
(2019) 11 CAL CK 0005

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 944, 947, 3576, 3845, 5517 (W) Of 2019,
Civil Application (CAN) No. 5009, 2300, 9268, 9269 Of 2019

Sharmila Mondal & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 01-11-2019

Acts Referred:

West Bengal School Service Commission (Selection For Appointment To The Posts Of Teachers For Upper Primary Level Of Schools) Rules, 2016 — Rule 2, 2(b), 8, 8(1), 8(2), 8(3)(b), 9, 9(3), 12, 12(5), 13, 13(9), 13(10), 13(11)

Citation : (2019) 11 CAL CK 0005

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Dibyendu Chatterjee, Madhuparna Sarkar, Siddhartha Roy, S.P. Lahiri, Dr. Sutanu Kumar Patra, Kakak Kiran Bandyopadhyay, B.P. Vaisya, Sagnik Chatterjee, Chaitali Bhattacharya, Ekramul Bari, Syed Mansur Ali, Tanuja Basak, Reshmi Ghosh,, Soumya Shankar Chini, Chaitali Bhattacharya, Kartik Chandra Kapas, Firdous Samim, Gopa Biswas, Tanoy Chakraborty, Chhandak Dutta, Monalisa Dar, Kuntalendu Mondal,

Final Decision : Allowed/ Disposed Of

Judgement

Moushumi Bhattacharya, J

1. The controversy in these writ petitions relates to appointment of Physical Education and Work Education teachers for Upper Primary Schools in the State governed by West Bengal School Service Commission (Selection for Appointment to the Posts of Teachers for Upper Primary Level of Schools) Rules, 2016. The petitioner's complain that the West Bengal School Service Commission, being the authority responsible for conducting the selection for the posts, has not complied with the mandate of Rule 13(9) of the 2016 Rules. Rule 13 deals with "method of SLST for selection of candidates and preparation of panel for teachers for Physical Education and Work Education". Under sub-Rule 9, the Central Commission has to prepare and publish an Interview List in its website with all

details of the candidates to be called for the personality test, category wise on the basis of merit in the ratio of 1:1.4 of final vacancies.

2. The primary grievance, as urged on behalf of all 141 petitioners is that the Commission has failed to publish the Interview List containing the details of the candidates as mandated under the Rules. The other grievance is that the Commission has not complied with the requirement of Rules 8 and 9 of the 2016 Rules with regard to information on the available vacancies. According to the petitioners, the Commission failing to publish the Interview List with requisite details has prevented the petitioners from making a proper assessment of their performance compared to the other candidates and their eligibility for the Personality Test as a consequence.

3. Learned counsel for the petitioners submits that apart from non-compliance of Rule 13(9) of the 2016 Rules, less meritorious candidates of reserved categories have been included in the list of general category candidates while reserved category candidates with better marks have been placed in the reserved category. In other words, the Commission has not applied the correct standards for selecting the most meritorious candidates for the concerned posts. Counsel relies on an order dated 8th April, 2019 passed in W.P. 947 (w) of 2019 which directed the Commission to comply with the mandate of Rule 13(9) within a period of two weeks and submits that the Commission has not complied with this direction. It is further submitted that no appeal has been filed by the Commission from the said order and the Commission is therefore bound to act in terms of the said direction. Counsel refers to the statements made in the Report of the Commission which would show that the Commission has acted arbitrarily in the preparation of the Merit List. Counsel submits that the said paragraphs would show that the Commission has admitted to following a "policy of deciding" the category under which a candidate is found eligible to be called for interview. Counsel also submits that untrained candidates have been empanelled, as would be evident from the documents annexed to the writ petition, in violation of the advertisement notification dated 16th December, 2016 which had given precedence to candidates having the desired training qualification over other candidates. Counsel relies on a number of decisions in support of the argument made which are (2009) 6 SCC 619, AIR 1996 SC 1378, (2010) 5 SCC 136, (1976) 4 SCC 66 and (2009) 5 SCC 1 on the point of arbitrary placement of reserved category candidates in the general Merit List. Counsel cites Y.B. Patil Vs. Y.L. Patil reported in (1976) 4 SCC 66 for the proposition that the principle of res-judicata can be invoked not only in separate subsequent proceedings but also in subsequent stages of the same proceedings and hence once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding. The immediate prayer of the petitioners is that the Commission should be directed to publish a fresh Interview List for preparing the Merit List and further that the appointments already made should be kept on an adhoc basis subject to preparation of the final Merit List.

