
(2020) 08 CAL CK 0073

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 475, 477, 478, 481, 483 (W) Of 2018, 709, 712, 714, 715, 717, 737, 988, 990, 991, 992, 993, 997, 1330, 1332, 1333, 1335, 1337, 3112 (W) Of 2014, 2250 (W) Of 2016, 5385 (W) Of 2015

Trisha Bhattacharjee And Ors

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

:West Bengal School Service Commission (Selection Of Persons For Appointment To The Post Of Teachers) Rules Of 2007 — Rule 2(f), 8, 9, 12(3), 12(4), 12(6)
Code Of Civil Procedure, 1908 — Order 1 Rule 9

Citation : (2020) 08 CAL CK 0073

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Ekramul Bari, Tanuja Basak, Chaitali Bhattacharya, Mrinal Kanti Ghosh, Biswabrata Basu Mullick, Ranjan Saha, T. M. Siddiqui, Sanjib Das, Bhaskar Prasad Vaisya, Suman Dey, Sirsanya Bandopadhyay, Subhendu Sengupta, K.M. Hossain, Parvej Anam. Subrata Mukhopadhyay, Sarwar Jahan, Basabi Raichowdhury, Daisy Basu, Dr. Sutanu Patra, Kanak Kiran Bandyopadhyay, Soumya Majumdar, Arjun Roy Mukherjee, Vivekananda Bose, Deblina Chatterjee, Sabyasachi Chatterjee. Tapan Kumar Mukherjee, Somnath Naska, Supriya Dubey Chakraborty

Final Decision : Disposed Of

Judgement

@JUDGMENT-JUDGMENT

Rajasekhar Mantha, J

1. Common issues arise in these batch of writ petitions. Arguments have been advanced by three sets of Counsels for the petitioners in the following writ petitions.

i. WP 1330 (W) of 2014 - Ruma Das and Ors. Vs. West Bengal Central School Service Commission and Ors., ii. WP 2250 (W) of 2016 - Sayed Sultan Ali Vs.

State of West Bengal and iii. WP 5385 (W) of 2015 - Shikshak Chhatra Oikya Sangram Manch Vs. State of West Bengal.

2. The petitioners in other applications did not choose to argue separately and are, therefore, deemed to have adopted the aforesaid arguments.

3. The subject matter of challenge is the recruitment process to the post of Assistant Teachers initiated pursuant to the advertisement No. 01/AT/11 dated 29.12.2011 issued by the West Bengal School Service Commission (SSC).

4. The process involved includes an Eligibility test [also called Teacher Eligibility Test (TET)], a Subject Test and a Personality Test (Interview). Only those candidates who obtained 60% and above marks in the TET had their subject test answers assessed. Thereafter those who obtained 40% and above marks in the subject test were to be called for personality test/interview. The recruitment was to be conducted in terms of the West Bengal School Service Commission (Selection to the Post of Teachers) Rules of 2007 as amended in 2011(2007 Rules)

5. The Teachers Eligibility Test was conducted on 29th July, 2012, results whereof were published on the 1st of December, 2012. The Subject test was thereafter conducted and results thereof were published on 6th August 2013 and interviews were conducted on or about 28th August, 2013.

6. On the 25th September, 2013 a list called "Combined Merit List" was published indicating the marks obtained by each candidate. At the time of Advertisement in December, 2011, about 6891 vacancies were declared. The same was subject to change based on vacancy reports from the Districts to be received even until after the written tests.

7. In a writ petition being WP (Civil) No. 94 of 2012 filed by West Bengal Untrained Teachers' Association and Anr. Vs. State of West Bengal, by order dated 2nd February, 2014 a two-Judge Bench of the Hon'ble Supreme Court sought answers to the following questions from the West Bengal School Service Commission (SSC), in connection with the subject recruitment process.

- a. "How many teachers with requisite qualification are available for appointment?
- b. How many of them are trained and how many of them are untrained as per Rules?
- c. How many posts are available?
- d. In the test also, how many trained and qualified teachers passed; and how many qualified and untrained teachers have passed; and how many unqualified and untrained candidates passed?"

8. In reply thereto the SSC indicated on affidavit that there were 36,140 teachers with requisite qualifications available for appointment. It was further indicated in the said affidavit that 82,517 trained candidates (with B.Ed

qualification) and 5,63,761 untrained candidates appeared in selection tests held by the Commission. The Hon'ble Supreme Court, thereafter, disposed of the matter directing issue to be decided in the pending writ petitions, before this Court.

