
(2010) 05 CAL CK 0002

In the Calcutta High Court

Case No : M.A.T. No. 169 of 2010 with C.A.N. 950 of 2010

Nilmadhab Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Citation : (2010) 2 CALLT 304 : 114 CWN 1048

Hon'ble Judges : Pranab Kumar Deb, J; Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Mr. Lakshmi Gupta, Mr. Kamallesh Bhattacharyya and Mr. Kamal Mishra, for the Appellant; Balai Chandra Ray, Joydeep Kar, Tapabrata Chakraborty and Mr. Saikat Banerjee for the State, Mr. Tulsdas Maity and Mr. Milan Bhattacharyya for the Intervenor, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—The important question that arises for our consideration in the appeal is whether two different recruitment processes initiated at different times for filling up the separately notified vacant posts Primary School Teacher can be clubbed together for preparing a common panel to fill up the said separately notified vacancies.

2. The present controversy arises pursuant to the attempt of the respondent authorities to club together two different recruitment processes separately initiated in the year 2005 and 2006 for filling up the assessed vacancies of 1365 and 300 posts of Primary School Teacher.

3. By the common judgment and order dated 8th February, 2010, a learned Judge of this Court finally disposed of two writ petitions being W.P. No. 2044(W) of 2010 and W.P. 2145(W) of 2010 upholding the stand taken by the State-respondents to club together two different recruitment processes initiated separately in the year 2005 and 2006 for filling up the posts of Primary School Teacher.

4. Assailing the said judgment and order passed by the learned single Judge, writ petitioners in W.P. No. 2044(W) of 2010 have preferred the instant appeal.

5. The principal grievance of all the appellants/writ petitioners is that pursuant to the requisition dated 22nd November, 2005 made by the Purba Medinipur District Primary School Council, names of the said appellants/ writ petitioners were sponsored by the concerned Employment Exchange for filling up 955 posts of Primary School Teacher out of total 1365 vacant posts since 30% of the said 1365 posts were kept reserved pursuant to the Government Order issued by the Labour Department. Subsequently, on 1st March, 2006 another requisition was sent by the said District Primary School Council to the concerned Employment Exchange in respect of 300 newly created posts with a request to sponsor the names by 31st March, 2006. Out of the aforesaid 300 vacant posts, 30% were also kept reserved pursuant to the Government Order issued by the Labour Department and, therefore, requisition was sent for sponsoring the names of suitable candidates for filling up 210 additional posts of Primary School Teacher.

6. It is the specific contention of the appellants that since their names, were sponsored by the Employment Exchange pursuant to the requisition dated 22nd November 2005 for filling up 955 posts, they cannot be clubbed together with the candidates whose names were sponsored against the subsequent requisition dated 1st March, 2006 for filling up the additional 210 posts.

7. The appellants herein were sponsored by the Employment Exchange in response to the requisition dated 22nd November, 2005 and they submitted their Bio-data and testimonials to the Purba Medinipur District Primary School Council in the year 2006. However, for a considerable period thereafter, no further step was taken by the concerned District Primary School Council for filling up the aforesaid vacant posts of Primary School Teacher. Suddenly, on 6th August, 2009, said District Primary School Council published a notification indicating that new recruitment process will be initiated for recruitment to the post of Primary School Teacher. This was an open advertisement. The aforesaid new process was initiated in view of amendment of the Recruitment Rules of 2001 in the year 2009.

8. Under the aforesaid amended Rules, persons who had already submitted their Bio-data were required to submit the same afresh. However, benefit of the relaxation of the upper age limit was extended to the 2005-06 sponsored candidates.

9. Challenging the said publication and the recruitment process, about 30 writ petitioners were moved before this Court and the same were entertained by a learned Judge of this Court (Justice Soumitra Pal). For the sake of convenience, Justice Pal dealt with the facts of one of the writ petitions being W.P. No. 1580(W) of 2009 although all the writ petitions were heard analogously since the issues involved in all the writ petition were common.

10. After contested hearing, on 23rd September, 2009 Justice Pal was pleased to

pass the following interim order in the writ petitions:

.....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 canceling the selection process initiated in 2006 under the unamended Rules for 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.....

