
(2019) 11 CAL CK 0013

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 10409 (W) Of 2019

Manas Kumar Sarkar

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 04-11-2019

Acts Referred:

West Bengal Schools (Controller Of Expenditure) Act, 2005 — Section 14(2), 14(30)
Constitution Of India, 1950 — Article 14, 19, 226

Citation : (2019) 11 CAL CK 0013

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Ritwik Pattanayak, Chaitali Bhattacharya, Kartik Chandra Kapas

Final Decision : Disposed Of

Judgement

Moushumi Bhattacharya, J

1. A decision of the District Inspector of Schools (DI), Secondary Education, Murshidabad dated 13th May 2019, by which a Panel for the post of Assistant Headmaster (AHM) was disapproved and was directed to be formed afresh is the subject-matter of challenge in this writ petition. The petitioner prays for setting aside of the impugned decision and for recasting of the Panel and for being appointed as the first empanelled candidate for the post of Assistant Headmaster of "Khagra Gurudas Tarasundari Institution".

2. The genesis of the present proceeding arises from an order of a Learned Single Judge dated 30th October 2017 passed in WP 25818 (W) of 2017 by which the DI was directed to consider the petitioner's representation and pass a decision. The petitioner in that proceeding was one Basudeb Naskar who had also appeared for the post of AHM and challenged the selection process. Pursuant to this direction, the DI passed a reasoned order by noticing several Government Orders in relation to correspondence course/distance mode of learning by reason of which the DI referred the matter to the 'higher authority' for a 'meaningful

interpretation' / clarification of the GOs. The petitioner's case was also mentioned in the said order. The Higher Authority, being the Director of School Education (Law), West Bengal, responded with reference to a Memo dated 30.10.2018 from the Registrar, Netaji Subhas Open University, which in turn referred to a public notification dated 23.02.2018, which stated inter alia that degrees/certificates awarded for Open and Distance Learning programmes should be treated as equivalent to the corresponding degrees/certificates from traditional universities. The impugned order forming the basis of this Writ Petition was passed after the view of the Director of School Education was conveyed to the DI.

3. The case of the petitioner is that the petitioner was unfairly excluded from the zone of consideration by reason of being awarded 4 instead of 7 marks in reliance of a 'Corrigendum' (to an earlier Memo) dated 30th April 2003 published by the School Education Directorate in relation to Guidelines for recruitment of Asst Headmaster/Headmistress of Recognised Aided Non-Govt Secondary Schools etc.

4. Learned Counsel for the petitioner submits that the petitioner should have been awarded 7 marks, instead of 4 marks, by treating the degree obtained by the petitioner from Netaji Subhas Open University at par with the 'Regular Hons.' Graduates. Counsel submits that the 4 marks awarded to the petitioner was designated for 'Special/Condensed Honours' degree and cannot be equated with the degree obtained by the petitioner particularly when a First Class obtained through correspondence course is treated at par with Regular Hon. degrees for the post of Headmaster under The West Bengal School Service Commission (State Level Selection Test for Appointment to the posts of Teachers) Rules 2015. Counsel submits that equivalence/parity of treatment has been given for the post of Assistant Teacher, i.e., degrees obtained through correspondence course has been brought within the fold of Regular courses. Counsel relies on a Memorandum dated 13.6.2006 which recognises degrees obtained through correspondence course/distance mode of education. Counsel cites Dwarka Nath Vs. Income Tax Officer, Special Circle, D-ward, Kanpur reported in AIR 1966 SC 81, Comptroller and Auditor-General of India, Gian Prakash, New Delhi Vs. K.S. Jagannathan reported in (1986)2 SCC 679 on the point on the petitioner's entitlement to a Writ of Mandamus and K. Thimmappa Vs. Chairman, Central Board of Directors, State Bank of India reported in (2001)2 SCC 259 on the point of intelligible criteria for discriminating amongst equals.

