Amendment Act, 2002).

(b) Article 21A was kept dormant till 2010.

(c) Article 21A was activated with effect from April 1, 2010.

(d) The minimum qualifications prescribed by NCTE Regulations of 2001 were not binding upon the State Government.

(e) Accordingly every State Government had authority, competence and/ or jurisdiction to recruit primary teachers in accordance with the qualifications

as it would deem fit and proper.

14. The selection process which is now the subject matter of challenge in the present writ petition and the consequential order which provides for

holding written test and interview de novo with the eligible candidates who were participated in the process of written test and interview was set in

motion in the year 2009 itself. It is no longer res integra that once the recruitment process is set into motion, the eligibility criteria for participation in

the recruitment process cannot be altered and/or changed. On a broad spectrum of analysis of the NCTE Act, RTE Act and the

Regulations/Notifications framed thereunder it would appear that NCTE was empowered to prescribe minimum qualifications under Section 23(1) of

the RTE Act. NCTE, as an academic authority so appointed by the Central Government, may prescribe the minimum qualifications for appointment of

teachers.

15. Para 5 of the Notification dated August 23, 2010 (published in the Official Gazette on August 25, 2010) makes it abundantly clear that the State

Government would alone have the discretion to decide whether it could adhere to the 2001 Regulations for the purpose of participating in the

recruitment process which had already commenced or to prescribe minimum qualifications on its own. Needless to say in 2008 the Supreme Court

held in uncertain terms that the State Government would not be bound by the minimum qualifications prescribed by NCTE Regulations, 2001. The said

Judgment was sought to be reviewed but the review petition failed. The recruitment process of appointment of teachers was initiated in 2009. At that

material point of time it was beyond any cavil that the State Government was not bound to comply with the NCTE Regulations, 2001. The said

judgment in Basic Education Board, UP Vs. Upendra Rai (supra) was doubted and referred to the Larger Bench. By an order dated January 13, 2014

the Larger Bench held that the questions which had been referred to a Larger Bench had become academic in view of the NCTE (Amendment) Act,

2011.

16. The question whether after initiation of recruitment process rules of game can be changed or not has been referred to the Constitution Bench in

the case of Tej Prakash Pathak Vs. Rajasthan High Court, (2013) 4 SCC 540, wherein it was held by the Supreme Court in no uncertain term it is a

salutary principle not to permit the State or its instrumentalities to tinker with the rules of the game insofar as the prescription of eligibility is

concerned. The commencement of RTE Act and consequent notification issued by the NCTE as an academic authority prescribing the minimum

qualifications for appointment of teachers and consequent amendment in the NCTE Act in 2011 are to be viewed in the conspectus of Article 21A of

the Constitution. Needless to say that Article 21A was kept inactive till April 1, 2010. None of the regulations or amendments or even RTE Act was

given any retrospective effect. The candidates who had been selected for the purpose of participation in the selection process had acquired an

indefeasible right to participate in the selection process. Many of such candidates by now would have become age barred. In 2009 the recruitment

process was initiated for appointment of primary teachers in all Districts of West Bengal, except Silliguri and Darjeeling. Similarly circumstanced

candidates participated in the selection process and were eventually appointed to the post of primary teachers in other Districts. However since

written test and interview were vitiated by gross irregularities the Government took a conscious decision to hold the written test and interview with the

candidates whose applications were screened and who were eligible to participate in the written test and interview in 2009. If those candidates are

deprived of an opportunity to participate in the selection process to be held de novo, it would result in discrimination as the similar circumstances (sic

circumstanced) candidates in other Districts who had identical qualification and fulfilled the eligibility criteria had opportunity to participate in the

selection process and those who qualified successfully were eventually appointed to the post of teachers.

17. In any view of the matter the writ petition cannot invite the Hon'ble Court to delve into the question of validity of the order dated June 21,

2012 as the said order was approved by the solemn order dated June 09, 2014 passed by the Hon'ble Division Bench.

43. We had called for the records of WP 31563 of 2014 (W) to be placed before us since orders passed therein had been referred to us for our

consideration by Mr. Bhattacharya.