11. The common issue which was raised in the aforesaid writ petitions before Justice Pal was whether the candidates whose names were sponsored in 2006 and who submitted their Bio-data in connection with the requisition made in 2006 could be deprived of the benefit of the separate selection process already initiated and in progress on the ground of the amendment of the Recruitment Rules of 2001 in 2009 and due to initiation of the fresh recruitment process in 2009.

12. It was also urged on behalf of the writ petitioners that the amendment of the Recruitment Rules of 2001 in 2009 cannot justify the cancellation of the recruitment process already initiated under the unamended Rules and the initiation of the fresh recruitment process under the amended Rules in respect of the vacancies covered by the recruitment| process in progress.

13. Justice Pal in the aforesaid order dated 23rd September, 2009 also observed:

.....It is to be borne in mind that every selection procedure has a methodology of its own and varies from examination to examination. Since in the case in hand under Rule 9 appearance in the interview is not the criterion, the selection process commenced as soon as the candidates were requested to submit their testimonials/certificates which forms, under Rule 9(b), the bulk of computation of marks for selection.....

14. The aforesaid writ petitions ultimately appeared before another learned single Judge of this Court (Justice Dipankar Datta) and were disposed of by the common order dated 24th December, 2009. Justice Datta while dealing with the controversy involved in the writ petitions was pleased to observe as follows:

.....The vacancies for which the Employment Exchange were approached in 2006 and also the vacancies which occurred thereafter were clubbed together and in view of amendments made to the Recruitment Rules, advertisements were published inviting applications from all eligible candidates to offer their

candidatur for recruitment as Assistant Teachers in primary schools.

At this stage, the present petitions were filed by those candidates who had been, sponsored in pursuance of requisitions sent to the employment exchanges in 2006. It was contended by them that the process that had once started ought to be brought to its logical conclusion according to Recruitment Rules that existed on the date such process was initiated by the respective Councils and that the same could not have been concluded by applying the amended Rules.....

Emphasis Supplied

15. In the aforesaid common order dated 24th December, 2009, Justice Datta further observed:

".....Without expressing any opinion on the merits of the rival claims, this Court disposes of these writ petitions by making the interim order dated 23.9.2009 absolute with the only modification that the concerned Councils shall consider, if not already considered, all candidates who were/are eligible, according to law, to participate in the selection process initiated in the year 2006 for filling up those vacancies in respect whereof requisitions were sent to the concerned employment exchanges strictly in accordance with the terms of the Recruitment Rules that would govern the process on the date the same was initiated. (Emphasis Supplied)

16. Referring to the aforesaid Interim order passed by Justice Soumitra Pal and the final order passed by Justice Dipankar Datta in the writ petitions, Mr. Sakti Nath Mukherjee, learned senior Counsel representing the appellants submitted that the controversy in the first round was only about the legality and propriety of the cancellation of the recruitment process already initiated only on the ground of subsequent amendment of the Recruitment Rules in the year 2009 and the attempt for fresh recruitment under the said amended Rules. Mr. Mukherjee further submitted that the clubbing together complained of in the first round of litigations ending with the judgment and order dated 24th December, 2009 was confined to the issue cancellation of the recruitment process already initiated under the unamended Recruitment Rules then in force and attempt to place those sponsored candidates of 2006 in the new recruitment process under the amended Rules of 2009.

17. The second round of controversy arose in the context of the attempt on the part of the respondent authorities to club together the two recruitment processes, one initiated in the year 2005 and the other in 2006. Undisputedly both the recruitment processes were initiated under the unamended Recruitment Rules i.e. the Rules which were in force prior to the amendment in the year 2009.

18. This time controversy arose over the permissibility of the two separate recruitment processes being clubbed together when:

a) the number of vacancies were different;

- b) the years of vacancies were different;
- c) the categories of vacancies were different;
- d) the date for calculation of qualifying age were different;
- e) the last dates for submission of recommendations by Employment Exchanges were different;
- f) the date of recommendations made by Employment Exchanges were different;
- g) in respect of 2005 requisition seniors from the list in the Employment Exchanges were recommended and in respect of 2006 requisition the juniors from the list in the Employment Exchange were recommended;
- h) some of the candidates recommended in respect of 2005 requisition became overaged on 01.01.2006 (the relevant date for 2006 requisition). Similarly it may also be that some of the recommended against 2006 requisition were underage on 01.01.2005 (the relevant date for 2006 requisition).