5. Learned Counsel appearing for the State raises the issue of the petitioner not being entitled to seek a Mandamus since the petitioner has not shown any legally enforceable right to be appointed as an Assistant Headmaster and further that having participated in the selection, the petitioner cannot turn around and challenge the same. Counsel submits that since the Panel was disapproved in its entirety, the petitioner cannot complain of any particular injustice having been suffered by the petitioner. It is also submitted that the petitioner is not eligible for appointment as not having obtained an Honours qualification in the subject in

which the petitioner was appointed as a Pass graduate teacher. Petitioner should have challenged the relevant Guideline for recruitment of AHM. Lastly, it is contended that both Headmasters and Assistant Teachers are recruited through competitive examinations conducted by the School Service Commission while no such examination is conducted for Assistant Headmasters.

6. I have heard learned counsel appearing for the parties. The point of controversy in the instant proceeding is whether the method of evaluation for the selection to the post of Assistant Headmaster (AHM) should have been treated as par and on the same footing to the evaluation of academic qualifications for the selection of Headmaster/Headmistress. It is evident from the impugned order that the petitioner has been excluded from the zone of consideration for two reasons; first, because the petitioner obtained Honours degree as well as Master's degree in History which was not relevant to his appointment and second, the degree of the petitioner was recognized as "Special Honours Degree" since he obtained the said degree through correspondence course from Netaji Subhas Open University as an in-service candidate. The District Inspector of Schools (D.I.) awarded four marks to the petitioner for the Master degree relying on G.O. No.1628-GA dated 10.07.2002 read with Memo No.999/G.A. dated 30.04.2003. Memo No. 1628 dated 11.07.2002 which published the "Guidelines for recruitment of Assistant Headmaster/Headmistress of recognized aided non-government secondary schools/higher secondary schools, Government sponsored school and all types of recognized and aided Madrasahs provided that the willing teachers of institutions who are "Graduates with Honours including Special Honours or holding Masters degree with two years' course and having 5 (Five) years teaching experience in a Junior High School/Secondary Institution" may apply for the post. Annexure 'A' to the Memo provides a Statement of the marks to be awarded for Hons. Graduate (Regular) which is seven marks for first division, six marks for second division and four marks for "Others" out of the total of seven "full marks". By a Memo No.999 dated 30th April, 2003, forming a corrigendum to the Memo no.1628, the awarding of marks was notified as follows;

"Guidelines for preparation of panel for the post of Assistant Headmaster/Headmistress in recognized Aided Secondary/Higher Secondary Non-Govt. Schools and Govt. Sponsored Schools and scale of pay of Assistant Headmaster/Headmistress.

1. Henceforth, in terms of Annexure-A of this office memo no. 1628-GA dated 10.07.2002; if a Assistant Teacher, appointed in Pass Graduate or Honours Graduate Scale of Pay, has Honours degree or Masters' Degree qualification, as applicable, obtained from a recognized institution before or after joining in service, and has applied for post of Assistant Headmaster/Headmistress, then marks will be awarded to him/her for the aforesaid degree for preparation of panel for the post of Assistant Headmaster/Headmistress irrespective of the fact that he/she has any kind of approval obtained from the District Inspector of

Schools (SE) concerned for the said degree or not."

7. The petitioner obtained a 1st Class in B.A. (Hons.) in July 2008 and thereafter 2nd Class in M.A. (History) in August, 2012. Both degrees were obtained through correspondence course from Netaji Subhas Open University. According to counsel, the petitioner's Honours as well as Masters degree in History from Netaji Subhas Open University acquired in 2008 and 2013, respectively, cannot be categorized either as "Special" or "Condensed" warranting four marks which the D.I. awarded to the petitioner. On this issue, the Notification No.33-AC dated 13.01.2016 containing amendments to the West Bengal School Service Commission (State Level Selection Test for Appointment to the Post of Teachers) Rules, 2015 is relevant. Under Part D Table 1, relating to the manner of evaluation of academic qualifications including professional qualification for the selection of Headmaster/Headmistress in school, the following has been provided;

"PART-D

Provision Relating to Evaluation of Academic Qualifications Including Professional Qualification for Selection to the Post of Headmaster/Headmistress Teachers.