44. A bare perusal of the aforesaid pleadings manifest the State's ostensible concern for the candidates who had taken the 2009 examination and

who, perforce, were deprived of the opportunity of consideration of their candidature for public employment as Assistant Teachers because of

irregularities committed at the end of the Councils. They were referred to as "the victims of circumstances", having no fault. Reading such

pleadings, we are left to wonder how the State could change its policy all on a sudden and seek to give effect to the amended provisions of the 2001

Rules requiring candidates to possess training qualifications to be qualified for appointment on the post of Assistant Teacher. It is on record that

learned Judges of this Court sitting singly had interdicted the process that followed the said G.O., but it was either the State or the relevant DPSC (we

mean the Howrah DPSC) that carried appeals to the appellate court against orders of injunction and sought for orders so that the process could be

completed in pursuance of the said G.O. The Howrah DPSC succeeded in persuading the appellate court to approve the said G.O., to interfere with

the order of injunction and to obtain the green signal for going ahead with the process of recruitment. It completed the process of recruitment upon the

panels being approved by the Director. It did not strike the Director or the State that candidates appointed on vacant posts in primary schools within

the jurisdiction of the Howrah DPSC were not trained. This was obviously so because the said G.O. had been approved by a judicial order of the

appellate court and the State intended that the candidates who had taken the written examinations should be allowed to reap the benefits of hard

labour put in by them. However, the shifting of stands by the State without reference to its earlier stand has left us bewildered. There is presently no

material before us to establish that the stand taken in such affidavit dated 8th December, 2014 was at all taken into consideration while adopting the

changed stand. We are inclined to the view that the State, having a duty to act with fairness and transparency, should have placed all the materials

before us.

45. While hearing these appeals, we had called for affidavits from the North DPSC and the Malda DPSC to give particulars of expenses incurred for

holding the written examinations in terms of the said G.O. based on audit reports. Such information was asked to be provided, for, we felt that in the

event we are persuaded to agree with Mr. Dutta, it would nullify the written examinations that the writ petitioners had taken, which must have

involved expenses being incurred from the public exchequer; hence, the State must take the responsibility of recovering such expenditure from the

officials who were responsible for the written examinations being held de novo by the North DPSC and the Malda DPSC, and then deciding not to

give effect to its results, on their whims, thereby leading to wastage of public money. While the North DPSC has pleaded that it spent a little less than

Rs.43 lakh more or less for holding the written examinations, the Malda DPSC pleaded having spent a little less than Rs.1.36 lakh for 16308

candidates. Having regard to the conclusions that we have reached and the order we ultimately propose to pass, we do not consider it appropriate to

make any such direction at this stage but record our displeasure and dismay, in respect of the casual manner in which the Malda DPSC proceeded to

comply with our direction. The reason is obvious, which we may not elaborate.

46. Despite all the discussions and the observations above, as are relevant to the issues, we are faced with an impediment to decide the appeals on

merit. Most of the arguments advanced by Mr. Dutta are not based on the pleadings. He is, however, right in his submission that the State ought to

have been given an opportunity to contest the writ petitions by filing counter affidavits. What impels us not to so decide but to interfere with the orders

under challenge is on this limited ground, that the learned Judge disposed of the writ petitions with mandatory directions on the very first day of the

same being moved without even calling for affidavits. We are of the considered view that having regard to the complex issues involved in the writ

petitions, the situation did call for filing of affidavits and disposal of the writ petitions based on the pleadings. We also find that when WP-III and WP-

IV were being considered, a prayer for a short pass-over had been made on behalf of the State which the learned Judge did not grant on the ground

that the order proposed to be passed by His Lordship "will not prejudice the State". That is indeed not so, as is manifest from the way the State

has urged us to interfere on the ground that the order is prejudicial to its interests.