19. The learned single Judge while deciding the writ petition filed by the appellants herein together with another identical writ petition by the common judgment and order dated 8th February, 2010 specifically held:

.....in any event, when the State, in due furtherance of their attempts to comply with judicial Orders, are in the process of doing so and in that process if they club together two recommendations, it cannot be said that they have acted in a clandestine manner that calls for judicial interference.....

20. In the aforesaid impugned judgment and order under appeal, learned single Judge has specifically mentioned:

.....the Respondents have adopted a policy which facilitates the process of expeditious filling up of the vacancies.....

21. Mr. Saktinath Mukherjee, learned senior counsel of the appellants submitted that in the present case it was not open to the State to adopt a policy which facilitates the process of expeditious filling up of the vacancies. Mr. Mukherjee further submitted that when the statutory rules prescribe a zone for consideration or field of choice it is not open to the employer to even consider far less to appoint a candidate, who is not coming within the zone or field prescribed by the statutory rules. In support of the aforesaid contention, Mr. Mukherjee referred to and relied on the following decisions:

- 1) S. Ramaswamy Vs. Union of India (UOI) and Others,
- 2) Union of India (UOI) and Others Vs. Majji Jangamayya and Others,
- 3) Union of India (UOI) and Another Vs. F.H. Dubash,

22. It has been argued on behalf of the appellants that the fields of choice or the zones for consideration under the two separate requisitions of 2005 and 2006 are

distinctly different and, therefore, candidates of two separate and different zones/ fields of choice cannot be clubbed together for filling up the available vacancies which were also notified separately by the concerned District Primary School.

23. The learned Advocate General argued on behalf of the State-respondents which was also adopted by the learned Advocate of the other respondents.

24. The learned Advocate General specifically submitted before us that question of clubbing the posts in the present case cannot and does not arise. It is the specific case of the State-respondents and the concerned District Primary School Council that no selection process was initiated in the year 2005 and selection process was initiated only in the year 2006.

25. Referring to the interim order passed by Soumitra Pal, J. on 23rd December, 2009, learned Advocate General submitted that the said interim order restrained the Government from canceling the selection process initiated in the year 2006 under the unamended Rules for the posts of Primary School Teacher and for filling up the vacancies for which the selection process was initiated in the year 2006. The learned Advocate General further submitted that the recruitment process which commenced pursuant to the advertisement issued in the year 2009 was divided into two slots; first slot was in respect of selection process which commenced prior to 2009 amendment and the second slot consisted of the rest of the vacancies.

26. Selection process which commenced prior to the 2009 amendments was guided by the Recruitment Rules of 2001. The learned Advocate General also submitted that the appellants/writ petitioners herein submitted their Bio-data in the year 2006 and accordingly, they were considered by the Recruiting Authority in the first slot pursuant to the interim order passed by Soumitra Pal, J. which was subsequently confirmed by Dipankar Datta, j, it was also submitted on behalf of the the State-respondents that the appellants/writ petitioners without raising any objection duly appeared in the written test and took a chance along with the other candidates whose names were requisitioned subsequently pursuant to the requisition issued on the basis of the notification dated 1st March, 2006.

27. The learned Advocate General further submitted that the appellants had waived their right as would appear from the fact that the appellants herein appeared in the written test pursuant to the advertisement wherein it was clearly mentioned that pursuant to the order of this Court, candidates who submitted their Bio-data in connection with the recruitment process initiated in the years 2005 and 2006 would be eligible to it for the written test Furthermore, the Admit Cards issued to the appellants also mentioned that such selection test is being held pursuant to the order passed by this Court. According to the learned Advocate General, despite knowledge of the fact that the said written test was being held pursuant to the order passed by this Hon'ble Court, the appellants took a calculated chance and sat in the written examination along with other

candidates whose names were requisitioned pursuant to the notification issued on 1st March, 2006.

