

**(2018) 10 CAL CK 0007**  
**In the Calcutta High Court**  
**Case No : Writ Petition No.17276 (W) Of 2011**

**Rumki Biswas @APPELLANT@Hash State of West Bengal & Ors**

---

**Date of Decision :** 01-10-2018

**Acts Referred:**

West Bengal School Service Commission (selection of persons for appointment to the post of teacher) Rules, 2007 — Rule 17(5)

**Citation :** (2018) 10 CAL CK 0007

**Hon'ble Judges :** Amrita Sinha, J

**Bench :** Single Bench

**Advocate :** Swapan Kumar nandi, Narayan Chattopadhyay, Soumi Kundu

**Final Decision :** Disposed Off

---

## Judgement

Liberty is granted to the learned advocate for the petitioner to add the Chairman, West Bengal Central School Service Commission as party

respondent in the matter. The learned advocate appearing for the West Bengal Central School Service Commission agrees to enter appearance on

behalf of the added respondent accordingly no direction is being passed for service upon the said added respondent.

The petitioner is a scheduled caste candidate possessing B. Sc. Honours in Biological Science, Zoology and M.Sc. degree. She appeared in the 11th

Regional Level Selection Test, 2010 for being appointed in the post of Assistant Teacher in non- government aided schools. She was selected for the

post and ranked 43 in the combined merit list published by the West Bengal Regional School Service Commission. Amongst the scheduled caste

candidates her rank was 2. The petitioner appeared in the counselling held by the West Bengal Regional School Service Commission on 6th June, 2011

and she selected the school named Central Satjelia M.C. High School, P.O â?"Luxbagan, P.S â?"Gosaba, Sub Division â?"Canning, South 24

Parganas.

The petitioner is a resident of Bandel, P.S-Chinsura, and District Hooghly. As the distance of the aforesaid school is more than 200 kilometres

away from her residence she wrote a letter to the Assistant Secretary, West Bengal Regional School Service Commission on 7th June, 2011 intimating

her inability to join and returned the declaration signed by her at the time of counselling. The petitioner prays for being appointed in any other school

which is close to her residence.

The petitioner submits that there are several vacancies within the region of Hooghly and appointment may be given to her in such a school. The

petitioner relies upon the judgments reported in (2011)3 CLJ (Cal.) 224 (Mukul Biswas Vs. The State of West Bengal & others); (2009)1 CLT 530

(HC) (Jayashree Mahata vs. The State of West Bengal & others) and an unreported judgment and order dated 24th July, 2013 passed in W.P.

9124(W) of 2011 (Paromita Das vs. West Bengal Central School Service Commission & others).

In Mukul Biswas (supra) the court had considered several decisions of the Hon'ble Supreme Court and held that equality of opportunity is one of

the professed goals enshrined in the preamble of the constitution and it is high time that the State addresses the problem in the light of the decisions of

the Supreme Court referred to in this judgment. The question that was answered in favour of the petitioner herein was whether an applicant for a post

be worse off for acquitting herself credibility in a recruitment examination and thereby stand deprived of a choice posting which she otherwise would

have been entitled to had she not been treated at par with general candidates. The Hon'ble court answered the question in favour of the petitioner

and had been pleased to allow the petitioner to exercise an option to choose a place of posting from the vacancies reserved for scheduled caste

candidates.

In the case of Jayashree Mahata (supra) similar question arose. Whether a candidate once recommended can be re-recommended provided they do

not join schools on the strength of such recommendations. The court held that the petitioner was entitled to be recommended to the OBC category

post that had fallen vacant. The court answered the question in favour of the petitioner and held that injustice has been done to the petitioner by not

recommending her in the OBC category vacancy that was available and directed the Secretary, Regional School Service Commission to recommend

the petitioner for appointment in any OBC vacancy and if no OBC vacancy is available to any available vacancy in the region, even though the vacancy may have arisen after expiry of the panel in question.