9. There is another relevant aspect. By a Judgment and Order dated 7th February, 2013 passed in WP 1019 (W) of 2013 in Tania Ghosh and Anr. Vs. State of West Bengal and Ors., a Co-ordinate Bench of this Court had ordered that in the recruitment process under the 12th Regional Level Selection Test (RLST) preference in appointments must be given first to candidates who possess minimum qualifications (B.Ed) as prescribed by NCTE notification dated 25th August, 2010. It is only thereafter that unqualified candidates were to be appointed subject to available vacancies.

10. At the time when the writ petition was admitted, an order was passed by a Co-ordinate Bench on 25th January, 2014 restraining the School Service Commission from recommending any further names for appointment in respect of the 12th RLST. The said interim order was modified on 17th February, 2014 permitting the SSC to recommend the names for appointment but that the same was to abide by the final result of the subject Writ Petitions. Affidavits were called from the parties.

11. In another order passed in these writ petitions on 11.09.2014 it was recorded that the writ petitioners would not press any issue other than that the SSC has not followed the dicta in the case of Tania Ghosh (Supra). However, in course of detailed arguments advanced on several occasions spread over two months, this Court has decided that all issues raised by the petitioners shall be heard.

12. The writ petitioners in WP 1330 (W) of 2014 (Ruma Das and Ors. Vs. WBSSC and Ors.) represented by Mr. Subrata Mukhopadhyay, would contend as follows:

a. The combined merit list was published on 25th September, 2013.

Another list was also published on the same date, which was not available or accessible on the website either on the same date or even thereafter. The facility on the SSC website of access to detailed categorized panels on 24th February 2014 was not there on 25th September 2013. The website publication on 29th September 2013 was manipulated by the SSC.

b. The Combined Merit List dated 25th September, 2013 is in fact the final panel but does not contain the list of 36140 candidates and the waiting list which ought to have been 1:5 times of 36,140.

c. The final selection was made without adherence to the Combined Merit List and persons ranking below in such list have been given appointment ignoring the persons' ranking far above.

d. The Combined Merit List dated 25th September, 2013 contained a list of

22,689 candidates against 46,401 vacancies.

e. The Combined Merit List dated 25.09.2013 does not segregate or follow the dicta in the case of Tania Ghosh (*supra*) i.e. first preference of recommendation to trained candidates and thereafter to untrained candidates.

13. By an order passed by this Court on 24th January, 2020, the SSC was directed to produce the following lists.

- a) "The total vacancy position in all subjects as on the date of advertisement;
- b) The total actual vacancy position subject wise as on 25th September, 2000;
- c) The combined merit list of all candidates who qualified in the personality test;
- d) The final actual panel from which this Court can reasonably ascertain (to comprise in about 54,000 candidates i.e. 1.5 times of 36,145) the persons actually appointed.
- e) The actual list in order of merit of the persons who have been actually appointed, subject-wise, region-wise, medium of instruction-wise, reserve category wise and gender wise in the subjects of English, Geography and Bengali."

14. Voluminous records were produced by the SSC and inspection was duly taken by all participating petitioners and their advocates over 7 days. After inspection a supplementary affidavit was filed by the petitioners in WP 1330 (W) of 2014. They further argued that:

- a. After publication of the merit list on 25th September, 2013, a second list was published much later in February 24, 2014 although counselling commenced from October 2013, all the way upto June-July 2014.
- b. Rule 12 (6) of the West Bengal School Service Commission (Selection of persons for Appointment to the Post of Teachers) Rules of 2007 (2007 Rules) prescribes publication of a panel and also waiting list.
- c. The Combined Merit List dated 25th September 2013 contained 46,140 names i.e. 6891 (advertised vacancies) + 39,510 (vacancies subsequently notified by the districts).
- d. This, according to the petitioners, therefore, proves that the Combined Merit List dated 05.09.2013 is the final Panel in terms of Rule 12 (6) above.
- e. In the lists produced before the Court by the SSC, incorrect information has been given. Persons in the rank of 960 to 1164 in the list dated 25th September, 2013 were upgraded and put as 113 candidates in the SC category.
- f. Under the OBC-A category 140 vacancies were shown. In such case 210 (140+5 times) successful candidates ought to have been there in the panel for counselling. However only 245 candidates have been included in this category in

the list produced before the Court.

g. Similarly the in OBC-B category 72 vacancies were shown. The final Panel for such category ought to have been 108 whereas 152 candidates were enlisted against the said category.

h. In the general category panel list 216 vacancies have been shown. However, a list only 164 candidates were available in the final panel. As per the Rules, 324 candidates ought to have been empanelled. Hence minimum number of candidates have not been empanelled or called for counselling i. It is argued that in the event of SSC contends that the disparity occurred due to the fact that a number of candidates secured the same number of marks, the SSC ought to produce relevant marksheets.

j. The merit list of 25th September 2013 ought to have been 1:1.5 times the list of vacancies. The total number of candidates in the said was only 1.1 times the actual vacancies.

k. Going by the vacancy figure indicated before the Hon'ble Supreme Court ie 36,140 only 30,006 candidates have been appointed, leaving 6134 posts vacant.