4. Learned counsel for the Commission disputes the contentions of the petitioners and submits that the prayer in the writ petition is for maintaining the ratio of 1:1.4 and the reservation policy cannot be enlarged to include the relief which is now being sought for on behalf of the petitioners. Counsel takes a preliminary objection of the writ petitioners belonging to different categories and espousing different causes which is not legally permissible. Counsel submits that the Interview List which was published in the website of the Commission was in compliance of Rule 13(9) containing all details of candidates, category wise and on the basis of merit. Counsel relies on 13(11)- fourth proviso- in that if the marks of the last candidate called for interview is the same in the case of more than one candidate, then all such candidates will have to be called for interview even if the limit exceeds 1:1.4. With regard to the allegation of non-compliance with the reservation policy, counsel submits that categorization is done for the first time at the stage of Rule 13(9) for preparing the Interview List and that such categorization is necessary since candidates would have to be shortlisted from thousands of applicants to the ratio of 1:1.4 of the final vacancies as provided under Rule 13(9). It is submitted that names of reserved category candidates having higher marks than general category candidates are placed in the general category list and names of reserved category candidates having less marks than the last general category candidate called for interview are placed in the respective lists of reserved categories. Counsel explains that the rationale of the aforesaid is that reserved category candidates from their respective categories are permitted to participate in the interview even though they have less marks than many of the general category candidates which is necessary for the reserved category candidates getting the opportunity to proceed to the next level of the selection process. Counsel relies on a judgment passed in W.P. 20384(W) of 2018 (Abdul Hakin Paik Vs. State of West Bengal) of this court in which the writ petition was dismissed in reliance of the correct sequence of categorization.

5. Learned counsel for the added respondents namely, those candidates who have already been recommended, submits that out of 1693 recommended candidates, 890 have already joined their respective posts. The remaining (added respondents) were unable to join their respective posts in spite of being recommended by reason of the interim order dated 29th January, 2019 which restrained the West Bengal Board of Secondary Education from making any further appointments. Counsel submits that the writ petitioners have no jural relationship since some of the candidates belong to OBC category while others are from SC, ST categories and several of the petitioners are in the general category. Counsel relies on *Mrinal Kanti Das Vs. State of West Bengal* reported in (2011) 5 CHN 420 which dismissed the writ petition on the ground of there being no jural relationship inter se the writ petitioners. Counsel also relies on *Madan Lal Vs. State of J & K* reported in (1995) 3 SCC 486, on the point that the writ petitioners having participated in the selection process are debarred from challenging the same.

6. I have heard learned counsel for the parties and taken note of the documents annexed to the writ petition as well as the subsequent Report of the Commission and the exceptions taken to such Report by the petitioners. In order to determine the scope of the two writ petitions which are under consideration, the main prayers in W.P. 944(W) of 2019 and W.P. 947(W) of 2019 are stated below. The prayers in both the writ petitions are identical.

a) A direction upon the Commission to give appointment to the petitioners in the post of Assistant Teacher in Bengali Medium in Physical Education and Work Education in the first SLST 2016.

b) The respondents be directed to maintain a ratio of 1:1.4 of the total vacancy in preparation of the Panel.

c) The Commission be directed to maintain the Reservation Policy for preparing the Merit List for Bengali Medium in the first SLST 2016.