Table 1

Sl.

Examination Passed

Full Marks

Award of Marks

Remarks

4.

(a) Bachelor's degree in Honours as regular/external/ private candidate or through distance mode of education/ correspondence course

6, 6

[For 1st Div/Class

5

[For 2nd [Div/Class], 4 [For Other Div/Class]

Holders of Degree Degree with Spl. Hons. Condensed Hons/ Approved.

c) Degree with Spl. Hons./ Condensed Hons./Approved Proficiency course

5 marks (fixed)

8. Under Table 2 of the same Notification relating to manner of evaluation of academic qualifications including professional qualification for the selection of Assistant Teacher for the post meant for Honours and Graduate/Post-Graduate

vacancy in school, provides as follows;

Table 2

Sl No.

Examination Passed

Full marks

Award of Marks

Remarks.

3.

(a) Bachelor's degree in Honours as regular external/private Candidate through distance mode of education/correspondence Course

10, 10

[60% and above]

8

[below 60% to 45%], 4 (Below 45%)

Holders of Degree with Spl. Hons.

Approved Proficiency courses shall not be allotted any additional marks for their pass course degree."

9. It would appear from the above evaluation for selection to the post of Headmaster/Headmistress, that Bachelor's degree in Honours as "regular" has been treated at par with distance mode of education or correspondence course and has been awarded the same marks for a first division (six marks for both regular and correspondence course) while a Special Honours/Condensed Honours has been treated on a different footing with a different gradation of marks. This scheme has been repeated for selection of Assistant Teachers for the post of Honours/Graduate/Post-Graduate vacancies in schools. Here also, Bachelor's degree in Honours as regular has been categorized under the same bracket as distance mode of education/correspondence course and candidates have been awarded the same marks for 60 per cent and above, while Special Honours/Condensed Honours have been grouped together under a separate category with a different gradation of marks to be awarded to such candidates. On a perusal of the aforesaid Notification, namely, No.33 dated 13.01.2016, this court wonders as to the basis of awarding 4 marks to the petitioner, who obtained a Bachelor degree Honours in first division through Netaji Subhas Open University. The 4 marks obviously relates to the Corrigendum published on 30th April, 2003 and finds place under the heading "Others" in relation to "Graduate (Special/Condensed Hons.). It should be mentioned that for Graduate (Special/Condensed Hons.), no marks have been mentioned for candidates who have obtained such

Honours degree in either first division or second division. Hence, even if the Corrigendum is silent on the number of marks to be awarded to Graduates in the Special/Condensed Honours category, awarding four marks to the petitioner taking the benefit of such silence, does not appear to have a reasonable basis, particularly when compared to the manner of evaluation for Headmaster/Headmistress as well as Assistant Teachers in the Notification No.33 dated 13.01.2016. The reference to the Notification of 13.01.2016 becomes all the more relevant since in Para-D (Table 1), Bachelor's degree in Honours has been treated at par with distance mode of education/correspondence course while Special Honours/Condensed Honours has been put under a different bracket. Hence, the second ground of rejection of the petitioner on the basis of the Honours degree obtained by the petitioner being recognized as a "Special degree" is contrary to the Notification dated 13.01.2016. The method of evaluation of a candidate aspiring for the post of Assistant Headmaster can be treated to be on a different footing from the method of evaluation relevant for a candidate aspiring for the post of Headmaster or Assistant Teacher provided there is an intelligible basis for such differential treatment. Second, when an Executive instruction is silent on a matter which would have a decisive result on the selection of a candidate, a silence or lacuna in providing for the marks to be awarded (in the facts of this case) cannot be used against a candidate without a rational basis. In other words, a decision-making authority cannot choose a particular number (mark) to be awarded to a candidate simply because the relevant fields in the particular Notification shows blank spaces. This is all the more relevant when the candidate (writ petitioner) should have been treated as a Graduate (Regular Honours) as has been mentioned in the Notification dated 13.01.2016.