28. It has been specifically urged before this Court on behalf of the State-respondents that the appellants herein neither at the stage of short-listing nor at the stage of appearance at the written examination raised any objection to the effect they were required to be considered separately in a separate slot against the vacancies requisitioned pursuant to the notification dated 22nd November, 2005. It has been specifically argued on behalf of the State-respondents that the appellants having appeared at the written examination held by the Purba Medinipur District Primary School Council with their eyes open and not having objected to the process of short listing, and having accepted the Admit Card which was issued for sitting in the written test and having appeared in the written test with their eyes open-are not eligible and entitled to challenge the said selection process by filing the writ petition and/ or the instant appeal and its connected application.

29. The learned Advocate General referred to and relied on the following decisions in support of the aforesaid contentions:

- 1) Madan Lal and Others Vs. State of Jammu and Kashmir and Others,
- 2) Dhananjay Malik and Others Vs. State of Uttaranchal and Others,
- 3) K.A. Nagamani Vs. Indian Airlines and Others,

30. The learned Advocate General submitted that the appellants cannot be treated as a separate group under any circumstances. According to the learned Advocate General, the appellants will either come under the category of candidates for which the selection process had commenced without segregation or requisitions or the said appellants must stand with the rest of the candidates.

31. Referring to the interim order passed by Soumitra Pal, J. and the subsequent final order passed by Dipankar Datta, J., learned Advocate General submitted that since the appellants herein submitted their Bio-data and testimonials in 2006, question of considering the said appellants separately from the other candidates whose names were sponsored pursuant to the requisitions made by the concerned District Primary School Council on 1st March, 2006 cannot and does arise. The learned Advocate General, however, specifically argued before this Court and also clearly mention in the written notes submitted before us that there has been no clubbing of posts.

32. Mr.Saktinath Mukherjee, learned senior counsel of the appellants submitted the stand taken by the State-respondents before the learned single Judge (Tapen Sen, J.) and accepted by the said learned Judge while finally deciding the writ petitions by the judgment and order under appeal was the permissibility, of such clubbing together by the State on the basis of the so called "policy decision". Mr. Mukherjee submitted that the State cannot take a stand before the appeal Court. Mr. Mukherjee referred to the various observations of the learned single Judge in

the judgment and order under appeal which are reproduced hereunder:

.....According to them they therefore formed a separate class by themselves and so far as the second spell of vacancies is concerned which was 300 in number, fresh notification was made and fresh candidates sponsored..... The Petitioners have stated that they have already taken the written tests conducted by the Council on 6.12.2009 and if the Petitioners are empanelled against the notified vacancies of 1365 they have a fair chance of getting employment provided the sponsored persons who were subsequently included by the subsequent requisitions are excluded from the zone of consideration and it is in the background of such facts, that the Petitioners have come to this Court praying for the reliefs prayed for as indicated above..... There is no dispute that these Petitioners are persons who participated in the selection process which was initiated in the year 2006..... Let it be recorded that the Petitioners belonged to the 2006 slot of vacancies and it is on the basis of the judicial Orders that the selection process was ordered to be concluded and/or set in motion. The Petitioners have also undertaken the selection test and in any event, when the State, in due furtherance of their attempts to comply with judicial Orders, are in the process of doing so and in that process if they club together two recommendations, it cannot be said that they have acted in a clandestine manner that calls for judicial interference. In any event, considering such a large public interest and also considering the fact that the State has to give effect to the right of education to the younger generation who should have the right to receive education from teachers, this Court finds no reason to interfere.

The Writ Petitions are accordingly dismissed.....

33. Referring to the aforesaid observations and findings of the learned single Judge in the judgment and order under appeal, Mr. Mukherjee submitted that it cannot be disputed by the State-respondents that the said State-respondents had taken a specific stand before the learned single Judge that they were clubbing together candidates, who were recommended and had submitted their Bio-data against the requisition dated 22nd November 2005 and 1st March, 2006. Mr. Mukherjee also submitted that on the basis of the aforesaid submissions writ petitioners namely the appellants herein had to suffer the dismissal of the writ application and, therefore, it is not now open to the State-respondents to make any contrary case and dispute the stand earlier taken before the learned single Judge. Mr. Mukherjee referred to and relied on a judgment of the Supreme Court in the case of State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, wherein the Apex Court held:

4. When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State, of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written

submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. Judgments cannot be treated as mere counters in the game of litigation. We are bound to accept the statement of the judges recorded in their judgment, as to what transpired in Court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. of course a party may resile and an appellate Court may permit him in rare and propriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

34. The aforesaid decision was also followed in the case of D.P. Chadha v. Triyugi Narain Mishra and Ors. reported in (2001) 2 SCC 221 (Paragraphs 18, 19 and 20) and in the case of Shankar K. Mandal and Others Vs. State of Bihar and Others, .