7. Although in the course of submissions, learned counsel appearing for the petitioners have widened the scope of challenge to the Selection Process for Physical Education and Work Education teachers in the Bengali Medium, the relief to be considered should be in aid of and within the parameters of the prayers in the two writ petitions. The foremost grievance of the petitioners appears to be the insufficiency of the Interview List published by the Commission in its website pursuant to the order dated 8th April, 2019. The contention of counsel for the petitioner is accepted with regard to the aforesaid since the date does not appear from the document annexed to the affidavit of exception of the petitioners. The contention of the petitioners with regard to this Interview List is that an individual candidate has the right to know the breakup of marks under each head obtained by each of the candidates who had appeared in the Test as that is the only way a candidate would be able to find out the basis of his/her exclusion from shortlist for the Interview List/Personality Test. The petitioner's complain that the Interview List published by the Commission does not comply with Rule 13(9) of the 2016 Rules and without such compliance, the Commission cannot proceed any further with the preparation or publication of the Merit List under Rules 13(10) and 13(11). The related argument is that the Commission should prepare a common panel consisting of all categories of candidates according to gradation of their merit regardless of general or reserved category candidates after which the Commission is to prepare a list, category wise, for male/female and for Scheduled Casts, Scheduled Tribes, Other Backward Classes (OBC) etc.

8. Upon consideration of the relevant Rules, this court finds that the method of selection of candidates and preparation of panel for teachers for Physical Education and Work Education have been sequentially provided in the following manner under the relevant stages of Rule 13 of the 2016 Rules.

"13. Method of SLST for selection of candidates and preparation of panel for Teachers for Physical Education and Work Education.

- (4) The Central Commission shall arrange written examination.
- (5) The Central Commission shall determine the method of written examinations, contents of paper, duration of examination, time and venue of examination and other matters relating to such State Level Selection Test.
- (6) The Central Commission shall decide the procedure and the manner of conducting the Selection Test.
- (7) The admit cards for written examination shall be issued by the Central Commission by any mode as may be determined by the Central Commission.
- (8) The Central Commission shall arrange written examination.
- (9) After the evaluation of the OMR sheets or answer sheet of the written examination, the Central Commission shall prepare and publish the Interview List in their website with all details of the candidates to be called for personality test, category-wise on the basis of merit (Marks of written test, Academic and Professional Qualifications as mentioned in Part B and C of Schedule II) in the ratio of 1:1.4 of final vacancies.
- (10) The Central Commission shall prepare and publish in their website a merit list of candidates prepared category-wise on the basis of marks obtained in written test, evaluation of academic and professional qualification and marks of personality test as per Part B and Schedule III.
- (11) The Central Commission shall also prepare and publish in their website a Panel of candidates (category-wise) equal to the number of vacancies and a category-wise waiting list of the rest of the candidates from merit list who were not included in the panel. From the panel, the Central Commission shall prepare Region-wise lists of candidates on the basis of the option exercised by the candidates and published in their website."

Rule 13(9) provides that the Interview List shall be published by the Commission in its website "with all details of the candidates to be called for personality test, category wise on the basis of Merit" which would be determined by the marks obtained by the candidate in the written test, academic and professional qualification in the ratio of 1:1.4 of final vacancies. The evaluation of the heads mentioned in this Rule would be governed by Schedule II Part B and C which provides for a scheme for allotting specific marks and grades for the academic qualifications obtained by the candidate. It should be mentioned that Rule 13(9) mandates the Commission to publish the names of the candidates shortlisted for the Personality Test under categories on the basis of their merit.

9. The term "category" has been defined under Rule 2 as :-

"Category means Subject Category, medium of instruction category, reservation category and gender category in each subject group or in Physical Education or Work Education as the case may be".

The Interview List published by the Commission in May 2019 has to be seen in the context of what Rule 13(9) requires the Commission to do. The Interview List contains the following details of the candidates:-

Serial No., Roll No., Name, "candidate category", "candidate gender", subject and medium.

10. In the context of Rule 2 and 13(9), the Interview List cannot be said to be lacking in any of the categories mentioned under the definition Clause of Rule 2(b). Having found thus, this court however, reiterates the view taken in the order dated 8th April, 2019 passed in both the writ petitions which was that a candidate is not only entitled to know his/her own result but to also know his/her position in respect of all other candidates who have been shortlisted or rejected for the Personality Test. It was also stated in the said order that the object behind Rule 13(9), or for that matter any Rule laying down the method of selection of candidates, is to ensure a process that is transparent at every level for the satisfaction of the candidate who has been excluded from the race. It should be mentioned that in the order dated 8th April, 2019, this court had found that the Commission has not complied with Rule 13(9) of the Rules and had hence directed the Commission to comply with the said Rule within a specific time period. The Interview List was published by the Commission in pursuance of the aforesaid direction.

