
(2019) 10 CAL CK 0025

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 9180, 9597, 11944 (W) Of 2019, Civil
Application (CAN) No. 5957 Of 2019

Aktarul Islam Kayal & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

West Bengal School Service Commission (Selection For Appointment To The Posts Of Teachers For Upper Primary Level Of Schools) Rules, 2016 — Rule 2(e), 2(f), 8, 9, 12, 12(3), 12(4), 12(5)

Citation : (2019) 10 CAL CK 0025

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Subir Sanyal, Dibyendu Chatterjee, Vishak Bhattacharya, Ruchira Chatterjee, Madhuparna Kanrar, Sidhartha Roy, Jhuma Chakraborty, Partha Sarathi Sengupta, Bhaskar Prasad Vaisya, Dwariknath Mukherjee, Suman Dey, Raja Ram Banerjee, L.K. Gupta, Dr. Sutanu Kumar Patra, Kanak Kiran Babdyopadhyay, Supriya Dubey Chakraborty, Biswarup Bhattacharya,, Malay Kumar Ray, Shilpi Ganguli

Judgement

Moushumi Bhattacharya, J

The controversy in these writ petitions relates to the recruitment for the post of Assistant Teachers for Upper Primary Schools (except Physical Education and Work Education) for the 1st State Level Selection Test (SLST), 2016 governed by The West Bengal School Service Commission (Selection for Appointment to the posts of Teachers for Upper Primary Level of Schools) Rules, 2016 (hereinafter referred to as the 'Rules'). The petitioners complain that they have been unfairly left out of the selection process by reason of non-compliance of Rules by the Commission and various other factors which point to a lack of fairness and transparency in the mode and manner of selection. The allegations made by the petitioners were enumerated in the presence of learned Counsel appearing for the parties in an order dated 19th July, 2019. The allegations enumerated include

that

- (i) candidates with lesser marks or with inferior academic qualifications were called for personality tests,
- (ii) untrained candidates were called for personality tests,
- (iii) the TET percentage of candidates were deleted in the final forms,
- (iv) the marks obtained by candidates in the academic qualifications did not translate to correct percentages.
- (v) Candidates, who are not before the Court or have not obtained any order from the Court have been left out from the zone of consideration despite having better academic scores compared to those who have been called for.
- (vi) The list of vacancies to be provided under Rules 8 and 9 of the 2016 Rules have not been published by the Commission and
- (vii) Non-compliance of Rule 12(4) of the 2016 Rules under which the Commission is bound to publish an interview list in its website with all details.

For understanding how the Court proceeded in these matters, the orders passed in these writ petitions are briefly stated.

By an order dated 1st July, 2019 passed in W.P. 91144(W) of 2019, the Commission was restrained from publishing the results of the interview pending for a final decision in the writ petition and that the Commission would not take any decision on the appointment of candidates or prepare the final merit list. By the said order, the interview was allowed to proceed.

The said order also records the instruction issued by the Commission that no untrained candidates have been called for the personality test as also the contention of the petitioners that the Rule 12(4) relating to publish of an interview list with all details had not been complied with by the Commission.

By an order dated 4th July, 2019 passed in W.P. 9180(W) of 2019, the Commission was directed to publish the interview list of the candidates in accordance with the definition given under Rule 2(e) of the Rules and was further directed to publish a supplementary Interview List within 10th July, 2019. The order dated 19th July, 2019 has already been mentioned above. By this order, the Commission was directed to file an affidavit in answer to the allegations raised on behalf of the petitioners. The next order dated 9th August, 2019 passed in one of the writ petitions took note of the submission made by learned Counsel appearing for the Commission that the Commission is overburdened with pending verifications and hence the verification of the writ petitioners who had not been heard by this Court should be put on hold until the W.P. 9597(W) of 2019 has been decided. It should be stated that the Court had all along proceeded taking note of the assurance given by learned Counsel for the Commission that the final recommendations would abide by the decision in

W.P.9597(W) of 2019. The stand of the Commission was also specifically noted in the order dated 19th July, 2019.

The immediate reason for expediting the matter is a Note prepared by the Commission and handed up on 20th September, 2019 by which the Commission proposed the following:

- 1) That the Commission has revisited the issue on errors in the selection process being pointed to do and that such exercise was not only restricted to the petitioners before the Court but all candidates.
- 2) On such exercise being carried out, the Commission found that there were errors in respect of several candidates including the petitioners as mentioned in the supplementary affidavit of the petitioners.
- 3) The omission to call certain candidates for verification and/or personality test has been suitably rectified by calling all eligible candidates for verification and for personality test.
- 4) The grievance of the petitioners has been addressed in the manner as indicated above.
- 5) The Commission may be permitted to publish the merit list which will enable the candidates to point out further errors, if any, in such list. If errors are pointed out, the Commission will take steps to remove the errors and publish a final merit list. If no errors are pointed out, the merit list published shall be taken to be the Final Merit List.
- 6) In the interest of justice, the Court may direct that no counselling for recommendation for appointment shall be held without the leave of the Court.