15. In the meantime candidates who were successful and were approved and appointed pursuant to interim order dated 17th February 2014, have filed several writ petitions contending that they have not been regularized as Assistant Teachers and are not getting full service benefits in view of the said interim order in the instant batch of the writ applications. They prayed for regularization of their appointments.

16. Two of such persons have sought to implead themselves in the instant writ application. They have filed CAN 7380 of 2018 for regularisation of the appointment (by one Milan Mondal) and CAN 4 of 2020 for addition of parties (by one Kutubuddin Ansari). Since addition of parties was opposed, the said CANS were taken up along with the final hearing.

17. Counsel for the petitioner in WP No. 2250 (W) of 2016, Sayed Sultan Ali Vs. State of West Bengal, Mr. Samim Ahmed argued as follows:

a. The combined merit list published on 25th September, 2013 is in fact the 'Panel' as defined under the 2007 Rules. Rule 12 (8) does not permit preparation of more than one panel. The writ petitioner's ranking was 277 in the merit list dated 25.09.2013 and the SSC before the Supreme Court having admitted that 36140 persons have been appointed, the petitioner ought to have been given appointment.

b. Sayed Sultan Ali had earlier filed WP 25102 (W) of 2014. A Co-ordinate Bench of this Court vide order dated 11th September, 2014 directed the SSC to deal with the petitioner's contention.

The said representation was disposed of by the SSC, Western Region, at Bankura and has been challenged in WP 2250 (W) of 2016.

c. The petitioner's individual grievances have been addressed.

However, at page 12, in paragraph 24 of the writ petition, the petitioner has set out a list of persons who were not called for personality test despite being ranked higher in the combined list dated 25.09.2013.

d. The Combined merit list dated 25th September 2013 is in fact the Panel as the petitioner attended the personality test on 25th August 2013.

e. Since the Counselling process was started on 1st October 2013 the list of 25th September 2013 must be treated as the final panel.

f. The averments in the writ petition and supplementary affidavit have not been denied by the Commission. The CAG report has not been denied by the Commission.

18. The petitioners in WP 5385 (W) of 2014 Shikshak Chhatra Oikya Sangram Manch Vs. State of West Bengal, represented by Mr. Soumya Majumdar, made following submissions:

a. As per the affidavit filed by the SSC before the Hon'ble Supreme Court, there were 36,140 persons ready for appointment. The persons actually appointed, as evident from the records produced by the SSC before this Court, indicates 30007 posts filled up. So how were balance 6133 vacancies filled by the SSC?

The Commission cannot refuse to fill up vacancies at their whim & fancy. Reliance is placed at Paragraphs 46 and 47 of the decision of the Hon'ble Supreme Court in the case of Jitendra Kumar and Ors. Vs. the State of Haryana and Ors reported in (2008) 2 SCC Pg161.

b. The term 'panel' is defined under rule 2 (f) of the 2007 Rules. "Waiting list" is defined under Rule 2(O) and "Vacancy" at Rule 2(n).

c. As per Rule 12 (6) the list of qualified candidates ready for personality test should be 1.5 times of the declared vacancies. In terms of Rule 8, the District Inspectors (DIs) of Schools of each district are supposed to send their vacancies to the Commission for overall assessment.

d. In terms of Rule 9 (3) (a) a provisional vacancy list is published while inviting applications. The final vacancy list is published after the result of written examination and the final vacancies are declared taking into consideration the vacancies communicated by the districts.

e. The vacancies, as on 31st May, 2013 as per page 62 of WP No. 2250 (W) of 2016, was 46,401. In the affidavit before the Supreme Court 36,140 candidates were stated to be eligible for appointment but only 30007 have been appointed.

f. Rule 12 and Rule 15 have been placed in detail stating that the list published on 25th September, 2013 has to be the final panel.

The Commission's stand is that there is a merit panel and there is a final panel, is incorrect, illegal and contrary to rules. The panel itself is arbitrary as some

persons called for the personality test were not there in the combined merit list dated 25.09.2013.

g. The State has adopted the pick and choose policy in making appointment. While empanelled candidates have no vested right of appointment, the petitioners have a right to be considered appointment which was not done in the instant case. Reliance has been placed on the case of Vinodan T. & Ors vs University Of Calicut & Ors reported in (2002) 4 SCC 726.

