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**(2012) 01 CAL CK 0026**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 22097 (W) of 2009**

Santanu Naskar and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 10-01-2012

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

West Bengal Primary School Teachers Recruitment Rules, 2001 — Rule 8, 9

**Citation :** (2012) 01 CAL CK 0026

**Hon'ble Judges :** Harish Tandon, J

**Bench :** Single Bench

**Advocate :** D.K. Shome and Mr. L.N. Bhattacharya, for the Appellant; Sipra Mazumdar, A. Chakraborty, For the State, Mr. Joytosh Majumdar and Mr. Pinaki Dhole, For the Council, for the Respondent

**Final Decision :** Allowed

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## Judgement

Harish Tandon, J.—The petitioners are the registrants of the concerned District Employment Exchange and their names were sponsored for consideration of their candidature for the post of Primary Teacher in a school under the District Primary School Council, South 24-Parganas. Pursuant to the sponsorship, the petitioners were asked to submit their bio-data and testimonials in terms of Rule 9 of the West Bengal Primary School Teachers" Recruitment Rules, 2001. The petitioners submitted their testimonials and bio-data on a date prescribed by the said authority. There were several litigations before this Hon"ble Court relating to the said Recruitment Process and upon the disposal of the same the District Primary School Council, thereafter, notified the date of written test. For verifying the said date being fixed for written test, the petitioner approached the offers of the District Primary School Council and found that by notice dated 25.10.2009 the candidature of 298 candidates have been cancelled by the concerned Employment Exchange which includes the petitioners" candidature as well.

2. Although, the petitioners pleaded several irregularities regarding the number

of vacancies advertised and/or notified and relief in this regard is made but one of the relief in this writ petition claimed by the petitioners is the cancellation of the said notice dated 25.10.2009 by which the sponsorship of the petitioners was cancelled.

3. At the time of admission of the writ petition this court dismissed the same because of non-furnishing of the Madhyamik Parikha Mark sheet. Having assailed the said order in intra court appeal being MAT No. 101 of 2010, the Division Bench set aside the said order and granted liberty to the petitioners to file a supplementary affidavit annexing the Madhyamik Parikha Mark sheets with a further direction to decide the issue on merit.

4. The District Employment Exchange, Diamond Harbour, the Respondent No. 3 took a stand in affidavit-in-opposition that the sponsorship of the petitioners have been cancelled for having registered beyond the cut-off date.

5. However, the District Primary School Council in its affidavit-in-opposition specifically contended that the Deputy Director of Employment, South 24 Parganas issued letter dated 25.06.2007 intimating the cancellation of the candidature of 298 candidates including the petitioners and as such the petitioners cannot be brought within the zone of consideration.

6. In reply to the contention of the District Primary School Council it is contended by the petitioner that an appointment is made to several candidates who passed the Madhyamik Examination much after the petitioners which would be evident from the information downloaded from the website of the District Primary School Council, South 24 Parganas.

7. Mr. D.K.Shome, the learned Advocate appearing for the petitioner submits that the candidature of the petitioners could not have been cancelled by the concerned Employment Exchange without giving an opportunity of hearing to the petitioners. He further submits that the authorities themselves have acted in contravention to the statutory rules by considering the candidature of the others who are subsequent registrant. Lastly, he submits that the authorities permitted the petitioner No.1 to appear in the written test without intervention of the court who is subsequently found successful for being appointed to such post but his appointment is withheld because of the pendency of the instant writ petition and relies upon a judgment of this High Court in case of Dilip Pradhan Vs. The State of West Bengal and Others,

8. The learned Advocate appearing for the state and the council jointly submits that when the candidature of the petitioners is cancelled, they are not the sponsored candidates and therefore cannot be considered in view of the embargo created under Rule 8 of the aforesaid Recruitment Rules. It is strenuously submitted that the candidate does not acquire indefeasible right to appointment even after his name is included in the select list and placed reliance upon the several judgment of the Apex Court delivered in case of State of Orissa & another vs. Rajkishore Nanda & Ors. reported in (2010) 6 SCC 777, All India SC

and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc., & Jitendra Kumar and Others Vs. State of Haryana and Another, . It is further submitted that the appointment made by mistake does not create a right upon the other and the court should not pass an order upon the authorities to commit the mistake and placed reliance upon a judgment of the Supreme Court in case of State of U.P. and Others Vs. Rajkumar Sharma and Others, . It is succinctly argued that the statutory authorities cannot act beyond the statutory limits as held in the judgment rendered by Apex Court in case of Rakhi Ray and Others Vs. The High Court of Delhi and Others, . By contending that the administrative authorities has a right to fill or not to fill the post and further power to cancel the selection process, reliance is placed upon judgment of the Apex Court in case of Secretary, Board of Basic Education, U.P. Vs. Rajendra Singh and Others, and AIR 1998 SC 375.