11. The decisions relied on by learned counsel appearing for the petitioners proceed on the basis that reserved candidates who are entitled to be admitted on the basis of merit should be placed with general candidates and not be clubbed in the reserved category - Ritesh R Sah. In Ravinder Kumar, the Supreme Court held that although the selection list should be recast in view of the findings that candidates should be shifted from the reserved to the general category, such an exercise would unsettle the position and lead to removal of candidates who have been serving for long. The Court was hence of the view that interest of justice would sufficiently be served if the appellant was directed to be appointed in the concerned category. In Andhra Pradesh Public Service Commission, the Supreme Court reiterated the principle that if reserved category candidates are meritorious enough to compete with open category candidates, they should be recruited from the open category. In Dinesh Kumar Sinha, the Supreme Court upon considering the rights of reserved candidates selected in the merit category, without availing of any concessions, to choose a preferred service, thought it fit to refer the questions to a Constitution Bench. Y.B.Patil has been relied upon to show that a party is bound by a judgment when no appeal has been preferred from it and that the principles of res judicata can operate in a subsequent stage of the same proceeding. Madan Lal vs State of J&K reported in (1995) 3 SCC 486, relied on for the added respondents for the proposition that candidates taking a calculated chance by appearing at an interview cannot later turn around and question the fairness of the process on being unsuccessful. The aforesaid decisions proceed on the basis of final results being published and a challenge made to the process

after publication. In this case, the petitioners have questioned the short-listing of candidates for the Interview List and have contended non-compliance of the 2016 Rules in the arbitrary placing of candidates. The presumption of the alleged arbitrariness is based on a random collection of data and conclusions drawn from the same. This Court is of the view that once the Interview list with sufficient details/information is accessible to the petitioners, they will be better equipped to prove the substance of their allegations including of the alleged placement of certain candidates to the disadvantage of others. The decisions cited by counsel would be of greater assistance after they are armed with the information.

12. It should also be stated that the method of selection forming the basis of the decision in Andhra Pradesh Public Service Commission, namely for filling up of vacancies in Group I Services in the State was different since the process involved holding of examinations in two phases where candidates were shortlisted at the very first stage. In this case, the short-listing is done for the first time at the stage of preparing the Interview List under Rule 13 (9). In Ramesh Ram, the view that a meritorious candidate from the unreserved category should have the option of a post both in the reserved as well as unreserved categories does not appear to have been violated by the Commission in the present case. In Abdul Hakin Paik Vs. State of Bengal, besides the governing Rules being different, the specific marks obtained by the petitioner as compared to one Manisha Garain (whose appointment to the concerned post had been assailed by the petitioner) both before and after the Personality Test were disclosed by the Commission, which led this Court to take a view in the matter.

13. This court has recently passed an order on 1st October, 2019 in W.P. 9597 (W) of 2019 (Akhtarul Islam Vs. State of West Bengal), W.P. 9180 (W) of 2019 and W.P. 11944(W) of 2018, where the controversy related to Rule 12 of the 2016 Rules for Selection of candidates and preparation of panel for teachers (except Physical Education and Work Education). By the said order, the Commission was permitted to publish a tentative Merit List, subject to errors being pointed out by the concerned candidates and further that the Merit List would contain the information category wise on the marks obtained by the candidates in TET, marks obtained in Academic qualification, marks obtained in professional qualification and marks obtained in the Personality Test for each of the candidates. The only difference between 12(5) and 13(9) of the 2016 Rules is that of the categories mentioned within brackets for evaluation of Merit for short-listing for the Personality Test. It should also be mentioned that the direction given in the aforesaid writ petitions by the order dated 1st October, 2019 was on the basis of the fair stand taken by the Commission for an early resolution to the controversy. This court, therefore, finds no reason why the Commission should not be directed to disclose the information under the specific heads mentioned in Rule 13(9) in the Interview List which was published in May 2019. Disclosing these details would result in adequate information being made available to a candidate not only to assess his/her own performance under the various heads but also that of the other candidates for clarity in assessing the

overall position of the candidate. Furnishing the details would also answer the immediate grievance raised on behalf of the petitioners that the Commission has not published the Interview List "with all details" which has put the candidates at a disadvantage.