10. With reference to the second ground taken by the D.I., namely, that the petitioner obtained Honours as well as Master degree in a subject not relevant to his appointment, material parts of the Memo No.1628 dated 10.07.2002 and Memo no.124 dated 26.02.2015 published by the Directorate of School Education in relation to "Guidelines for Preparation of Panel for the Post of Assistant Headmaster/Headmistress in Recognized Aided Secondary/Higher Secondary Non-Government Schools and Government Sponsored Schools and Scale of Pay of Assistant Headmaster/Headmistress" are reproduced below:

Memo No. 1628-G.A.

OM-18/2001

Dated:-10th July, 2002.

Guidelines for recruitment of Assistant Headmaster/Assistant Headmistress of recognized Aided Non-Govt. Secondary School/Higher Secondary Schools, Govt.

Sponsored schools and all types of Recognized & Aided Madrasahs in terms of Notification No.151-L dated 25.01.2002 and Notification No. *811-SE(S) dated 17.06.2002, published in Kolkata Gazette.

The post of Assistant Headmaster/Assistant Headmistress shall be filled-up by the Managing Committee/Ad hoc Committee/Ad hoc Committee/Administrator from amongst the sanctioned strength of the teaching staff with prior permission of the Dist. Inspector of Schools (Secondary Education) of the respective district against a sanctioned post.

2. Headmaster or Headmistress or Teacher-in-Charge as the case may be as directed by the School Authority, after receiving of prior permission from the Dist. Inspector of Schools (SE) for filling up of the post of Assistant Headmaster/Assistant Headmistress, shall notify and collect applications of such approved and willing teacher(s) of his/her Institution, who are (a) Graduates with Honours including Special Hons. or holding Masters Degree with two years' course and having 5(five) years' teaching experience in a ** Junior High School/secondary institution."

Memo No. 124/(22)-LS.

IC-325-LS/13

Dated:-26.02.2015.

"Guideline for preparation of panel for the post of Assistance Headmaster/Headmistress in recognized Aided Secondary/Higher Secondary Non-Govt. Schools and Govt. Sponsored Schools and scale of pay of Assistant Headmaster/Headmistress.

1. Henceforth, in terms of Annexure-A of this office memo no.1628-GA dated 10.07.2002; if an Assistant Teacher, appointed in Pass Graduate or Honours Graduate Scale of Pay, has Honours degree or Masters' Degree qualification, as applicable, obtained from a recognized institution before or after joining in service, and has applied for post of Assistant Headmaster/Headmistress, then marks will be award to him/her for the aforesaid degree for preparation of panel for the post of Assistant Headmaster/Headmistress irrespective of the fact that he/she has any kind of approval obtained from the District Inspector of Schools (SE) concerned for the said degree or not."

11. From a careful reading of the two Memos, it is clear that none of the Memos contain any requirement for a candidate to obtain an Honours/Masters degree relevant to his appointment. Memo No.124 further provides an option to an Assistant Teacher/Candidate to utilize the marks for the degree obtained from a recognized institution either "before" or "after" joining in service. This also takes care of the argument made on behalf of the State in relation to Section 14(2) and (3) of the West Bengal Schools (Controller of Expenditure) Act, 2005 under which a teacher appointed in the Graduate Teacher category will be entitled to draw pay in the scale in which he is appointed and shall not be entitled to claim any additional increment or higher scale of pay for acquiring any qualification other than that specified for the post and similarly, a teacher appointed in the Honours Graduate or Post-Graduate category will only be entitled to draw Post-

Graduate scale of pay upon acquiring the Post-Graduate degree. With regard to the 2005 Act, this court finds merit in the contention of counsel for the petitioner that the State cannot be permitted to make a departure from its own guidelines by which an option was given to Assistant Teachers to participate in the selection process for AHMs and for being allotted marks based on the qualifications obtained both before as well as after joining the service. But most important, the impugned Memos for the preparation of panel for the post of AHM does not mention any requirement of obtaining a degree relevant to the appointment of the teacher anywhere and hence could not have been used against the petitioner in the matter of selection.

