

**(2019) 08 CAL CK 0023**

**In the Calcutta High Court**

**Case No :** Writ Petitions (WP) No. 26316, 26318, 26322 , 26331 , 26332, 26340, 26342, 26344 , 26346 , 26348 , 26366 , 26367, 26368 , 26369 , 26370 , 26380 , 26385 , 26388 , 26390 , 26390 , 26392 , 26394 , 26397 , 26399 , 26469 , 26470 , 26471 , 26477 , 26478 , 26479

Abhijit Sadhukhan & Ors

APPELLANT

Vs

State Of West Bengal & Anr?

RESPONDENT

**Date of Decision :** 09-08-2019

**Acts Referred:**

West Bengal Primary School Teachers' Recruitment Rules, 2001 — Rule 6, 6(6), 8(3), 9, 9(1), 9(2)(d), 9(8)  
Constitution Of India, 1950 — Article 142

**Citation :** (2019) 08 CAL CK 0023

**Hon'ble Judges :** Arijit Banerjee, J

**Bench :** Single Bench

**Advocate :** Joydeep Kar, Kamal Kishra, Partho Banerjee, Tamal Taru Panda, Rimpay Mukherjee, Joytosh Majumdar, Pinaki Dhole, Kakali Samajpaty, Abhisk Prasad, B.P. Vaisya, Ld, Md. Masud, Somnath Naskar, Jyotsna Roy Mukherjee, Tapas Ballav Mondal, Debarati Sen (Bose), Arunava Maiti, S. T. Mina, Biswabrata Basu Mallick

**Final Decision :** Dismissed

## Judgement

Arijit Banerjee, J

(1) In these bunch of writ petitions, the petitioners have challenged similar orders passed by the Chairman, Hooghly District Primary School Council (respondent no.4) and the Commissioner of School Education, West Bengal (respondent no. 2). The same issues arise in all the writ petitions and hence they have been bunched together for hearing and disposal. Submission has been made by the parties with reference to the pleadings filed in W.P. No. 26316(W) of 2014 (Abhijit Sadhukhan vs. State of West Bengal and Anr.). This judgment and order shall dispose of all the writ petitions.

(2) The petitioner aspires to be appointed to the post of Assistant Teacher under the Hooghly District Primary School Council (in short, "DPSC"). A notification dated 3rd December, 2009 was published by the DPSC for recruitment to several posts of Assistant Teachers in various primary and junior basic schools. Learned counsel for the petitioner submitted that it was indicated in the recruitment notification that the candidates would be allotted marks on the basis of their performance in the recruitment tests and also on the basis of marks obtained in the Madhyamik Examination and on extra-curricular activities. The notification did not provide for allotment of any additional mark for having undergone any training programme.

(3) The petitioner participated in the recruitment process. It was submitted that he performed well in the written test. However, the panel of successful candidates that was published by the DPSC in or about January, 2010 did not include the petitioner's name.

(4) The petitioner contended that from a scrutiny of the panel published by the DPSC, it transpired that at least 11 candidates had been allotted additional marks for allegedly having undergone Teachers' Training Course. However, none of them had undergone a course recognised by the National Council for Technical Education (in short, "NCTE"), but had undergone training in institutes set up by the State. It was contended that had the said eleven(11) candidates not been treated separately and allotted additional marks on the basis of the Teachers' Training Course they had undergone, their marks would have been far less than the marks secured by the petitioner. It was further submitted that the petitioner has secured higher marks than the said 11 candidates even after allotment of additional marks to them. But for the fact that such candidates were treated as trained candidates, they could not have been selected in the panel.

(5) Being aggrieved the petitioner approached this Court by filing W.P. No. 5501(W) of 2013 (hereinafter referred to as the "previous writ petition"). The said writ petition was disposed of by an order dated 25th April, 2013, inter alia, directing the Chairman, Hooghly DPSC to dispose of the petitioner's representation by passing a reasoned order. The Commissioner of School Education was directed to pass an appropriate order on receipt of the reasoned order that was to be passed by the Chairman of the Hooghly DPSC.