19. Both Mr. Majumdar and Mr. Ahmed representing the petitioners in Sayed Sultan Ali (Supra) and Shikshak Chhatra (Supra) writ petitions respectively, relied upon a CAG report in which had passed scathing remarks on the process of selection adopted by the SSC in the 12th RLST.

20. It was also argued that reservation in service category is applicable in the Honours and PG posts as the Right to Education Act of 2009 and has no manner of application in the upper primary level. The Act of 2009 was illegally applied by the State amending the Rules of 2007 in the year 2011. The candidates in the in-service/temporary category were given double benefit i.e. reservation of 10% and additional marks of 0.5 marks or for respective temporary duty. There is, therefore, according to the petitioners, violation of Article 14, 16, 20 and 21.

21. Mr Sarawar Jahan who also appeared in W.P.No.1330 (w) of 2014, referred to discrepancies committed by the SSC in publication of the "Combined Merit List" on 28th September 2013. In substance he submits that no option to access the details of such list was accessible/available until 28th January 2014. He submits that since there was no way of seeing the details of actual candidates called for counselling and the basis thereof. By placing various webpage extracts he also showed that the SSC website was altered/saved on about 60 occasions between 28th September 2013 and 28th December 2013. He therefore submits that this would indicate that the final list of candidates who were called for interview could have been altered from time to time to suit the whim and fancy of the SSC.

22. In reply, Dr. Sutanu Patra, Ld. Advocate appearing for the SSC argued as follows.

a. The Tania Ghosh (Supra) decision of the Co-ordinate Bench was followed in letter & spirit. The candidates of reserved category were allowed to participate based on their rank even in the general category in terms of the decision of this Court in the case of Mukul Biswas Vs. State of West Bengal WP 13489 (W) of 2010, decided on 13th August, 2010. The West Bengal School Service Commission Appointment of Teachers Rules of 2007 has to be read alongwith the amendment dated 23rd December, 2011.

b. The combined merit list published on the 25th September, 2011 is not a panel. The actual panel was published on 24th February, 2014 alongwith a waiting list. Rule 12 (5) and proviso thereof and Rule 8 were duly followed.

c. In terms of Rule 12(5) a panel and a waiting list are required to be prepared,

Region wise, Subject wise, Reservation wise (OBC- A, OBC-B, SC, ST, Female), Girls School only, Boys school only, Co-Education, Medium of instruction wise etc. Hence there cannot be a straitjacket calculation like total vacancies, final panel and final wait listed candidates.

d. 46401 was the final vacancy as per Rule 8 and this was declared prior to personality test.

e. At the time of advertisement only temporary vacancies were declared provisionally. Pursuant to a direction of this Court, all the panels category wise indicated hereinabove and the respective waiting list have been produced before this Court. f. The petitioners have not been able to demonstrate any error or specific case of impropriety in such list produced in Court. g. None of the petitioners in WP 1330 (W) of 2014 are trained and hence cannot claim priority over untrained candidates. h. The advertisement was issued as per Rule 9 of the 2007 Rules and the written examinations for Pass and Honours category candidates were conducted as per rule 12 (3) and 12 (4) of the 2007 Rules as amended. The TET examination and subject test were conducted on the same day. The answer scripts of only those candidates who secured 60% and above, in the TET were checked. Thereafter candidates who secured more than 40% marks in the subject test were called for personality test. i. As per 12 (6) after subject test, Panels was published subject wise, medium wise, category wise and gender wise etc. and only thereafter 1.5 times of the vacancies were called for personality test.

j. Thereafter adding the written test marks, academic qualifications, experience in teaching and personality test were taken into consideration and the combined merit list was prepared. The combined merit list published on 25.09.2013 is in fact not the panel. The combined merit list was prepared to help preparation of the panel. The said combined merit list was published in the website of the Commission. Upto four rounds of counselling was done on the basis of the prepared panel.

23. In an affidavit-in-opposition affirmed on 05.03.2020 to the supplementary affidavit filed by the petitioner on 19th February, 2020, the SSC has stated as follows:

i) "That the concerned selection process being 12th Regional Level Selection Test (Assistant Teacher), 2011 (hereinafter referred to in short as 12th RLST) was conducted strictly in terms of the provisions of West Bengal School Service Commission (Selection of Persons for Appointment to the Posts of Teachers) Rules, 2007 (hereinafter referred to in short as 'the said Rules of 2007') and its amendments made in the year 2011 vide notification no. 1585-SE(S)/ES/S/1S-26/2010 (Part) dated 21.10.2011 (hereinafter referred to in short as 'the said Amendments of 2011'). The Commission has not violated any provision and/or mandate of the said Rules and its amendments.