12. With regard to the contention made on behalf of the State that the writ petitioner cannot question the selection process not having challenged the guidelines for recruitment of AHMs or the Corrigendum published through Memo No.999 dated 30th April, 2003, this court is of the view that such a challenge is not required in the facts of the present case since the writ petitioner cannot be categorized as a "Special/Condensed Honours", graduate under the State's own Notification dated 13.01.2016.

13. This brings the court to deal with the question of equivalence between candidates applying for the post of Assistant Headmaster and those applying for the post of Headmaster/Headmistress and whether different standards of evaluation can be made applicable to candidates applying for these two posts. The governing Notification for appointment to the post of Headmaster and Assistant Teacher is No.33-SE dated 13.01.2016 while for AHMs it is Memo nos.1628 and 999 dated 10.07.2002 and 13.04.2003, respectively. On a careful reading of these Memos/Notifications, it is found that all three have treated Graduate (Regular Honours) and Graduate (Special/Condensed Honours) as two separate and distinct categories. The only difference is that while in the evaluation for the post of Headmaster/Assistant Teacher, specific marks have been allotted for a degree with Special/Condensed Honours, (in the Corrigendum (Memo No.999) dated 13th April, 2003), the only mark which has been allotted (four marks) for Special/Condensed Honours is under the category of "Others". The fields under "First Division" and "Second Division" for Graduate Special/Condensed Honours are blanks, i.e., no marks have been mentioned under these categories. The view of the D.I. that the Honours degree of the petitioner is a "Special Honours degree" obtained through correspondence course is arbitrary. G.O. No. 1628 read with Memo no.999 has been relied upon for arriving at the said view. The basic reasoning of D.I. appears to be that degrees obtained through correspondence course/distance mode of learning cannot be equated with a degree obtained through traditional/conventional modes of instruction. In this context, Notification No.590-SE dated 13.06.2006 in relation to "Equivalence of Certificates awarded by different institutions and recognition of degrees obtained through Distance Mode of Education/Correspondence courses", is relevant. The material portion of the said Notification is set out below;

"Government of West Bengal

School Education Department, Secondary Branch

No. 590-SE(S)/6C-21/2006

Dated:-13.06.2006.

Equivalence of Certificates awarded by different institutions and recognition of degrees obtained through Distance Mode of Education/Correspondence Courses.

In supersession of this Dept. Memo No. 742-SE (Appt.) dated 31.07.2002 and No. 1158-SE(S)/6C-1/03 dt. 9.9.03 the undersigned is directed to state that all degrees obtained through Correspondence Courses/distance Mode of Education conducted by UGC affiliated Universities, in West Bengal with the approval of Higher Education Department including the Indira Gandhi National Open University and Netaji Subhas Open University are recognized by the State Government.

The Undersigned is further directed to state that Madhyamik (Secondary) and Uccha Madhyamik (Higher Secondary) Certificates awarded by Rabindra Mukta Vidyalaya, West Bengal (erstwhile West Bengal State Open School) to successful candidates who have cleared compulsory subjects in the examination similar to those in the Madhyamik Examination under West Bengal Board of Secondary Education and cleared the compulsory and minimum number of Elective subjects as stipulated for the Higher Secondary Examination under West Bengal Council of Higher Secondary Education respectively, are recognized by this Government."