35. The learned advocate General, however, submitted that the council had requisitioned names for selection under Rule 8(3) which provides vacancies existing on date plus vacancies anticipated to arise against sanctioned strength within next 12 months have to be taken into consideration for computation of the total number of vacancies. It has also been submitted that if for a given period vacancies on computation is found to be of a certain figure and the Council omits any number during requisition, it may for the missing or omitted numbers requisition again.

36. The learned Advocate General further submitted that the Council retains the aforesaid statutory power in view of Rule 4(9) of 2001 Rules. The learned Advocate General also submitted that in the instant case if the requisition dated 22nd November, 2005 is taken into consideration, twelve months period expires on 21st November, 2006 and within the said period the said vacancy of 300 posts have occurred by reason of fresh creation of such posts. Therefore, the vacancies have come into existence during the same period. Referring to Rule 2(q), learned Advocate General submitted that when a post is created with the sanction from

the Government, such additional posts also vacancies and such vacancies have been created within next twelve months. The said additional vacancies, therefore, occurred during the same period according to the learned Advocate General.

37. It has also been submitted by the learned Advocate General that statutory Rules of 2001 does not prevent sending of two requisitions for the same period and any contrary interpretation of the statutory Rules of 2001 will lead to serious anomalous situation. Learned Advocate General submitted that if the contention of the appellants is accepted, any subsequent requisition even if is sent for the same period, the vacancies have to be bifurcated and the candidates will have to be considered in different slots which will lead to absurdity and such interpretation will be contrary to the provisions of the statutory Rules of 2001.

38. There is no dispute that the appellants herein were sponsored pursuant to the requisition sent by the Purba Mednipur District Primary School Council on 22nd November, 2005. The aforesaid appellants, in our opinion, cannot be asked to compete with those who were recommended against the subsequent requisition dated 1st March, 2006. The zone of consideration or the field of choice is very much important in the context of statutory Rules and the same Cannot be disregarded or ignored to the extreme prejudice of candidates who were seniors and recommended earlier.

39. In the present case, the candidates sponsored by the Employment Exchange against 2005 requisition were senior to those who were recommended pursuant to the requisition dated 1st March, 2006. Some of the candidates sponsored against 2005 requisition became overaged on 1st January, 2006 (the relevant date for 2006 requisition). Similarly, some of the candidates recommended against 2006 requisition were underage on 1st January, 2005 (the relevant date for 2005 requisition).

40. Purba Medinipur District Primary School Council initiated two separate processes by issuing two separate requisition dated 22nd November, 2005 for filling up 1365 vacancies and 1st March, 2006, for filling up further 300 vacancies in the post of Primary School Teacher. In respect of the recruitment process initiated pursuant to the notification dated 22nd November, 2005, total vacancies were calculated for the period 2003 to 200C and the subsequent recruitment process was initiated pursuant to the notification dated 1st March, 2006 due to creation of additional 300 posts of Primary School Teacher. Therefore, the categories of vacancies of admittedly, different.

41. The qualifying age in respect of the recruitment process initiated pursuant to the requisition dated 22nd November, 2005 was different from the subsequent recruitment process initiated pursuant to the notification dated 1st March, 2006.

42. In the aforesaid circumstances, candidates in respect of 2005 requisition are separate in every respect from the candidates sponsored by the subsequent requisition dated 1st March. 2006. The candidates sponsored pursuant to 22nd

November, 2005 requisition constitute a separate zone like the candidates sponsored in response to the subsequent requisition dated 1st March, who also constitute a separate zone.