ii) That in the said Amendments of 2011 it was stipulated that a General

category candidate must secure minimum 60% marks in the TET examination in order to qualify for the next level and get his answer script in the subject test evaluated.

iii) The Commission by exercising the power conferred by the said Rules of 2007, fixed 40% as the qualifying marks in the subject test and the same was specifically mentioned in the brochure supplied to every candidate.

iv) That due to compliance of the aforesaid rules and/or conditions, in most of the cases it was found that lesser number of candidates became eligible for being called for the Personality Test (interview) than the limit of 1.5 times of the final number of vacancies of the respective subject, category and Region. As such in those cases number of candidates called for Personality Test though remained less than the limit of 1.5 times of the final vacancies but in many cases, the same was even less than the actual number of final vacancies. As a result, all the vacancies could not be filled up in the said selection process due to shortage or unavailability of sufficient numbers of qualified candidates. For demonstrating the said fact, the following facts and data are required to be placed on record.

a) Total no. of final vacancies - 46,401 (Eastern Region 5,617, Northern Region 17,437, Southern Region 7,683, Western Region 8,703, South-Eastern Region 6,961);

b) Total no. of application received - 7,14,825;

c) Total no. of valid application - 7,02,475;

d) Total no. of candidates appeared in the examination - 5,70,911;

e) Total no. of candidates qualified in Part-II (TET)- 1,73,638;

f) Total no. of answer scripts of the subject test (Part-I) evaluated- 1,73,638;

g) Total no. of candidates who obtained the qualifying marks in subject test (Part-I) - 36,602;

h) Total no. of candidates called for Personality Test - 36,602;

i) Total no. of candidates who appeared in the Personality Test - 36,140 (Eastern Region 4,638, Northern Region 11,580, Southern Region 6,250, Western Region 7,871, South-Eastern Region 5,801);

j) Total no. of candidates empanelled - 29,575;

v) It is stated that where there were lesser number of candidates available than the number of final vacancies, all the qualified candidates were called for counselling but where the number of qualified candidates were much more than the number of final vacancies, all of them could not be called for counselling.

vi) In this respect copies of Final Combined Merit List and list of candidates called for counselling for subject Computer Science (H/PG), medium-Bengali of Eastern

Region of the Commission are annexed herewith and collectively marked to the letter "B".

vii) That in the said selection process [12th RLST (AT),2011], in strict compliance of the solemn order passed in W.P. No. 1019 (W) of 2013 (Tania Ghosh & Ors. - Vs- The State of West Bengal & Ors.), trained candidates were given preference, that is to say, first the trained candidates were called for counselling and recommended and only after the exhaustion of the list of selected trained candidates, non-trained candidates were called for counselling and recommended.

viii) In this respect copy of panel of subject Computer Science (H/PG), medium-Bengali of Eastern Region under General, Co- Ed category is annexed herewith and collectively marked to the letter "C".

xi) I say that the said selection process was initiated by issuing and advertisement on 30.12.2011 and concluded with the expiry of the panels on 24.03.2015. The relevant dates are given below for proper adjudication of the case:

- a) Date of advertisement with tentative vacancies- 30.12.2011;
- b) Dates of holding examinations (TET and Subject Test)- 29.07.2012 and 02.09.2012;
- c) Date of publication of Part-II (TET) result- 01.02.2012;
- d) Date of publication of Part-I (Subject Test) result (i.e. interview list)- 06.08.2013;
- e) Date of publication of Combined Merit Lists - 25.09.2013;
- f) Date of publication of Final Merit Lists & Panels - 25.09.2013;
- g) Date of commencement of 1st phase of counselling - 01.10.2013;
- h) Date of expiry of panel - 24.03.2015;"

24. Having considered the rival submissions of the parties, the relevant parts of the WBSSC (Selection of Persons for appointment to the Post of Teachers) Rules of 2007 issued by notification dated 21st September, 2007 and as amended in 2011 need to be understood. The word panel is defined on Rule 2 (f) as follows:

"panel" means list published by the Commission for Schools and Madrasahs separately containing the names of candidates equal to number of vacancies declared for Regional Level Selection Test found fit for appointment strictly in order of merit;

25. Vacancy is defined at Rule 2 (n) as follows.

""vacancy" means a vacancy in the post of a Teacher for classes of Upper Primary Level caused by-

- (i) creation of a new post;
- (ii) superannuation;
- (iii) death;
- (iv) resignation;
- (v) transfer;
- (vi) removal or dismissal;
- (vii) any other reason, apart from the above, as the State Government may, by order, determine"

26. Waiting list is defined at Rule 2 (o) as follows.

"waiting list" means a list of candidates from the merit list (category-wise) but not included in the panel"

27. Rule 8 is entitled 'information regarding vacancies'. Rule 9 prescribes the mode of advertisement.

"8. Information regarding vacancies (1) The District Inspectors of Schools (Secondary Education) shall, on being asked by the Director of School Education, prepare a report regarding the number of vacancies in posts, Subject group-wise, subject-wise, medium-wise, gender-wise and reservation category-wise for the posts of Teachers and send it to the Directorate of School Education.