9. Lastly it is contended that the authorities can make a classification by fixing a cut-off date which does not offend Article 14 and 16 of the Constitutions and placed reliance upon a judgment of the Supreme Court in case of National Council for Teacher Education and Ors. vs. Shri Shyam Shiksha Prashikshan Sansthan and Ors. reported in 2011 (1) Supreme 673.

10. Having considered the respective submissions there is no manner of doubt that the name of the petitioners was initially sponsored by the concerned Employment Exchanges within the District but was subsequently cancelled vide notice dated 25.6.2007. It would be relevant to reproduce the said letter which runs thus:

To

The Chairman,

District Primary School Council,

South 24 Parganas,

19B, Ballygunge Stn. Road,

Kolkata - 700 019

Sub : Cancellation of particulars of candidates submitted by the DEE, Diamond Harbour against the post of Primary Teachers.

Sir,

On thorough enquiry of the office records of DEE, Diamond Harbour like submission list for the vacancy of Pry. Teachers Candidates' Identity Cards & relating register (X-63) I have come to the conclusion that the candidatures of the 298 candidates mentioned in the enclosed sheet are not within the basis of selection for the said post.

You are, therefore, requested to kindly not consider their candidatures against the post of Primary Teacher so that they may not get any interview letter from

your end.

Enclo: As stated/

Yours faithfully,

(R. C. Dalut)

Deputy Director of Employment,

South 24 Pgs.

Copy forwarded to Employment Officer-in-Charge, D.E.E., Diamond Harbour with the advice the display the enclosed list of candidates whose names have been forwarded to the post of Pry. Teachers under D.P.S.C., South 24 Pgs. Their Regn. may please be cancelled under his Seal & Signature.

(R.C. Dalut)

Deputy Director of Employment,

South 24 Pgs.

11. The said letter does not contain any reason for the cancellation to the sponsorship of 298 candidates including the petitioners herein. However, in furtherance thereof, another communication was made on 05.08.2008 incorporating the grounds for such cancellation which reads thus:

To

The Chairman,

District Primary School Council,

South 24 Parganas,

19B, Ballygunge Station Road,

Kolkata- 700 019.

Sub : Recruitment of Primary Teachers.

Sir,

In earlier correspondences in connection with the recruitment of Primary Teachers I have cancelled particulars of candidates sponsored by the Employment Exchanges of the district of South 24 Parganas on the following grounds :-

1) Beyond basis of selection, Basis of selection made by five Employment Exchange was already informed.

2) Non-submission of Caste Certificates or Change of Category or physically Handicapped Certificates. Example :-Particulars of one candidate were sponsored as S/C or O.B.C. or P/H candidates by an Employment Exchange but the

candidate does not actually belong to S/C or OBC or P/H candidate.

3) Seniority or Registration, Example :- It is found that the candidate's name was sponsored mentioning seniority of Registration as X02.10. (N.C.O). It has been informed that the following

N.C.O.s (National Code of Occupation) are understood as :

X02.10 - Class VIII passed but below non-matric passed.

X01.10 - Matric or Madhyamic Exam. Passed.

X01. 20 - H.S. passed.

X01.30/X01.40/X01.50 - Graduate in Arts/Science/Commerce respectively.

4) Year of passing out of Examination, Example : - It is found that one candidate belonging to General Category passed in the year 1996. His name was sponsored but the year, 1994 is the basis of selection.

5) Insertion of name in the Employment Exchange's Register (X-63) :-It appears from the Register that in the blank pages of Register one candidate's particulars are inserted and it is understood that the handwriting or ink is different ( In this occasion the name of the candidate should be verified with the Register).

6) Checking of Identity Card (X-10) :- It is observed that on the body of X-10 the renewal date is written as Directorate's (DTE's) Order/Permission. This is happened specifically in the matter of insertion of name in the Register.

7) Candidate residing outside jurisdiction :- It appears from the sponsored lists that father's names of some candidates have not been mentioned, In place of father's name, C/o is written. It is also found on enquiry that in such cases most of the candidates addresses are same and these candidates resident outside the jurisdiction of sponsoring exchange. Only Ration Card of the sponsored candidate will be helpful to identify the fake address of the candidate.

Your have been collecting bio-data of the sponsored candidates. During checking of their bio-data, I would request you to kindly take into consideration of the above noted facto/grounds so that the fake candidate may not got chance of interview.

Your are at liberty to cancel or reject particulars of sponsored candidates on any of the above noted grounds without referring the matter to this office. Only doubtful cases may please be referred to this office.

Yours faithfully,

( R.C. Dalui)

Deputy Director of Employment

South 24 Pgs.

12. On bare perusal of the same it appears that the several ground has been assigned without specifying which of the petitioners comes clearly within a particular ground. The aforesaid letter is issued vaguely and there is no certainty about the applicability of which of the ground to which of the petitioner, for example, in respect of ground No.5 it is stated that one candidate's particular is inserted in the blank pages of the register in different handwriting or ink. From the ultimate instruction to the District Primary School Council to apply any of the grounds at the time of verification of the Bio-data, it is impossible and/or improbable that the District Primary School Council would be able to find out the said one candidate without specifying his name.