43. No candidate outside the aforesaid zone of consideration can be allowed to compete with the candidates who are included in the said zone of consideration for filling up the vacant posts of Primary School Teachers pursuant to the notification issued by the District Primary School Council dated 22nd November, 2005 otherwise the same would violate all norms and 1 Rules of recruitment. Every candidate seeking appointment under a specific recruitment process should be assessed within the respective zone of consideration. Every recruitment process will constitute a separate zone of consideration and, therefore, different recruitment processes cannot be clubbed together for filling up the vacant posts upon clubbing together separately vacancies.

44. In the present case, candidates sponsored pursuant to the notification dated 22nd November, 2005 including the appellants herein submitted their Bio-data and testimonials in the year 2006 for filling up the aforesaid 1365 vacant posts of Primary School Teacher out of which 30% was kept reserved in terms of the Government Order issued by the Labour Department. In response to the requisition dated 1st March, 2006, Bio-data and other testimonials were submitted by the concerned candidates in the year 2007.

45. Therefore, the candidates who submitted their Bio-data in the year 2007 for filling up the subsequently created 300 posts of Primary School Teacher pursuant to the notification issued by the Purba Medinipur District Primary School Council dated 1st March, 2006 cannot be allowed to compete with the candidates included in different zone of consideration for filling up the separately notified vacancies relating to 1365 posts of Primary School Teacher in terms of notification dated 22nd November, 2005.

46. As the Purba Medinipur District Primary School Council initially issued notification dated 22nd November, 2005 for filling up 1305 vacancies and keeping 30% reserved pursuant to the Government Order issued by the Labour Department requested the Employment Exchange to sponsor candidates for filling up 955 vacant posts, a specific zone of consideration was constituted with the candidates sponsored for filling up the aforesaid 955 vacant posts. The said Council thereafter, issued another notification on 1st March, 2006 for filling up further 300 newly created posts of Primary School Teacher and keeping 30% of the posts reserved pursuant to the Government Order issued by the Labour Department took steps for filling up 210 posts and a separate requisition was made to the concerned Employment Exchange for sponsoring candidates. Therefore, the candidates sponsored for filling up the aforesaid 210 vacant posts of Primary School Teacher will also constitute a distinctly separate zone.

47. Two separate zones under any circumstances cannot be clubbed together since by clubbing together, field of choice will be enlarged which cannot be

permitted. Every candidate has to be considered within the respective zone of consideration.

48. Once a recruitment process is initiated for filling up particular vacant post/posts, the same should be completed following the Recruitment Rules upon considering only those candidates who are within the zone of consideration for filling up the said vacancy/vacancies. No candidate outside the zone of consideration can be considered for selection against the notified vacant posts in relation to a particular recruitment process. Different recruitment processes can be initiated for filling up separately notified vacancy/vacancies.

49. In the present case, one recruitment process was initiated for filling up 1365 vacancies in terms of notification dated 22nd November, 2005 and the other recruitment process was initiated for filling up subsequently created 300 posts pursuant to the notification dated 1st March, 2006. Therefore, two different recruitment processes initiated for filling up different sets of vacant posts of Primary School Teacher cannot be clubbed together.

50. The judgments cited by the learned senior counsel of the appellants on the issue of field of choice although relates to the subject matter of promotion, the principles of law decided by the Hon"ble Supreme Court in the aforesaid decisions will, however, apply in case of recruitment also as we are of the opinion that two different recruitment processes initiated for filling up separately notified vacancies cannot be clubbed together by enlarging the field of choice. Performance of a candidate in respect of a particular zone cannot be compared with any candidate of a different zone, Notified vacant posts should be filled up by the candidates coming within the zone of consideration and not by others outside the said zone.

51. The learned senior counsel of the appellants has rightly submitted before this Court that the field of choice in respect of the appellants herein is restricted to 955 vacant posts and that field of choice of the candidates cannot be mixed with the candidates of different field of choice constituted for filling up subsequently created 300 vacant posts. The learned senior counsel of the appellants also submitted that by reason of clubbing the vacancies mentioned in two separately issued notifications dated 22nd November, 2005 and 1st March, 2006 respectively unequals have been treated equally. The learned senior counsel of the appellants has rightly submitted that the candidates sponsored pursuant to the. first requisition dated 22nd November, 2005 cannot be considered along with the candidates sponsored pursuant to the subsequent requisition dated 1st March, 2006 as the candidates sponsored pursuant to each requisition will constitute a specified different zone of consideration.