(2) On receipt of report under sub-rule (1), the Directorate of School Education shall, with due approval of the State Government, send the Subject group-wise, subject-wise, medium-wise, gender-wise and reservation category-wise vacancy report compiled region-wise, earmarked vacancies such posts, if any, declared by the State Government for any year, to the Central Commission.

(3) The report as mentioned in sub-rule (2), shall be sent to the Central Commission in the following manner:-

(a) firstly, before the date of publication of the advertisement inviting application; and

(b) lastly, fifteen (15) days before the date of publication of the result of the written examination or Interview list, as the case may be.

(4) The State Government may, by notification, earmark upto 10% of the total vacant posts with a view to provide adequate representation of the Para Teachers without disturbing 100 point roster as may be notified from time to time. If there is no notification to earmark the posts or if the posts remain vacant due to nonavailability of suitable candidates, the earmarked posts shall be filled up as per general procedures as mentioned in these rules from the qualified eligible candidates.

9. Advertisement (1) The Central Commission shall, on receipt of the report of region-wise vacancies under rule 8, issue an advertisement through newspapers in the State in English, Bengali, Hindi and/or in any other languages, if necessary, as may be decided by the Commission and also through the website of the Commission.

(2) Such advertisement shall be issued specifying the vacancies, qualification, age as on the 1st day of January of the year of advertisement and other necessary information relating to such posts, details of which may be obtained through the website of the Central Commission and from the Offices of Central Commission and Regional Commissions.

(3) While specifying the vacancies in the advertisement, the Central Commission shall, for the said posts of such Teachers, publish a tentative number of vacancy at the time of inviting applications for State Level Selection Test (SLST) that have been reported under clause (a) of sub-rule (3) of rule 8 and a final vacancy list at the time of publication of Interview list except Physical Education and Work Education and in case of Physical Education and Work Education at the time of publication of the result of the written examination declaring the actual vacancies that have been reported under clause (b) of sub-rule (3) of rule 8. Subject-wise vacancies in each group shall be clearly mentioned and candidates may choose his/her subject group which he/she had in TET Examination and the subject chosen shall be a subject in his/her Graduation level for vacancies except Physical Education and Work Education."

28. Rule 12 on which extensive submissions have been made by the parties prescribes the "method of selection" is set out below:

"12. Method of SLST for selection of candidates and preparation of panel for teachers (except Physical Education and Work Education) (1) The Central Commission shall arrange for proper custody of all online applications which may be received by it against the vacancies.

(2) The Central Commission after receiving application forms shall prepare list of eligible candidates for the purpose of preparation of a computer generated database of all the candidates.

(3) The Central Commission shall verify the validity of TET Certificate, academic and professional qualification of the candidates having valid TET Certificates and marks obtained in TET and other academic and professional qualification shall be evaluated in the manner mentioned in Part A of Schedule II.

(4) The Central Commission shall prepare and publish in their website and Interview List with all details of the candidates to be called for personality test, category-wise on the basis of merit as mentioned in Part A of Schedule II in the ratio of 1:1.4 of final vacancies.

(5) After interview, the Central Commission shall, from Interview List, prepare and publish a merit list category-wise on the basis of merit (weightage of TET,

academic and professional qualification and marks obtained in personality test) as per Part A of Schedule III.

(6) 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 publish in their website.

Provided that the Central Commission shall publish in their website the appropriate answers of the Questions for general information.

Provided further if more than one candidate obtain the same aggregate (total marks) the merit position of the candidates shall be determined according to their date of birth, i.e. candidates with earlier date of birth shall be preferred and if the aggregate and date of birth shall also be same, the candidates obtaining higher academic score shall be preferred and if the aggregate, date of birth and academic score shall be same, the candidates obtaining higher weightage in TET shall be preferred.

(7) The Central Commission shall publish such panel and waiting list of candidates in the website of the Commission as well as the Offices of the concerned Regional Commissions. A copy of the same will be submitted to the School Education Department and the Directorate of School Education for information."

29. It follows from the above that all Regional Commissions are to prepare a list of eligible candidates after receipt of applications, to the Central Commission for preparing a computer generated database in the State and for issuance of admit cards for examination. The written examination is conducted thereafter. The Central Commission shall decide the procedure and manner of conducting Regional Level Selection Test and is to issue detail instructions.