14. Second, the "meaningful interpretation" sought for by the D.I. of the relevant Government Orders for deciding the fate of the Panel, as reflected by the Order dated 09.07.2018, was specifically answered by the Registrar, Netaji Subhas Open University with reference to a Public Notice dated 23.02.2018 issued by the University Grants Commission (U.G.C.), Distance Education Bureau in the following manner;

"The Government of India has envisaged a greater role for the Open and the Distance Education System. The envisioned role may be fulfilled by recognized and treating the Degrees/Diplomas/Certificates awarded through distance mode at par with the corresponding awards of Degrees/Diplomas/Certificate obtained through the formal system of education. Open and Distance Education System in the country is contributing a lot of expansion of Higher Education System and for achieving target of Gross Enrolment Ratio, without compromising on quality. Non recognition/non equivalence of degrees of Open and Distance Learning (ODL) institutions for the purpose of promotion/employment and pursuing higher education may prove a deterrent to many aspiring students and will ultimately defeat the purpose of Open and Distance Education."

Accordingly, the Degrees/Diplomas/Certificates awarded for programmes conducted by the ODL institutions, recognized by the erstwhile DEC/UGC, in

conformity with UGC Notification on Specification of Degrees should be treated as equivalent to the correspondent awards of the Degrees/Diploma/Certificate of the traditional Universities/Institutions in the country."

15. Two things are significant from the above. First, despite referring to the scope of the G.Os to the "Higher Authorities" for proper clarification of the same, the D.I. in the impugned order decided to make an unreasonable departure from the response received from the higher authority in his construction of the relevant G.Os/Memos. Second, an artificial distinction was made between a "regular" degree and the degree obtained through correspondence course in rejecting the eligibility of the petitioner. The manner in which such distinction was sought to be made has been expressed in the following words of the D.I.;

"However the Commissioner of School Education in turn, communicated as executive instruction vide Memo No.90-LS dt.27.02.2019 wherein priority of equivalency of degree through correspondence course is given but whether the degree obtained through correspondence course by an in service teacher is treated as regular degree remained silent in the said instruction."

16. In this context, a decision of the Supreme Court in Abdul Motin Vs. Manisankar Maiti reported in (2018) 16 SCC 533 should be mentioned where a PhD degree obtained from Netaji Subhas Open University was challenged as an invalid degree since the same was obtained through correspondence course. The point for consideration before the Supreme Court was whether a PhD degree by an Open University under the Netaji Subhas Open University Act, 1997 and a PhD degree by a regular university should be treated as different for appointment to the post of Principal/Lecturer/Reader, etc., in Non-Government Colleges where a PhD degree is an essential qualification. After considering the effect of the decision in Annamalai University Vs. Information and Tourism Deptt. reported in (2009) 4 SCC 590, the Supreme Court was of the view that a PhD degree issued by an Open University and that issued by a formal/conventional university must be treated at par having been issued under the uniform standards prescribed by the University Grants Commission Act.

17. The ratio of the aforesaid decision makes it clear that the distinction sought to be made by the D.I. between the competing courses offered and the degrees obtained is contrived and artificial.

18. A party suffering the consequences of an arbitrary differential treatment despite being in the same class as candidates aspiring for the post of Headmaster/Headmistress finds reflection in K. Thimmappa, where the Supreme Court held that to pass the test of permissible classification, two conditions must be fulfilled, namely, that (a) the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped from those left out of the group and (b) that the differentia must have a rational nexus to the object sought to be achieved by the statute in question. The "unintelligible differentia" sought to be made by the D.I. is between regular Honours degrees

and those obtained through correspondence course. The unequal treatment given to the two competing degrees is against all the relevant notices and Public Statements/Notifications issued by not only the higher educational authorities but the School Education Department itself. It is also relevant to state that distance mode of learning has gained considerable recognition and is the accepted mode of obtaining qualifications for a substantial percentage of the population in the country today. Obtaining a degree through correspondence course/distance mode is the preferred option for a large number of candidates for compelling reasons including the suitability of such courses with reference to a candidate's location, resources, convenience and adjustment with parallel commitments. This is reflected in the Public Notice of the UGC and the vision of the Government in recognizing and treating degrees awarded through distance mode at par with those obtained through the formal system of education. The decision of the D.I., therefore, in placing a degree awarded through correspondence several notches lower than a degree obtained through a formal course, effectively sets the clock back to a narrow and constricted vision of the education system in the country.