Learned Counsel appearing for the petitioners was given an opportunity to respond to the Notes/proposal of the Commission. On the returnable date, by a detailed note, the petitioners rejected the suggestions of the Commission by pointing out certain alleged errors which, according to the petitioners, were not capable of being rectified. The main objection taken was that the Note of the Commission was vague and devoid of particulars. It was also stated in the written note/"Reaction of the Petitioners on the Notes submitted on behalf of the Commission" that the holding of personality tests in two phases would invalidate the selection process and encourage corruption and favouritism. Counsel also stressed that non-publication of the interview list with all details was in violation of the order dated 1st July, 2019 passed in W.P. 11944(W) of 2019.

To address the point that the suggestions of the Commission were devoid of particulars, by an order dated 26th September, 2019, the Court directed the Commission to furnish the information by 30th September, 2019. In the said order, the heads of information to be provided by the Commission were recorded. The heads were at the suggestions of learned counsel for the petitioners. These were;

- a) the number of candidates who have been verified under Rule 12(3) of the Rules,
- b) the information whether all untrained candidates have been excluded from the interview list,
- c) whether any candidates have been brought into the zone of consideration on the basis of information which was not provided on the dates of their respective applications with regard to the training qualifications,
- d) whether the evaluation of the candidate and professional qualifications has been correctly done in the case of candidates selected for the interview list.

On the returnable date, the Commission handed up written instructions with the information that a total of 44,194 candidates have been verified under Rule 12(3); that all untrained candidates have been excluded from the interview list; 586 candidates have been brought into the zone of consideration on the basis of the information which was provided on the date of their respective applications with regard to their training qualifications; the evaluation in respect of academic and professional qualifications of the candidates selected in the interview list has correctly been done.

The above sequence has been set out in some detail to address the issue raised by the petitioners that a formal application was necessary for seeking the leave of the Court for publishing the merit list under Rule 12(5) of the Rules. It would be evident that learned Counsel representing the parties were given adequate opportunity to place their case as well as to object to the stand taken by the other side.

To simplify the scope of the matter, the Commission prays for modification and/or variation of the order dated 1st July, 2019 by which the Commission was restrained from publishing the results of the interview pending a final decision in the writ petition and from preparing a final merit list of the candidates.

Although it is correct that no formal application has been taken out by the commission for seeking the order as stated above, this Court is of the view that in fit cases where expediency is called for, the Court can dispense with technical requirements and pass orders upon giving sufficient opportunity of hearing to all the concerned parties. The requirement for such is all the more when the Court is looking at a long vacation of four weeks starting from tomorrow i.e. 2nd October, 2019.

In the view of this Court, the reasons for verifying or modifying an order would essentially involve a change of circumstances subsequent to the initial order which was passed by the Court. This presupposes that the initial order was passed on a certain state of affairs which existed on that day. On an alteration of the state of affairs, a Court can have a fresh look at the matter provided it is satisfied that the change of circumstances warrant that the matter should be assessed in a new light. The Court had the option to reject the suggestions and

keep the matter after the vacation in November for conclusion of the hearing. However, upon considering the proposal of the Commission together with the objection taken to the suggestions by the petitioners and the further information provided by the Commission at the instance of the petitioners (all in writing and handed up to Court), this Court deems it fit to revisit the reasons for passing the restraining order on the Commission on 1st July, 2019.

The first and pre-dominant issue which constitute a change in the circumstances is the suggestion of the Commission that it will publish a Merit List containing the following information:

(i) Weightage of TET.

(ii) Academic Qualification.

(iii) Professional qualification.

(iv) Marks obtained in the Personality Test, for each of the candidates short-listed for the Merit List. The information which the Commission offers to provide in the Merit List has its basis in Rule 2(f) which defines Merit List as ".....a list of candidates prepared category-wise on the basis of Merit (Weightage of TET, Academic qualification and Professional qualification and marks obtained in personality test) from interview list."