52. The learned Advocate General, however, admitted before us that the posts were not clubbed together although the fact remains that the candidates who were recommended pursuant to the requisition dated 22nd November. 2005 and submitted their Bio-data and testimonials in 2006 were clubbed together with the

candidates who were sponsored pursuant to the requisition dated 1st March, 2006 and submitted their Bio-data and other testimonials in the year 2007.

53. The learned single Judge erroneously permitted the State-respondents to club together two different categories of candidates namely, the candidates who were sponsored pursuant to the requisition dated 22nd November, 2005 and the candidates who were sponsored pursuant to the notification dated 1st March, 2006.

54. Undisputedly, recruitment processes were initiated in respect of both categories of the aforesaid candidates before the amendment of the Recruitment Rules in the year 2009 and in that sense they formed a separate slot but while filling up the vacancies, two different recruitment processes can under no circumstances be allowed to be clubbed together as each recruitment process was initiated for filling up the vacancies specifically mentioned in the specific notification issued by the concerned District Primary School Council. Recruitment process initiated for filling up the specified vacancies mentioned in the particular notification cannot be merged with any other recruitment process initiated for filling up separate vacant posts mentioned in a separate notification in connection with different recruitment process.

55. Therefore, in the present case, learned single Judge should not have permitted the State-respondents to club together two different recruitment processes by clubbing together the available vacant posts specifically mentioned in different notifications forming the basis of different recruitment processes.

56. The learned Advocate General submitted that the appellants/writ petitioners herein appeared at the written examination without raising any objection. We fail to understand how the appellants can raise any objection since it was not known to the said appellants that the concerned respondents will ultimately prepare a common panel in respect of the candidates sponsored pursuant to the notification dated 22nd November, 2005 and subsequent notification dated 1st March, 2006.

57. There is no illegality and/or irregularity in holding a common written examination for assessing the performance of candidates of different zones, but while preparing the panel for filling up the vacancies of a particular zone, performance of the candidates of that particular zone should only be taken into consideration. Therefore, there is no scope to prepare a common panel in respect of two different zones of consideration as sought to have been done in the instant case.

58. It has also been submitted on behalf of the State-respondents that more than 1000 Primary School Teachers in the district of Purba Medinipur have already been appointed by the Council and the candidates so appointed are not even parties to the present proceeding. Therefore, according to the State-respondents, any adverse order will prejudice the interests of the candidates so appointed during the pendency of the appeal.

59. There is no dispute that at the time of filing of the appeal, no appointment was made by the Council. This Court took expeditious steps for early disposal of the present appeal. Both the appeal and application were heard regularly as "Specially Fixed Matters". During the pendency of the appeal, no step could be taken by the respondent authorities in order to render the appeal infructuous. All steps taken by the respondent authorities including the Purba Medinipur District Primary School Council during the pendency of the appeal relating to the appointment of the Primary School Teachers will certainly abide by the result of the appeal.

60. For the reasons discussed hereinabove, the candidates who were sponsored pursuant to the notification dated 22nd November, 2005 and submitted their Bio-data and other testimonials in the the year 2006 like the appellants/writ petitioners herein are entitled to be considered within their own zone of consideration and they cannot be clubbed together with the candidates who submitted their Bio-data in the year 2007 against the requisition made on 1st March, 2006.

61. Respondent-Purba Medinipur District Primary School Council as well as other State-respondents are, therefore, directed to take necessary steps to prepare separate panels for filling up separately notified vacant posts of Primary School Teacher pursuant to the notifications dated 22nd 2005 and 1st March, 2006 respectively.

62. For the aforementioned reasons, we are unable to affirm the decision of the learned single Judge.

63. In the aforesaid circumstances, the judgment and order under appeal cannot be sustained in the eye of law and the same are accordingly, set aside.

64. This appeal and the connected Stay Application thus stand allowed

65. In the facts of the present case, there will be, however, no order as to costs.

Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Pranab Kumar Deb, J.-I agree.