19. The next issue for consideration is whether the petitioner can seek a Writ of Mandamus in the present facts and circumstances. For this, the prayer in the writ petition is required to be stated. Besides seeking setting aside of the impugned order of the D.I. dated 13th May, 2019, the petitioner has sought for a writ in the nature of Mandamus commanding the D.I. to take necessary steps for awarding seven marks to the petitioner instead of the four marks awarded and also for a Mandamus commanding the respondents to recast the Panel after awarding the proper marks to the petitioner as well as for taking necessary steps for appointment of the petitioner as the first empanelled candidate for the post of Assistant Headmaster of the concerned institution. The argument on behalf of the State that the petitioner cannot seek a Mandamus as the petitioner has not been able to establish a legally enforceable right is supplemented by the contention that no illegal or mala fide act has been committed by the D.I.

20. The scope of a Writ of Mandamus is best expressed in the language of Article 226 of the Constitution itself. Under the "Power of High Courts to issue certain writs", Article 226 provides that every High Court shall have the power in the territories to which it exercises jurisdiction to issue to any person or any authority or any Government writs "in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari" or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose. The language used in Article 226 is ".....writs in the nature of....." Mandamus, etc., which means that the power conferred on a High Court to issue the five Writs is wider than the prerogative Writs in the courts of England. The language used gives the writ courts in India a wider canvas not only to issue the writs in question but also to issue directions or orders with the force and effect of the five Writs, taken together or separately, for enforcing the rights guaranteed under Part III of the Constitution. The approach of the Supreme Court in interpreting the breadth of

Mandamus has found expression in several cases from Dwarka Nath (AIR 1966 SC 81) and K.S. Jagannathan [(1986) 2 SCC 679] to the recent Maharashtra Chess Association Vs. Union of India reported in (2019) SCC Online SC 932 where the parameters of the power has been stretched to "reach injustice wherever it is found". Drawing from Basappa Vs. Nagappa (1962) 2 SCR 169, the Supreme Court recognized the need to mould the reliefs to meet the peculiar and complicated requirements of each case. It has also been held that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue Writs of Mandamus or in the nature of Mandamus or to pass orders and necessary directions where a public authority has failed to exercise or has wrongfully exercised the discretion conferred upon it by a statute/ rule/policy decision or has exercised such discretion by taking irrelevant considerations into account so as to frustrate the object of conferring such discretion but also to compel the public authority to act in a proper and lawful manner to prevent injustice to the concerned parties. Paragraphs from the recent decision in Maharashtra Chess Association reiterating the reach of the power are set out;

"13. Echoing the sentiments of Lord Coke, this Court in Uttar Pradesh State Sugar Corporation Limited Vs. Kamal Swaroop Tondon observed that:

` ` 35..... It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court "to reach injustice wherever it is found."

14. The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. In A.V. Venkateshwaran, Collector of Customs, Bombay V. Ramchand Sobraj Wadhwani a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it:

` ` 10.....We need only add that broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible Rules which should be applied with rigidity in every case which comes up before the court.

15. The powers of the High Court in exercise of its writ jurisdiction cannot be circumstanced by strict legal principle so as to hobble the High Court in fulfilling its mandate to uphold the rule of law.

16. While the powers the High Court may exercise under its writ jurisdiction are not remedy would create a bar on the Bombay High Court entertaining the

Appellant's writ petition."