13. There is no manner of dispute to the proposition of law enunciated by the Supreme Court that a candidate who has been selected and included in the select list does not acquire any indefeasible right of appointment as the vacancies are required to be filled up in terms of the statutory rules as has been held in case of *Arthur Jeen & Ors. (supra)*. However, in case of *Jitendra Kumar and Ors. (supra)* the Apex Court held that although the selectee has no legal right to claim the appointment but the authorities at the same time cannot ignore the select list or act malafide and arbitrarily at the time of making appointments. It is not a case of an authority acting whimsically but a case of denial of an opportunity because of the cancellation of the sponsorship by the concerned Employment Exchange. A stand is taken that the different Employment Exchanges within the District have set up different cut-off dates for the purpose of sponsorship. There is no dispute to the legal proposition that the classification within the class is permissible provided the same is rational, reasonable and founded on an intelligible differentia as held in case of *Shri Shyam Shiksha Prashikshan Sansthan and Ors. (supra)* in these words:

16. Article 14 forbids class legislation but permits reasonable classification provided that it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and the differentia has a rational nexus to the object sought to be achieved by the legislation in question. In *re the Special Courts Bill, 1978* In *Re: The Special Courts Bill, 1978*, C.J., speaking for majority of the Court adverted to large number of judicial precedents involving interpretation of Article 14 and culled out several propositions including the following:

(2) The state, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) the constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on

delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) the principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

14. There is also no quarrel to the proposition that if any mistake is committed in giving appointment to some other candidate, same does not confer any right upon the unsuccessful candidates to seek parity as has been held in case of *Rajkumar Sharma & Ors* (supra).

15. The administrative or statutory authorities are bound to act in terms of the statutory rules and are not supposed to act *de hors* the same. Furthermore, the authorities have a right to cancel the selection process unless a said decision is an outcome of smack of arbitrariness, lack of bonafide and/or beyond the powers.

16. Although several points have been urged by the respondents but the points

centered around as to whether a candidate who were allowed to participate in the Recruitment Process without an intervention of the Court can be weeded out on superfluous reasoning.

17. In this regard the reference can be made to a Co-ordinate Bench decision of this court in case of Dilip Pradhan (supra) where it is held:

8. Undoubtedly, the writ petitioner participated in the recruitment process as a sponsored candidate. His sponsorship shall be deemed to be valid and the letter dated 22nd December, 2006, issued by the Deputy Director of Employment, South 24-Parganas, shall have no manner of application in the facts of the instant case. In the event he has come within the zone of consideration in the category he applied for, the Chairman, District Primary School Council, South 24-Parganas, shall forward his name to the office of the Director of School Education, West Bengal, within a period of six weeks from date. Immediately on receipt of the name of the writ petitioner, the Director of School Education, West Bengal, shall take appropriate steps in the matter and grant approval in favour of the writ petitioner, in the event he conforms to and fulfils all statutory requirements necessary for the purpose of securing his appointment. It is expected that the Director of School Education, West Bengal, shall complete the process as expeditiously as possible, preferably within a period of four weeks, but not later than six weeks from the date of receipt of the communication from the office of the Chairman, District Primary School Council, South 24-Parganas.

18. Admittedly, the petitioner No.1 was allowed to participate in the recruitment process without intervention of the court whereas the others were not allowed. Admittedly, the petitioner No.1 is found successful and his name is included in the panel but the appointment is withheld because of the pendency of the instant writ petition. In view of the decision of the Co-ordinate Bench rendered in case of Dilip Pradhan (supra) the letter cancelling his sponsorship has no manner of application so far as the petitioner No.1 is concerned.

19. What relief could be granted to the other petitioners who were not allowed to participate in the selection process? It is undisputed that the selection which commenced in 2006 has come to an end. All the vacancies which were determined have been filled excepting those where the litigation is pending and any decision which would be passed upsetting the appointments already made requires large number of persons to be affected by the decision which is otherwise not permissible without impleadment of them as party in the instant writ petition. Thus there can be any relief granted at this stage to the other petitioners.

20. Since the vacancy for which the appointment of the petitioner No.1 is withheld, has not been filled up, there is no impediment in passing a suitable direction for granting approval by the concerned authority.

21. The Chairman of the said council is directed to recommend the name of the petitioner No.1 to the Director of the School Education for granting approval

within three weeks from date.

22. The Director of School Education shall grant necessary approval within a week from the date of the receipt of such recommendation and ultimately upon receiving the approval the Chairman, District Primary School Council shall issue this appointment letter to the petitioner No.1 within 4 week.

23. The writ petition is thus disposed of.

24. There shall be no order as to costs.

25. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.