On 1st July, 2019, when the restraining order was passed on the Commission, the Court took into account the possibility of untrained candidates being called for the personality test and the alleged violation of Rule 12(4) at the time of preparation and publishing of the interview list with all details of the candidates. It appears from the said order that the petitioners had taken the stand that no such interview list was published and that the Commission had vehemently opposed the same. Upon considering the scope of Rule 12(4), the Court was of the view that a candidate is not only entitled to know his performance for the personality test but also the performance of all other candidates who have been called for the test. It was on this basis that the Court felt that the interview process may go on but with sufficient checks and balances and that the Commission should not publish the Merit List without a final decision in the concerned writ petition. An Interview List published by the Commission was brought to the notice of the Court on 4th July, 2019 as has been recorded by an order passed on the same day in W.P. 9180(W) of 2019. The Interview List was kept on record. The Interview List shows only the serial numbers, the application I.D. and the names of the candidates together with the subject, medium, selection category and gender pertaining to the relevant groups of candidates. Upon considering such interview list, this Court was of the view that the information furnished in the Interview List was not on effective compliance of Rule 12(4) not one which may help a candidate in knowing his rank in the over all scale of performance. The Commission was accordingly directed to publish a supplemented Interview List in its website within 10th July, 2019. It is the case of the Commission that it could not carry out the direction of the Court of

publishing a supplementary Interview List as that would have encouraged nepotism and bias in the selection process. It is evident therefore, that the order of 1st July, 2019 was passed on the Court not being satisfied with the information which the Commission published as part of the Interview List. This state of affairs was substantially altered when the Commission handed up the proposal in the form of a Note on 20th September, 2019. The suggestions contained in the note were explained by learned counsel for the Commission who assured the Court:

(a) that the Merit List published would be subject to the errors being pointed out by aggrieved candidates and

(b) counselling for recommendation for appointment would only be held with the leave of the Court.

The above assumes significance since the bedrock of the objections of the petitioners is the lack of transparency and fair process reflected from the non-compliance of the various stages of Rule 12 of the 2016 Rules. For a better understanding of what these stages are, the relevant clauses of Rule 12 are set out below:

"12. Method of SLST for selection of candidates and preparation of panel for teachers (except Physical Education and Work Education).- (1) The Central Commission shall arrange for proper custody of all online applications which may be received by it against the vacancies.

(2) The Central Commission after receiving application forms shall prepare list of eligible candidates for the purpose of preparation of a computer generated database of all the candidates.

(3) The Central Commission shall verify the validity of TET Certificate, academic and professional qualification of the candidates having valid TET Certificates and marks obtained in TET and other academic and professional qualification shall be evaluated in the manner mentioned in Part A of Schedule II.

(4) The Central Commission shall prepare and publish in their website and Interview List with all details of the candidates to be called for personality test, category-wise on the basis of merit as mentioned in Part A of Schedule II in the ratio of 1:1.4 of final vacancies.

(5) After interview, the Central Commission shall, from Interview List, prepare and publish a merit list category-wise on the basis of merit (weightage of TET, academic and professional qualification and marks obtained in personality test) as per Part A of Schedule III.

(6) The Central Commission shall also prepare and publish in their website a Panel of candidates (category-wise) equal to the number of vacancies and a category-wise waiting list of the rest of the candidates from merit list who were not included in the panel. From the panel the Central Commission shall prepare

Region-wise lists of candidates on the basis of the option exercised by the candidates and publish in their website."

To reiterate the sequence, the Rule contemplates the preparation of a panel of all candidates except Physical and Work Education; receiving of application forms and preparation of a computer-generated database of all candidates; verification of the validity of TET, Academic and Professional qualifications and the marks obtained in these categories followed by an evaluation; publishing of an Interview List with all details of the candidates to be called for the Personality Test; preparation and publication of a Merit List category-wise on the basis of the weightage to be given to TET academic qualifications and marks obtained in the Personality Test.

The Commission therefore seeks to comply with Rule 12(5) before complying with Rule 12(4). To address the objection of the petition that this cannot be permitted, the objective behind the Rules needs to be stated. The structure and sequence of Rule 12 points to ensuring fairness on all stages of the evaluation process. The candidates must be evaluated on all possible information which is available with the Commission before candidates are eliminated from going to the next stage, the presumption being that the evaluation must be uniform, standardized and free from extraneous considerations. What the Court needs to consider at this stage is whether skipping Rule 12(4) to reach Rule 12(5) would result in the selection process being invalidated. This Court could have taken a view against the proposal of the Commission if it was found that Rule 12(4) is being by-passed to the prejudice of the candidates. However, the Commission has voluntarily offered to furnish the information beyond that mandated by Rule 2(f) of the 2016 Rules - ("Merit List"). It should be mentioned that both Rule 2(f) and Rule 12(5) mandates that the Commission shall prepare and publish a merit list category-wise..... "on the basis of merit" as evaluated upon due weightage being given to a candidate's TET, Academic and Professional qualification and the marks obtained in the personality test is to be done on the mechanism provided under Part A of Schedule III of the Rules. This Schedule provides for specific marks being allotted under each of the heads mentioned in Rule 12(5).