(6) By his order dated July 25, 2013, the Chairman of the DPSC rejected the petitioner's claim for appointment to the post of Assistant Teacher on the ground that the petitioner had secured far less than the last empanelled candidate in the untrained category. It was submitted on behalf of the petitioner that the said authority failed to appreciate the challenge thrown by the petitioner that the said 11 candidates (respondent nos. 5 to 15) could not be treated as trained candidates and could not have been awarded additional marks on the basis of such purported training. The respondent no. 2 in his order dated March 20, 2014 observed that the total marks obtained by the petitioner was less than the cut off mark of the last empanelled candidate in the general non-trained category and

hence approval could not be granted for appointment of the petitioner as Assistant Teacher.

(7) The petitioner submitted that the said 11 candidates could not have been treated as trained and could not have been allotted additional marks since they did not undertake the Teachers' Training Course from an institute recognised by the NCTE. It was submitted that prior to passing of the orders impugned in this writ application, the petitioner was informed in response to a request made under the Right to Information Act that no additional marks have been allotted to PTTI candidates in view of the judgment and order passed by this Court in the case of *Tulsi Baksi -vs-State of West Bengal and Ors.* reported in 2008(4) CHN 789. However, in reality the respondents acted otherwise and unscrupulously allotted additional marks to at least 11 candidates and thus unduly favoured such candidates to the detriment of the petitioner.

(8) Mr. Kar, learned Senior Counsel appearing for the petitioner submitted that firstly, under the existing rules for recruitment of primary teachers, there was no scope for the respondents to prepare separate panels of successful candidates classifying them under trained and untrained categories. Secondly, the respondents acted illegally and in violation of the law laid down by this Court in *Tulsi Baksi's case (supra)* in allotting additional marks to the respondent nos. 5 to 15. Had a combined panel been prepared and had the said 11 candidates not been favoured with additional marks, the petitioner would have secured a position much above them and in all probability would have secured an employment. Hence, the petitioner has been wronged.

(9) Mr. Kar emphasised that the relevant recruitment notification does not provide for preparation of separate panels for trained and untrained candidates, nor does it provide for allotting extra marks to the trained candidates. Further, the West Bengal Primary School Teachers' Recruitment Rules, 2001 (in short, "2001 Rules") also has not conceived the idea of preparation of separate panels for these two categories. On the contrary, Rule 9(8) of the 2001 Rules mandates the respondents to prepare a panel of candidates under the general category. The respondents have overlooked such mandate of the statute while categorising candidates as trained and untrained and putting their names in different panels.

(10) On the point as to whether or not the respondent nos. 5 to 15 were entitled to the additional 22 marks on account of their training in non recognised institutes, Mr. Kar submitted that the West Bengal Board of Primary Education (Recognition of Primary Teachers' Training Institute) Regulation Act, 2002 came into force in the year 2002. The West Bengal Board of Primary Education granted recognition to a large number of institutes for imparting teachers' training. These institutes were other than institutes which were recognised by the NCTE under the NCTE Act, 1993.

(11) A public interest litigation was filed, being W.P. No. 4107(W) of 2006 (*Tulsi Baksi & Anr. -vs- State of West Bengal & Ors.*) challenging the power of the State

to grant recognition to these institutes in the teeth of the NCTE Act. A Division Bench of this Court held, inter alia, as follows:

(i) The institutes which are not recognised by NCTE cannot afford any diploma, degree etc. in teachers' education which could be treated as a valid qualification for the purpose of employment.

(ii) Without recognition from NCTE no regional Board or authority can have the right to function as a Board or to grant diploma or degree.

(iii) The 2002 enactment is void and inoperative. The institutions which have not followed the provisions of NCTE Act and are not recognised by the NCTE have no right to admit students in the Teachers' Training Programme.

(12) Learned Senior Counsel submitted that in effect the said judgment held that the institutes from which the private respondents did the Teachers' Training Course were a product of illegality and had no authority to issue diploma/degree. Consequently, the degrees/diplomas awarded by such institutes are a nullity. Hence, the private respondents could neither be treated as trained candidates nor could they be awarded 22 marks on the strength of their diploma/degree received from those institutes.