21. The decisions cited on behalf of the State including *Mani Subrat Jain Vs. State of Haryana* reported in (1977)1 SCC 486 and *Secretary, Parnasree Club Vs. State of West Bengal* reported in AIR 1999 Cal 197 proceed on the basis that the petitioner must have a judicially enforceable right and that a court will enforce the performance of statutory duties by public bodies on the application of a person who can show that he has a legal right to insist on such performance. In the facts of this case, the petitioner has challenged the impugned decision of the D.I. by which the petitioner has been allotted marks on his academic qualifications for which there is no rational basis. The G.O and Memo relied upon by the D.I. in coming to the impugned finding against the petitioner does not support the case made out by the D.I. in coming to such finding, the petitioner has been made to suffer the consequence of being categorized with Special/ Condensed Honours, which is contrary to a subsequent Notification issued by the School Education Department. Despite getting a first division in Bachelor's degree Honours, the petitioner has been clubbed with "Others" by an irrational construction of the concerned Memo. As a consequence of this categorization, the petitioner has been placed in the fifth rank in the Panel. The present writ petition has challenged the impugned decision of the D.I in the wrongful categorization of the petitioner and in failing to draw an equivalence between candidates falling under the same class. The Notifications/Memos shown to bolster the contention of the petitioner, leads this court to recognize the indefeasible right of the petitioner to compel the performance of a corresponding obligation on the part of the D.I. to decide the issue in a certain manner for preserving the rights guaranteed under Articles 14 and 19 of the Constitution of India. In *Pradip Kumar Das Vs. Union of India* reported in (2013)4 CAL LT 310, the question before the court was whether the petitioner's rights were infringed by the cancellation of the selection process consequent to an advertisement for recruitment of service providers in various categories through an open test. Upon considering the facts of that case, the learned Judge was of the view that candidates figuring in an unapproved merit list cannot claim a better right than candidates named in a valid Merit List/Panel prepared for recruitment who cannot claim appointment. In that case, the court was also of the view that the cancellation of the selection process ordered by the Inspector General or the sufficiency of the evidence collected by the Enquiry Officer is not a matter for the writ court to examine since a writ court would not venture to substitute its view for that taken by the Inspector General. *Centre for Public Interest Litigation Vs. Registrar General of the High Court of Delhi* reported in (2016)13 SCC 163 held that if suitable candidates are not found, the employer is not obliged to fill up the posts. In the view of this court, the facts in the aforesaid cases stand on a different footing and hence do not apply to the facts of the present case. The petitioner has questioned his rank and placement in the Panel by reason of the failure on the part of the D.I. to take a relevant, reasonable and consistent view of the relevant G.Os/Memos. The decision of the D.I. of disapproving the panel

cannot take away the petitioner's right to seek a direction on the concerned authority to act in a certain manner for the ends of justice. This court, therefore, cannot accept the contention that the petitioner is disentitled from seeking a Mandamus in the facts of the present case.

22. In view of the reasons stated above, this court finds merit in the contentions of the writ petitioner that the decision of the D.I. dated 13th May, 2019 is not sustainable and should accordingly be set aside. The school authority who has been given the power to prepare a new panel and the other concerned authorities involved in the said decision, are directed to give a proper construction to all the relevant Notifications/G.O.s as discussed above for making a correct evaluation of the petitioner's entitlement to the marks as an Honours Graduate with a first division. The concerned authority should consider the relevant clauses of the Memo no.1628 dated 10th July, 2002 as well the 2015 Rules in relation to appointment to the post of teacher in secondary or higher secondary school in the event it is found that more than one person including the petitioner has obtained the same marks or the same aggregate (total marks) after the evaluation of the candidates under the relevant G.O.s/Memos. The concerned authorities as well as the District Inspector of schools, Secondary Education, Murshidabad are directed to prepare a fresh panel in accordance with the aforesaid directions within a period of eight weeks from the communication of this Judgment on all the relevant parties.

23. W.P.10409(W) of 2019 is disposed of on the basis of the above directions. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.