Significantly, neither Rule 2 (f) nor Rule 12(5) casts any obligation on the Commission to disclose the marks obtained by the candidate under each of these heads. The wording of the Rules makes it clear that the Commission is only to prepare and publish a Merit List category-wise on the basis of the evaluation done under Part-A of Schedule-III under the heads mentioned in Rule 12(5). Although the consistent view of this court has been that a candidate is entitled not only to know his/her performance and rank but to also know the performance and rank of other candidates for the purpose of ascertaining whether there has been any unfairness in the exclusion of that candidate from the selection process, it follows that the only way that a candidate may reach that ideal position is when the candidate has adequate information made

available to him/her by knowing the marks which have been awarded to all candidates under each of the heads mentioned in Rule 12(5). The Commission has taken a step towards that objective of transparency and fairness in agreeing to go beyond the Rules for preserving the transparency of the process. This court is also of the view that in order to challenge the selection process or to prove its allegations against the Commission, the petitioners must have, at the very least, sufficient information at their disposal. Without a Merit List being published, the challenge to the selection process cannot be sustained by the petitioners. The petitioners have all along depended on a sporadic collection of information from varied sources. The Merit List together with the information offered to be published would give the petitioners a solid basis to find the loopholes in the selection process and the omissions on the part of the Commission. Without the Merit List, the petitioners will be shadow-fighting with erratic inputs from unascertained sources.

This court is of the firm view that the objective of litigation is not to prolong the dispute between the parties for the sake of the litigation itself but for addressing the grievance raised and for rectifying the wrong upon hearing all the parties as opposed to stalling the process which would lead to an effective adjudication. It is correct that the petitioners must restrict their case to the grievance as stated in the particular writ petitions and not embark on a random enquiry for the betterment of those who have not approached the court and may not even care as to the legality of the selection process. The most important factor which the court takes note of is the repeated assurance given by learned Counsel for the Commission that preparation of the Merit List will not be given finality until and unless the errors pointed out by the aggrieved candidates have been sufficiently addressed. Learned Counsel appearing for the State has submitted that the recommendations can be made conditional and subject to the final decision in the writ petitions. Counsel had also expressed concern that the process which was initiated in 2016 has not reached conclusion even after three years and a substantial number of schools being without teachers in the Upper Primary Sections and further that the balance of convenience/prejudice caused to the parties if the Commission is not allowed to complete the selection process should be taken into account. Counsel for the Commission has two-fold submissions on the point as to how the writ petitioners whose matters have not been heard will be affected by the proposal. First, that the Commission as on 20th September, 2019 has re-visited the issue on the errors with respect not only to the petitioners who have been heard but also in respect of the others. Second, that the publication of the Merit List would give a window to all the candidates who appeared for the selection process to view the marks obtained not only by the concerned candidate but all others who have participated in the selection process. This court believes that the writ petitioners would immediately have an opportunity to detect their rank and marks compared to all others and would further have an opportunity to point out such errors to the Commission. The Commission has also offered to entertain representations to this effect from

disgruntled candidates.

In the view of this Court, permitting the Commission to publish a tentative Merit List, subject to errors being pointed out, if any, by the concerned candidates, is a step in the right direction for preserving the selection of the meritorious and most deserving candidates for the concerned recruitment. The petitioners will also have adequate opportunity to present their individual cases and have their grievance redressed on publication of the merit list. The alleged wrongdoing on the part of the Commission in not publishing the Interview List under Rule 12(4) would have been fatal to the Commission had the Commission jumped to Rule 12(5) without disclosing the information which it now undertakes to disclose with the Merit List. This court is not convinced that disclosing of the information under the various heads under Rule 12(5) would deprive candidates of information which they otherwise would have been privy to had the Interview List been published with all details under Rule 12(4). As has been stated above, despite the Commission not being obliged to disclose any such information either under Rule 2(f) or under Rule 12(5), the Commission has undertaken to do so in order to address the allegations of the petitioners. Selective compliance of the Sub-rules under Rule 12 can therefore not be a ground to continue the restraint on the Commission.

In view of the reasons as stated above, this Court is not inclined to continue the restraint on the Commission from preparing a final Merit List. It is made clear that the Commission is granted leave to publish a final Merit List in its official website within seven days from today. The Merit List will contain the information category-wise on the marks obtained in TET, marks obtained in Academic Qualification, marks obtained in professional qualification and marks obtained in the Personality Test for each of the candidates. It is also made clear that the petitioners will be at liberty to point out the errors in the Merit List and carry their complaints to the Commission by way of written representations within three weeks from the date on which such Merit List is published. To address the matters which have not been heard, writ petitioners therein will also be at liberty to make such written representations to the Commission. It is also made clear, as suggested in the Note of the Commission, that counselling for recommendation for appointment shall not be held by the Commission without the leave of this court.

The order dated 1st July, 2019 in W. P. 11944(W) of 2019, is varied/modified in the manner as indicated above. Since W.P.9597(W) of 2019 and W.P.9180(W) of 2019 involve the same grounds of challenge, this order will govern these two writ petitions as well.

These matters will appear two weeks after the long Vacation.