(13) Mr. Kar submitted that in *Birbhum District Primary Council and Anr. -vs- Gulam Mortoza & Ors.* (MAT No. 678 of 2016), another Division Bench of this Court upheld and followed the law laid down in *Tulsi Baksi*. He submitted that in that case it was specifically submitted on behalf of the concerned DPSC that a candidate passing out from a non- recognised institution is not eligible for any mark for training. It was also submitted on behalf of the State that a decision had been taken to treat all candidates sponsored by the Employment Exchange as untrained. He submitted that the judgements in both *Tulsi Baksi* and in *Birbhum District Primary School Council* were carried before the Supreme Court by way of Special Leave Petition but were not interfered with excepting that in the later case, some directions were issued by the Hon'ble Supreme Court in exercise of power under Article 142 of the Constitution of India. In terms of such directions of the Hon'ble Supreme Court, the candidates who filed legal proceedings in the High Court on or before 31 December, 2010, were entitled to weightage in terms of Rule 9(2)(d) of the 2001 Recruitment Rules. None of the private respondents had filed any legal proceedings in the High Court and, therefore, did not meet the criterion for being entitled to weightage in terms of the Hon'ble Supreme Court's direction.

(14) Learned Senior Counsel then submitted that the petitioner does not insist upon cancellation of the appointments of the private respondents. However, the State authorities should treat 11 posts as vacant and make available the said 11 posts to the untrained candidates whose names appeared in the panel, serially and strictly according to merit list.

Submission on behalf of the State:-

(15) Appearing for the State, Mr. Joytosh Majumdar, learned Government Pleader submitted that it is not in dispute that the selection process of 2006 was held in 2009. Pursuant to the notification, trained and untrained candidates participated in such selection process. The written examination was conducted as per the 2001 Recruitment Rules (unamended). Under Rule 9, out of 100 marks 75 marks was meant for academic qualification, 22 marks for training, 3 marks for co-curricular activities and 10 marks for written examination. He submitted that in W.P. No. 15800(W) of 2009 (Gopal Saha & Ors.- vs- State & Anr.) an interim order dated September 23, 2009 was passed by a learned Judge of this Court which was to the following effect:

"So far as the prayer for interim order is concerned, as held in this order, since the vacancies occurred in the year 2006 and anticipated vacancies in the next twelve months were taken up as total vacancies, as postulated under rule 8(3), these vacancies form a slot by themselves; and as the petitioners, whose names were requisitioned in 2006 pursuant to the request by the primary school council had submitted their bio data and therefore come under the selection procedure under rule 9(1), in my view a prima facie case has been made out for granting an interim order. Therefore, let there be an interim order restraining the respondents from cancelling the selection process initiated in 2006 under the unamended Rules (emphasis is mine) for the post of primary school teachers and from filling up the vacancies for which the selection process was initiated in 2006 by any process other than from amongst the candidates who had submitted their bio data in 2006."

(16) This order was confirmed and the writ petition was disposed of subsequently on 24th December, 2009. The intra court appeal against the said order was dismissed by the Division Bench by an order dated 3rd April, 2014. Accordingly, the selection process was held in accordance with the 2001 Rules which provided for allotment of additional 22 marks for trained candidates.

(17) The records of the case would show that on the basis of written test held on 20th December, 2009, Hooghly DPSC prepared a panel for recruitment to the post of Assistant Teachers in different primary schools for different mediums. For Bengali Medium Schools under unreserved category (non-trained) 960 candidates were empanelled. The marks obtained by the first empanelled candidate was 65.0938 and the marks obtained by the last empanelled candidate was 48.8944.

(18) Due to the non availability of suitable candidate in exempted category, 161 posts were converted from exempted category (unreserved) to normal (unreserved) for Bengali Medium Schools in terms of Rule 9(8) of the 2001 Rules. These posts having been converted from exempted category (unreserved) were exclusively reserved for unreserved candidates and the marks obtained by the first empanelled candidate in such category was 48.889 and the lowest mark was 47.700.

(19) In the other backward class (OBC) category, 110 candidates were empanelled for Bengali Medium Schools. The marks of the first empanelled candidate was 48.878 and the lowest mark was 48.8722.

(20) Because of non-availability of suitable candidates in the exempted category 34 posts were converted from exempted category OBC to normal OBC wherein the highest and the lowest marks were 45.8722 and 45.0889 respectively. Four posts were also converted from Ex-serviceman OBC to normal OBC wherein the highest and the lowest marks were 45.0677 and 45.0167 respectively. Thus, in all 148 posts were reserved under the OBC category for which the highest mark was 48.8278 and the lowest mark was 45.0167.