30. After evaluation of answer-sheets in the written examination each Regional Commission is to prepare subject-wise, medium-wise, category-wise and gender-wise lists of candidates who shall qualify for personality test based on marks obtained by them in the written examination, evaluation of academic qualifications taken together. The number of candidates to be called for personality test are not to exceed 1:1.4 times of the actual vacancies published at the time of declaration of result of written examination.

31. Therefore, the final vacancy list is to come out after the written examination and before personality test. The marks obtained in the written examination are added to the marks awarded towards educational qualifications and the marks in the personality test and a panel of candidates fit for appointment to the post of Asst. Teacher in order to merit is to be prepared.

32. The expression "each such panel" in the 2nd line of Rule 12 (8) (a),

therefore, clearly indicates that separate panels in order to merit are to be prepared subject-wise, medium-wise, category-wise and gender-wise. The panels are prepared in proportion to the number of vacancies as per the divisions in Clause 12 (6) i.e. subject-wise, medium-wise, category-wise and gender-wise. It, therefore, follows from the above that there are many subjects like Maths, Science, Arts, Language and other streams and there has to be a panel for each specific subject. There could be more than one panel even of a single subject as for example in the subject history, since they have to be bifurcated medium-wise, category-wise, reservation-wise and gender-wise.

33. In each of the above panels that may exceed 10 in number, there is a waiting list. The same process is followed separately for Pass or Honours/Post Graduate category of vacancies as may be decided by the Central Commission. The Central Commission is to publish such panels and waiting lists, in their websites, at the offices of the Regional Commission as well as at the offices of the respective District Magistrate.

34. The Rules for posts other than Asst. Teachers are not discussed hereinabove as they are not relevant to the writ petition herein.

35. Hence there is one list to be prepared in terms of Rule 12 (6) and another set of panels in terms of Sub-Rule 8 of Rule 12.

36. By no stretch of imagination, therefore, can the combined merit list published on 25th September, 2013 be deemed as a panel given the definition of panel under Rule 2 (f) read with Rule 2 (n), Rule 8 and Rule

12. The arguments of the petitioners in this regard are therefore liable to be summarily rejected. The publication of the merit list on the 24th of September 2013 was unnecessary misleading and redundant.

37. Further the argument of Mr. Mukhopadhyay and Mr. Jahan that details option was not given in the web page of SSC published on 25th September 2013 is not acceptable as the categorization of the candidates may not have been done on the said date. The said list may at the most be a provisional list of successful examinees in the subject test.

38. It is also possible that the discrepancies alleged by the petitioners may have been perceived on the basis of the cut off marks in the TET for assessment of subject tests. While the original 2007 Rules prescribe 60% and above to be the cut off, the Commission in its discretions as conferred by the 2007 Rules reduced the qualifying marks to 40%. Such power appears to have been conferred under Rule 10 (5) and 13 (5) thereof.

39. The argument of the petitioners that there must be 36140 as stated in the affidavit filed before the Supreme Court is also not correct. In the affidavit filed before the Hon'ble Supreme Court it was only stated that there were 36,140 teachers with requisite qualifications "were available for appointment" (emphasis added). It is further indicated that 82,517 trained candidates and 5,63,761

untrained candidates appeared in the selection process under 12th RLST. It, therefore, follows that the State of West Bengal and the School Service commission cannot be deemed to have averred before the Supreme Court that there were 36,140 vacancies.

40. In this regard this Court has to accept the statements made by the SSC in its affidavit filed on 5th March, 2020 that there were 46401 vacancies, arrived at in terms of Rule 8 of 2007 Rules and in terms of the first proviso in Sub-Rule 6 of Rule 12.

41. While Sub-Rule 3, 4 and 5 of Rule 12 prescribe conduct of a written test in the manner to be decided by the Commission in the categorization under Rule 6, the School Service Commission has conducted first Teacher Eligibility Test for 5,70,911 candidates who applied. Out of the above 1,73,638 candidates qualified therein whose subject test answer scripts were evaluated. Out of 1,73,638 candidates 36,602 candidates qualified in the subject test and were called for the personality test. Out of the 36,140 candidates were called for personality test, 29,575 candidates were empanelled to be appointed.

42. As already stated hereinabove there cannot be a single panel for all the 29,575 candidates. Separate panels are to be prepared for each subject, medium-wise, gender-wise, category-wise (Reservation) and Pass and Honours/PG wise.

43. It is quite possible that enough candidates, after applying the cut off marks, may not be available after the aforesaid categories and after applying the dicta laid down in the Tania Ghosh decision (*supra*). Hence it is quite possible that there may not be enough candidates to follow the Rule of calling 1.5 times the vacancy against each category subject-wise.