14. This court should also not lose sight of the final relief which has been prayed for by the writ petitioners and which is only concerned with the Commission maintaining the 1:1.4 ratio and the reservation policy in preparation of the Merit List. It may reasonably be presumed that upon getting access to the additional information under Rule 13(9), the candidates will consequently have the means to determine whether the Commission has maintained the 1:1.4 ratio of total vacancies under the said Rule. The commission is accordingly directed to publish the Interview List in its website with the following and further details of the candidates to be called for Personality Test, which would be the marks obtained by each of the candidates in the written test, academic qualification and professional qualification together with the evaluation done for the same under Schedule II Part B and C for each of the candidates. The Commission shall publish the said Interview List by 18th November, 2019.

15. The last issue to be determined is whether the interim order dated 29th January, 2019 passed in both the writ petitions by a learned Single Judge of this court staying the hands of the Board from making any appointment in the field of Physical Education and Work Education teachers for a period of seven days should be continued. The said order was passed since the learned Judge was of the view that such an order would prevent multiplicity of litigations. The Board has been restrained from making any appointments in the field of Physical Education and Work Education teachers in Upper Primary schools across the State for the last nine months which may have resulted in many schools across the State being without Physical and Work Education teachers. That the students are the ultimate sufferers of such a scenario cannot be disputed. It is also true that by reason of the interim order which has been continued from January 2019 onwards, the candidates who were recommended by the Commission could not join their respective posts despite the recommendation. These candidates are 1693 in number out of which 890 candidates have already joined their respective posts. Continuing the interim order would therefore not inure to the benefit of any of the parties before this court including the petitioners. Once the Interview List is published by the Commission with the information as directed above, the aggrieved petitioners will have a more specific basis to challenge the selection process by further action if required. The petitioners will also have the option of bringing the recommended candidates who have already joined their respective posts (before the interim order dated 29th January, 2019 was passed) within the fold of a subsequent proceeding if the writ petitioners find that such a challenge is necessary upon obtaining the additional information published by the Commission. This court finds no basis in continuing the interim order in a vacuum without the petitioners having the information which is vital to and will lend substance to the challenge. The concerned authority under the relevant

Rules will be at liberty to proceed with the appointments of the recommended candidates in the field of Physical Education and Work Education in Upper Primary schools in the State subject to the Commission publishing the interview list with the details as has been directed above. However, since proceeding with the appointments before such Interview List is published may lead to the writ petitioners being at a disadvantage in the absence of additional information, the appointing authority is directed to proceed with the appointments on and from 13th December, 2019.

16. It is made clear that no appointments will be made for the concerned posts until and unless the Commission complies with the directions given in this order within the stipulated date.

17. In view of the above, the interim orders dated 29th January, 2019 passed in W.P. 944(W) of 2019 and W.P. 947(W) of 2019 are vacated. The concerned authorities will be free to proceed with the appointments subject to the condition of compliance of the directions by the Commission as stated above.

18. With regard to the allegation that the Commission has not complied with the requirements of Rules 8 and 9 of the 2016 Rules, the scope of these Rules is that specific, category-wise information with regard to vacancies shall be sent by the Directorate of School Education, with the approval of the State Government, to the Commission- Rule 8(1) and (2). Under Rule 9 (3), the Commission is to publish a tentative list of vacancies at the time of inviting applications and a final vacancy list at the time of publication of the result of the written examination declaring the actual number of vacancies that have been declared under Rule 8 (3)(b). The specific nature of the information to be provided has been stated in Rule 9(3). Since the petitioners have alleged non-compliance of these Rules, the Commission is directed to publish the tentative and final vacancy lists for Physical and Work Education teachers as mandated under Rules 8 and 9 within 18th November 2019.

19. The four applications filed in the two writ petitions for addition of similarly placed candidates as party respondents being C.A.N Nos. 5009 of 2019, 5086 of 2019, 9268 of 2019 and 9269 of 2019 are allowed.

20. W.P. 944(W) of 2019 and W.P. 947(W) of 2019 are disposed of in terms of the above.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.