(21) In the scheduled caste (SC) category, 346 candidates were empanelled. The marks obtained by the first empanelled candidate was 48.7938. The lowest mark in the said list was 37.0111. Due to non-availability of suitable candidate in the exempted category, 106 posts were converted from exempted category SC to normal SC wherein the highest and lowest marks were 37.0056 and 36.2833 respectively. 21 posts were converted from Ex-serviceman, SC to normal SC wherein the highest and the lowest marks were 36.2133 and 36.1444 respectively. In all, 473 posts were reserved for the SC category for which the highest mark was 48.7938 and the lowest mark was 36.1444.

(22) In the schedule tribe (ST) category, in terms of the notified vacancies, 94 candidates were empanelled in the first selection list wherein the highest mark was 47.8188 and the lowest mark was 39.6250. Due to non-availability of suitable candidates in the exempted category, 29 posts were converted from exempted category ST to normal ST with the highest and the lowest marks as 38.43625 and 38.2333, respectively. In all, 128 candidates were empanelled in the ST category wherein highest and lowest marks were 47.8188 and 38.2333.

(23) The 11 candidates being the private respondents were empanelled as trained candidates in terms of Rule 6 of the 2001 Rules which was in force at the time of notifying the vacancies for the year, 2006. The general trained candidates who might have secured less marks than general untrained candidates in the unreserved category were included in the panel on the basis of Rule 6(6) of the 2001 Rules according to which a trained candidate had to be appointed first and if no trained candidates were available then only non-trained candidates could be given appointment following the procedure prescribed in Rule 9 of the 2001 Rules.

(24) The petitioner in the instant writ petition is a general category non- trained candidate. The total marks of the petitioner is 42.9778 which is below the cut off marks of the last empanelled general category non trained candidate which is 47.700. Hence, the petitioner is not entitled to be appointed.

(25) Learned Government Pleader then submitted that the prayers in the writ petition are mutually destructive. Whereas prayer (d) is to the effect that there should be a mandamus directing the respondent authorities to incorporate the

name of the petitioner in the appropriate category in order of merit, prayer (e) is for issuance of a writ of mandamus directing the respondents to quash the panels prepared pursuant to the written test held on 20th December, 2009. Prayer (f) is for a direction on the respondents to appoint the writ petitioner to the post of primary teacher. This prayer also cannot stand together with prayer (e).

(26) Mr. Majumdar then submitted that if the petitioner is serious about pressing prayer (e) i.e. cancellation of the panels, it was incumbent upon him to implead as necessary parties all candidates who were given appointments as otherwise, the writ petition would be bad for non-joinder of necessary parties. In this connection, he relied on the decision of the Hon'ble Supreme Court in the case of *Ranjan Kumar- vs- State of Bihar* reported in (2014) 16 SCC 187.

(27) As regards the allotment of additional 22 marks to the private respondents, learned Government Pleader submitted that the NCTE Act, 1993, came into force with effect from July 1, 1995. Hence, primary training degrees awarded by the State recognised training institutions prior to July 1, 1995 were valid for awarding the additional marks as per the 2001 Rules. The 11 private respondents had completed their one year training course prior to the year 1995. Hence, they were validly allotted additional 22 marks on the basis of the degrees/diplomas produced by them regarding primary training. Tulsi Baksi's case would not have any application to the facts of the instant case.

(28) Learned Government Pleader then drew my attention to the judgment and order dated 19th December, 2012 of a learned Judge of this Court rendered in W.P. No. 18584(W) of 2012 (*Ananya Banerjee- vs- State of West Bengal & Ors.*), wherein the appointment of the same 11 trained candidates being the private respondents herein, were under challenge. The learned Judge upheld the appointment of the said 11 persons observing that there was no illegality in the decision making process insofar as the selection process was concerned. Such judgment and order was not challenged and has thus attained finality.