In the case of Paromita Das (supra) this court directed the respondent authorities to recommend the name of the petitioner in the scheduled caste

category in the vacancies that were available to scheduled caste candidates. The West Bengal Central School Service Commission affirmed an

affidavit-in-opposition on 22nd July, 2013. As the original affidavit-in-opposition that had been affirmed is not available in the record a photocopy of the

same handed over at the time of hearing of this case is retained with the records. Liberty is given to the learned advocate for the West Bengal School

Service Commission to reaffirm the same and file it in the department within a week from date.

In the opposition the respondents have opposed the prayer of the petitioner on the ground that in terms of Rule 17(5) of the West Bengal School

Service Commission (selection of persons for appointment to the post of teacher) Rules, 2007 the name of the petitioner has been removed from the

panel as she had already returned her declaration form and accordingly she was not entitled to be considered for recommendation in any other school.

It was also submitted that since the petitioner being the scheduled caste candidate secured better marks than other scheduled caste candidates, she

was treated as general candidate as per the extant rule. It was further submitted that as per the government guidelines the candidates from both

reserved and unreserved categories are to be assessed together in accordance with their merit. The reserved category candidates who had in

competition with the general category candidates qualified against un-reserved vacancies should be kept in the panel for general vacancies and should

be appointed against un-reserved vacancies in order of merits.

Learned advocate for the School Service Commission submits that the panel in question expired long back and in the meantime there has been a

change in the rules. The petitioner has not challenged the rule in question. Accordingly, the prayer for recommending the name of the petitioner cannot

be taken up at the present. The submissions made on behalf of the respondents

relating to expiry of the panel and the change of the rules in the meantime will in my opinion not have any impact in the instant case in as much as the writ petition was filed by the petitioner within the validity period of the panel and the same remained pending for consideration before this court from 2011 till date.

It appears from records that the petitioner filed the instant petition on 30th December, 2011. At the time of admission of the writ petition on 28th

March, 2012 the Court had passed a direction for filing affidavit-in-opposition within four weeks and the matter was directed to appear in the list for

hearing after eight weeks. The Court had been further pleased to direct that any step taken in the meantime shall abide by the result of the writ

petition. The respondent authorities did not care to file affidavit-in-opposition within the time as specified by the Honâ??ble Court.

The petitioner thereafter filed an application for early disposal of the writ petition on 7th December, 2012. The said application for early disposal was

considered and disposed of by the Honâ??ble Court on 28th June, 2013 by extending the time to file affidavit-in-opposition and the matter was

directed to appear in the monthly list of September, 2013. The learned Advocate appearing for the respondents chose not to appear when the

application for early disposal was taken up for consideration by the Court. The matter remained pending since thereafter. It is evident that the

petitioner took diligent steps for proceeding with the matter but unfortunately the matter remained pending for a considerable period of time and as

such the pendency of the writ petition before this Court ought not to stand in the way of granting reliefs as prayed for by the petitioner on the plea that

the rules has been changed in the meantime. Moreover the Court at the time of admission of the writ petition had already passed an order to the effect

that any steps taken in the meantime shall abide by the result of the writ petition.

It is undisputed that the petitioner is a scheduled caste candidate and she had qualified in the examination and secured a fairly good position in the

merit list. Her rank was 43 in the general category and 2 in the scheduled caste category. This court in the judgments referred to hereinabove

considered similar issue in details and passed direction in favour of the petitioner allowing them an opportunity to exercise an option in accordance with

their merit position in the reserved category. Though the petitioner in the instant

case signed her declaration for acceptance of appointment in the school at Canning, Gosaba, South 24 Paragons, but the said school being more than 200 kilometres away from her residence it is practically impossible to travel such a long distance and attend the school regularly. Had the rank of the petitioner in the scheduled caste category been taken into consideration then she would have got an opportunity to exercise her option in respect of any other school which was close to her residence.

In accordance with the ratio laid down in the judgments referred to hereinabove I am inclined to extend the same benefit to the petitioner. The writ petition is disposed of by directing the Chairman, West Bengal Central School Service Commission to recommend the name of the petitioner in respect of any of the vacancies available within the Hooghly region under the scheduled caste category within a period of twelve weeks from the date of receipt of a copy of this order. WP No. 17276 (W) of 2011 is disposed of accordingly. There will be no order as to costs. Urgent certified photo copy of this order, if applied for, be given to learned advocates of the parties upon compliance of all requisite formalities.