

(2019) 04 CAL CK 0023
In the Calcutta High Court

Case No : Writ Petitions (WP) 947 (W) Of 2019, CAN 2484 Of 2019

Laxman Mandi & Others

APPELLANT

Vs

State Of West Bengal & Others

RESPONDENT

Date of Decision : 08-04-2019

Acts Referred:

West Bengal School Service Commission (Selection For Appointment To The Post Of Teachers For Upper-Primary Level Of Schools) Rule, 2016 — Rule 8, 8(3)(b), 9, 9(3), 12, 13(9), 17(3)

Citation : (2019) 04 CAL CK 0023

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Subir Sanyal, Dibyendu Chatterjee, Jhuma Chakraborty, Madhuparna Kanrar, Siddhartya Roy, Ekramul Bari, Tanuja Basak,, Syed Mansur Ali, Sutanu Patra, Supriya Dubey Chakraborty, Himadri Kumar Bandyopadhyay, Anirban Sarkar, Dipmita Samanta

Final Decision : Disposed Off

Judgement

The grievance, as argued by learned counsel appearing for the writ petitioners, is many-fold. The primary grievance is that Under Rule 13 (9) the West Bengal School Service Commission (Selection for Appointment to the Post of Teachers for Upper-Primary Level of Schools) Rule, 2016 (in short, 2016 Rules), the Central Commission has failed to publish the interview list in its website containing the details of the candidates who are to be called for personality test, categorized on the basis of merit which includes marks of the written test, academic and professional qualification as mentioned in Part B and C of Schedule II in the ratio 1:1.4 of the final vacancies. The stage in Rule 13 (9) comes into play after OMR sheets/answer sheets of the written examination have been evaluated by the Commission. The other grievance expressed by learned counsel for the petitioners is that the Commission has not complied with the requirement under Rules 8 and 9 of 2016 Rules with regard to information on the available vacancies. The second part of Rule 9 (3) which is relevant for the petitioners i. e.

aspirants for the post of teacher in Physical and Work Education, provides, inter alia, for the list of actual vacancies reported under Rule 8 (3) (b) to be made available for the benefit of the candidates. Counsel submits that the non-publication of the results of the candidates prior to the personality test as well as the list of actual vacancies for the post of Physical and Work Education teachers has a prejudicial effect on the writ petitioners who have been unable to make a correct assessment of their eligibility vis-a-vis the other candidates. Counsel points to paragraph 12 of the Report filed by the Commission as well as paragraph 9 to rely upon the factual position as indicated by the Commission. Counsel submits that the facts as stated in paragraph 9 of the Report shows that the actual number of vacancies would far exceed the 1:1.4 ratio as mentioned under Rule 12 of the 2016 Rules. The final submission of counsel for the petitioners with regard to the prevailing trends in the empanelment of candidates by the Commission displaying an inclination to mark up the score in the personality test of candidates who have scored lower than those candidates who scored higher marks in the written test and the academic qualification, is a matter of inference requiring the data of all candidates appearing in the 1st SLST. This court therefore deems it fit to reserve these points for consideration at a later stage.

Learned counsel appearing for the Commission submits that advertisement of the actual vacancies under Rule 9 (3) has already been done and is a part of the writ petition. Counsel however undertakes to publish the result of the candidates for the interview list in its website with all relevant details in terms of Rule 13 (9) of the 2016 Rules.

Having considered the submissions of counsel appearing for the writ petitioners and the Commission, there has indeed been a non-compliance of Rule 13 (9) by the Commission. This would be evident from paragraph 12 of the Report filed by the Commission. Devising a system by which a candidate can get to know his result by keying in his particulars is certainly not the same as the totality of the result being published in the Commission's website as mandated under Rule 13 (9). Although the immediate purpose of the candidates knowing whether he will be called for the interview will be served by this method, the relevant Rule clearly mentions "..... With all details of the candidates" which entails that not only is a candidate entitled to know his result but to also know his position in respect of other candidates who have been selected or rejected for the interview. Without going into further details of the apprehension expressed by learned counsel appearing for the petitioners, this court is of the view that Rule 13 (9) has been framed to ensure a process which is transparent at all levels. For the sake of transparency, it is only fit with the Commission be directed to comply with the mandate of Rule 13 (9) of the relevant Rules.

With regard to the contention of learned counsel for the petitioners in respect of the actual list of vacancies, the Annexure at page 282 as compared with page 280 of the writ petition appears to have published the list of vacancies at the

time of inviting applications and before the stage of the personality test. The difference in the number of vacancies published at the time of application and before the personality test would indicate that the Commission has complied with the requirement of Rule 8 (3) (b) of the 2016 Rules read with the second part of Sub-rule 3 of Rule 9. In any event, the factual position as stated in paragraph 9 of the Report leaves room for further information which a candidate may be entitled to assess whether he/she has been unfairly left out of the zone of consideration.

For these reasons, the petitioners are given leave to take exception to the Report filed by the Commission. It is to be noted however that the exception taken must be restricted to and in aid of 2016 Rules and not what a candidate may aspire for which has not been provided for in the 2016 Rules. The exception to the Report is to be filed within two weeks after the interview list is published by the Commission under Rule 13(9).

The Commission is directed to act in compliance with Rule 13(9) of the 2016 Rules within a period of two weeks from date.

In Re.: CAN no.2484 of 2019

This application has been filed by 87 added respondents, who claim to have suffered the fallout of the interim order passed by this Court on 29th January, 2019 by which the Board was directed to stay its hands from making any appointment in the field of Work Education teachers for the State Level Selection Test, 2016.

Learned Counsel for the applicants submits that the interim order has resulted in the applicants being denied appointment to the concerned posts despite recommendations being made in favour of the applicants. Counsel submits that the interim order does not enure to the benefit of either the writ petitioners or the applicants and further points to a communication from the Chairman of the School Service Commission to the President of the West Bengal Board of Secondary Education dated 11th January, 2019 which is a recommendation letter for one of the applicants who has been prejudiced by the interim order. The communication reads that "This recommendation letter will remain valid for 90 days from the date of issue as per Rule 17(3) of the West Bengal School Service Commission (Selection for Appointment to the Post of teachers for Upper-Primary Level of Schools) Rule, 2016".

The prayer for vacating the interim order, as extended by a latter order dated 19th February, 2019, is strongly opposed by learned Counsel appearing for the petitioners, who submits that allowing the application would make the writ petition infructuous. This is because there are only a limited number of vacancies and once the applicants are given appointments to the posts, the writ petitioners will be left without any recourse even if the writ petition succeeds since by then the available posts would have been filled up by the applicants.

Having heard learned Counsel appearing for the parties, this Court is of the view that since the interim order has been continuing from 29th January, 2019 and extended by the latter orders passed on 19th February, 2019 and 12th March, 2019, the applicants can wait for a further period of five weeks when the writ petition can be decided on merits. Needless to say, if the writ petitioners do not succeed then all those, who have been recommended for appointment, will naturally be considered for the next step.

As pointed out by learned Counsel for the School Service Commission, since the writ petition as well as the connected application will be heard on merits on the returnable date, the recommendation letters given to the applicants herein will not be invalidated beyond the period mentioned in the said letters.

CAN No.2484 of 2019 is disposed of with the above directions.

The applicants herein are directed to file affidavit-in-opposition to the writ petition within a period three weeks from date. Reply, if any, within a week thereafter.

List the writ petitions after five weeks.

The interim order last extended on 12th March, 2019 will continue for a further period of six weeks or until further orders whichever is earlier.