(29) Mr. Majumdar then submitted that the petitioner approached this Court for the first time in 2013 i.e. after substantial delay. A Court is not expected to give any indulgence to any indolent person who without adequate reasons approaches the Court at his own leisure and pleasure. In this connection, he relied on the decision of the Hon'ble Supreme Court in the case of *Chennai Metropolitan Water Supply and Sewerage Board & Ors. -vs- T.T. Murali Babu* reported in (2014) 4 SCC 108. He submitted that the petitioner can at best be described as a fence sitter. In this connection, he relied on the decision of the Hon'ble Supreme Court in the case of *U.P. Jal Nigam & Anr. -vs- Jaswant Singh & Anr.* reported in (2006) 11 SCC 464.

(30) Learned counsel next submitted that a person does not have any vested right to be appointed on the basis of his name appearing in the selection list. In this connection, reference was made to the Hon'ble Supreme Court's decisions in

S.S. Balu & Anr. -vs- State of Kerala & Anr. reported in (2009) 2 SCC 479, Secretary, Board of Basic Education, Uttar Pradesh -vs- Rajendra Singh & Anr. reported in (2009) 17 SCC 452 and Punjab State Electricity Board & Ors. -vs- Malkiat Singh reported in (2005) 9 SCC 22. He further submitted that an unselected candidate who obtained marks below the cut off marks has no right to claim appointment. In this connection, he relied on the decision of the Hon'ble Apex Court in the case of Ashok Kumar & Anr. - vs-State of Bihar & Ors. reported in AIR 2016 SC 5069.

(31) Mr. Majumdar finally, submitted that the Hon'ble Supreme Court in Civil Appeal No. 1071 of 2019 (Amina Khatun & Ors. -vs- Birbhun District Primary School Council & Ors.) has upheld the awarding of 22 marks on the basis of certificates of training obtained by candidates from institutions recognised by the State but not by the NCTE.

(32) I have given my anxious consideration to the rival contentions of the parties.

(33) The primary grievance of the petitioner is that the respondent nos. 5 to 15 (in short, "private respondents") were allotted extra 22 marks treating them as trained candidates. However, the institutes from where the private respondents did their training courses were not recognised by NCTE and hence, as laid down by our Division Bench in the case of Tulsi Baksi (supra), they could not be treated as trained candidates. The further grievance of the petitioner is that under the applicable recruitment rules there was no scope for the respondents to prepare separate panels of successful candidates classifying them under trained and untrained categories. It was submitted that if a combined panel was prepared and if the private respondents had not been allotted the extra 22 marks, the petitioner would have stood a very good chance of being empanelled and being appointed as Assistant Teacher.

(34) I am unable to accept this contention of the petitioner. The interim order dated September 23, 2009 passed by a learned Single Judge in the case of Gopal Saha (supra) required the respondents to conduct the selection process initiated in 2006 as per the unamended Rules. This means, the recruitment process was to be completed as per the provisions of the West Bengal Primary School Teachers Recruitment Rules, 2001 (2001 Rules). Rule (6) of the 2001 Rules which was inserted by way of amendment vide notification dated 16 December, 2005 provides that priority and preference will be given to candidates having requisite training from a recognised institute (provided that candidates will be recruited on merit basis, if trained candidates are not available). Hence, the 2001 Rules clearly envisaged two categories of candidates i.e. trained and untrained. Trained candidates are to be given preference. Indeed, this also stands to logic. A trained candidate is likely to be better equipped to impart education to students.

(35) The next question is whether, in view of the Division Bench decision in the case of Tulsi Baksi (supra), the private respondents could be treated as trained candidates and could be allotted 22 marks for their training. Tulsi Baksi laid

down, inter alia, that degrees/diplomas awarded by training institutes not recognised by NCTE were invalid and of no value. The NCTE Act came into force with effect from July 01, 1995. The private respondents completed their training courses prior to the NCTE Act coming into operation. Hence, the question of recognition of the institutes from where the private respondents did their training courses by the NCTE could not and did not arise. In my considered view, the ratio laid down in Tulsi Baksi's case can apply only for the period subsequent to July 01, 1995. Accordingly, I find no irregularity or illegality in the respondent authorities treating the private respondents as trained candidates and allotting extra 22 marks to them as contemplated in Rule 9 of the 2001 Rules. Hence, I do not find any merit in the grievance that the petitioner has sought to ventilate through this writ petition.