47. In the result, we are of the considered opinion that a remand of the writ petitions is called for. The orders impugned stand set aside. WP-I, WP-II,

WP-III and WP-IV shall revive on the file of the writ court; let the same be placed for consideration of the learned Judge having determination. To

expedite disposal of the writ petitions on merits, we direct the State, the Malda DPSC and the North DPSC to file their respective counter affidavit

within 7th December, 2018; reply thereto, if any, may be filed by 21st December, 2018. The time-limit is peremptory and no extension of time shall be

granted to any party on any ground whatsoever. Since the writ petitions are at the instance of litigants who are unemployed, we would request the

learned Judge of the writ court to give some priority (if the same is at all possible subject to His Lordship's convenience) so that the writ petitions

can be considered and disposed of at an early date.

48. If the State chooses to file counter affidavit(s), it must, inter alia, furnish full particulars of the process that the Howrah DPSC and the South

DPSC had undertaken following the said G.O. including the date(s) on which the panels were prepared and forwarded to the Director of School

Education, West Bengal by the Howrah DPSC and the South DPSC, the date(s) on which approval was accorded by the Director and the period

during which offers of appointment were issued to the empanelled candidates. The relevant evidence shall also be annexed to the affidavit. The so-

called 'exchange in policy' must be supported with pleadings and evidence. Upon consideration of all the questions that would arise on the basis of

affidavit evidence filed by the parties, the writ petitions shall be finally disposed of.

49. The pending applications for addition of parties at the instance of applicants claiming to be similarly situate as the writ petitioners, stand allowed.

Office shall incorporate their names and particulars in the cause-titles of the relevant writ petitions as respondents supporting the writ petitioners. Any

other connected application, not dealt with herein, also stands disposed of.

50. FMA 1615 of 18, MAT 1412 of 2017, MAT 1889 of 2017, MAT 1906 of 2017, and MAT 1999 of 2017 stand disposed of with the observation that

appointments, if any, made hereafter on sanctioned posts of Assistant Teachers in primary schools within the jurisdiction of the North DPSC and the

Malda DPSC shall abide by the result of WP-I and WP-II, and WP-III and WP-IV, respectively.

51. The application for leave to appeal (CAN 706 of 2018), however, is not entertained. However, liberty is granted to the applicants to apply for

intervention before the trial court and if such an application is made, the same shall be disposed of on its merits in accordance with law. MAT 78 of 18

and the connected application, accordingly, stand dismissed.

52. There shall be no order for costs.

53. Before parting, we consider it proper to refer to a decision of the Supreme Court of very recent origin dated July 31, 2018 in Roma Sonkar v.

Madhya Pradesh State Public Service Commission & anr. (Civil Appeal Nos. 7400-01/2018). In paragraph 3 of such decision, it has been held that a

learned Judge of the High Court sitting singly and learned Judges sitting in a Division Bench hearing an intra-court appeal from the order of the

learned Judge exercise the same jurisdiction, i.e., the jurisdiction under Article 226 of the Constitution; only to avoid inconvenience to the litigants,

another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that a single Judge is

subordinate to the Judges of the Division Bench. Serious reservations were expressed by the Supreme Court as to whether the Division Bench while

disposing of an intra-court appeal could have remitted the writ petition to the single Judge for moulding the relief.

54. The decision in Roma Sonkar (supra) could not be cited by any of the parties since it was not there when we reserved judgment; but we consider

it to be our duty to say why, despite being aware of the same, we are ordering a remand.

55. The only reason for distinguishing the decision in Roma Sonkar (supra) is that, parties to a lis are not only entitled to a fair appeal but also to a fair

trial. WP-I, WP-II, WP-III and WP-IV were heard and decided by the learned Judge without affidavits. It is not that only for the purpose of moulding

the relief that we have ordered a remand, as was done by the Division Bench of the relevant High Court in Roma Sonkar (supra); it is for a just

decision on the merits of the rival claims, which should appear from the pleadings, that we have ordered a remand. The decision in Roma Sonkar

(supra) does not lay down the law that in no case can a remand be ordered by the Division Bench of a chartered High Court hearing an intra-court

appeal from an order passed in the exercise of jurisdiction under Article 226 of the Constitution and, thus, does not stand in our way. Needless to

observe, the learned Judge of the writ court shall be free to pass such judgment and order as His Lordship considers appropriate without being

influenced by any observation made hereinabove.