(36) The petitioner has prayed for cancellation of the panels that were prepared pursuant to the selection process initiated by issuance of notification dated 3 December, 2009. Such a prayer cannot be entertained in the absence of all the empanelled candidates being party respondents since they would be affected parties. To that extent the instant writ petition is also bad for non-joinder of necessary parties.

(37) It is not in dispute that the total marks obtained by the petitioner is 42.9778. It is also not in dispute that for Bengali medium schools under unreserved category (non-trained), 960 candidates were empanelled. The first empanelled candidate secured 65.0938 marks and the last empanelled candidate obtained 48.8944 marks. The respondent no. 4 being the Chairman, Hooghly DPSC in his office memorandum dated 25 July 2013 has discussed the entire issue in details and has come to the following conclusion.

"10. Thus the marks of the reserved category are below the cut off marks of the unreserved category. In the unreserved category the cut off marks in the selected list is 48.38944. 161 posts were converted from exempted category unreserved to normal unreserved category and a candidate belonging to any reserved category cannot and could not be included in the said reserved posts which were/are exclusively reserved for general category candidates in terms of Rule 9(8) of the West Bengal Primary School Teachers Recruitment Rules 2001. The record shows that eleven candidates were empanelled as trained candidates in terms of sub-Rule 6 of Rule 6 of the Recruitment Rule 2001 which was in force at the time of notifying the vacancies for the year 2006 slot. The general trained candidate securing 38.077 marks was included in the panel on the basis of rule 6(6) of the West Bengal Primary School recruitment Rules, 2001, which was inserted vide notification No. 1261-SE-(Pry)/10M16/2003 dated 16.12.2005. Sub rule 6(6) of the West Bengal Primary School recruitment Rules 2001, is independent of any other rules of the recruitment and in terms of the said rule a trained candidate has to be appointed first and if no trained candidate are available then only non trained candidates can be given appointment following the procedures of Rule 9 of the recruitment rules 2001. The petitioner in the

instant writ application is a general category non trained candidate. He has obtained 06.0000 marks in the written examination. The academic score of the petitioner is 36.9778 thus the total marks of the writ petitioner is 42.9778 which is below the cut of marks of the list empanelled general category non trained candidate. Therefore in view of the facts as sated herein above, the claim of the petitioner is not sustainable and the same is rejected."

(38) The Commissioner of School Education, West Bengal being the respondent no. 2 also noticed in his office memorandum dated 20 March, 2014 that the petitioner belongs to the general category and has no training qualification. He has obtained 42.9778 marks which is below the cut off marks for empanelled general category non-trained candidates. The respondent no. 2 thus upheld the order passed by the respondent no. 4 and in my view rightly so. The order passed by the respondent no. 4 is a well-reasoned order which was passed after giving hearing to the petitioner. Sitting in writ jurisdiction, I am not inclined to interfere with the order. It is well settled that while exercising the power of judicial review, the Writ Court does not function as an Appellate Court. What is under scrutiny is the decision making process and not the merits of the decision. In the present case, I find no infirmity or impropriety in the decision making process. The impugned order was passed by the respondent no. 4 by duly observing the principles of natural justice. The order cannot be said to be arbitrary or wednesbury unreasonable or perverse so as to warrant interference.

(39) Additionally, I cannot lose sight of the fact that the same selection process was challenged in the case of Ananya Banerjee- vs.- State of West Bengal (supra). The same argument was advanced by the petitioner in that case that though a trained candidate obtaining 38.0772 marks was empanelled and given appointment, the petitioner was not appointed even after obtaining 47.5000 marks. The Learned Judge by a judgement and order dated 19 December, 2012 upheld the selection process. The Learned Judge held that a panel should be prepared in respect of the selected candidates irrespective of their category in the first phase. Thereafter, category-wise panels should be prepared depending on or whether a candidate is trained or untrained. The allotment of 22 marks to trained candidates was also upheld by the learned Judge on an interpretation of the 2001 Recruitment Rules.

Judicial comity and the rule of precedents warrant that I follow the views of the Learned Judge as expressed in the aforesaid case. However, even independently, I have not found any infirmity in the selection process for the reasons recorded above.

(40) For the reasons as aforesaid, this writ petition fails and is dismissed. There will be no order as to costs.

(41) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.