44. In so far as allegation of the petitioners that the SSC has not followed the dicta that qualified candidates must be given first preference and it is only thereafter that unqualified candidates would be given appointment, the writ petitioners have not been able to demonstrate any impropriety after inspecting all the panels and waiting lists, produced before this Court by the SSC.

45. Not a single case of any person enlisted in the panels have been shown to have been disentitled. Counsels for the petitioners have also not been able to point out a single case of any candidate having been appointed contrary to the dicta in Tania Ghosh Case (*Supra*). The arguments of the petitioners must, therefore, be deemed as academic, speculative and based on conjecture and surmise.

46. The contention of Mr. Ahmed's client as regards specific candidates referred to in his writ petition have been explained by the SSC. Mr Ahmed could not demonstrate from the records produced by the Commission of any such discrepancy.

47. Insofar as the combined merit list published on 29th September, 2013 it has already been held in the previous paragraphs that the same cannot constitute a

panel. It is, however, equally true that the said publication does not fall within any of the requirements of the 2007 Rules (supra) as amended in the year 2011.

48. The Commission need not have published any such combined merit list as they were not required to do so as per the Rules described hereinabove. It is this unwarranted publication of a list entitled combined merit list that has created all the confusion and the volume of litigation.

49. Insofar as conducting of a TET and thereafter a subject test on the same day, this Court is of the view that since Sub-rule 5 of Rule 10, 12 and 13 permits the SSC to determine the procedure and manner of conducting the RLST, the same cannot be faulted.

50. Let us now deal with the observations by the Information Technology Audit Department of IOES in their Audit Report (general and social sector 2016-17). The said observations are as follows:-

"Information Technology Audit of the IOES of West Bengal School Service Commission, through Audit Report (General & Social Sector), 2016-17, has thrown light on instances of various control failures rendering the system susceptible to manipulation as discussed below:

i. The basic tenet of transparency and fair competition was jeopardised. It was observed that on a number of instances, marks of examinations and academic scores had been manipulated. Ineligible candidates had been called for PT and even got empanelled, while candidates having higher scores were excluded. This was done by overriding the system by taking advantage of its limitations in restricting any modification in the marks obtained in examination as well as academic/ professional score. This allowed the ineligible candidates to be selected through manipulation. ii. WBCSSC did not have any system development documentation, data dictionary. The recruitment activity was computerised only partially allowing manual intervention at strategic control points. iii. WBCSSC failed to establish secure connectivity among its offices to exchange confidential data. No proper business continuity plan was chalked out.

iv. WBCSSC also failed to map business rules and fundamental rules in the system. It led to instances like (i) system- calculated percentage of academic marks not matching with formula based percentage, (ii) examination status being shown as unsuccessful but the candidate getting call for PT, (iii) mandatory fields of religion/ gender/ citizenship remaining blank, marks obtained being shown as zero but academic score being awarded, etc. v. A sound system for maintenance of historical records (physical copy and soft copy) for future reference was not in place. Thus, there were various areas of control weaknesses and business rules violations in the IT Application used by WBCSSC, which renders the results of the system unreliable."

51. The observations have been carefully scrutinized by this Court. The same cannot be brushed aside lightly. At the same time one also cannot indict and hold

the entire 12th RLST-2011 as illegal based on the same. The observations are general in nature and do not refer to any specific case of illegality. The observations are coupled with the recommendations. The 12th RLST, 2011 in future should bear in mind the aforesaid observations in the letter and spirit. The apparent discrepancies found by this Court in the 12th RLST, 2011 are inter alia that counselling process was started in October 2013 much before publication of the panels in February, 2014. On what basis the said counselling process was started is unknown since admittedly no final panels had admittedly been published until before January/February, 2014.

52. There is no reason or purpose demonstrated by the WBSSC for the publication of the combined merit list on 25th September, 2013 or whether the same at all used in any counselling process. What prompted counselling to be undertaken from October, 2013 till date of publication of panels in February, 2014, is a mystery. There is however no clear evidence before this Court to hold that the same has vitiated the entire selection process.

53. What is clear is that there were admittedly 46,401 final vacancies and only 2,9575 candidates were empanelled. The SSC has answered that suitable number of candidates were not available. The same must be accepted as the only logical answer albeit as a *fait accompli*. It is not known whether the vacancies were either carried forward to the next year or filled up by any other manner.

54. However merely because there are available unemployed candidates the State cannot be compelled to fill them up as already decided by the Hon'ble Supreme Court in the case of *Vinodan T and others Vs. University at Calicut* reported in (2002) 4 SCC 726. Even a selected candidate does not have a vested right to be appointed merely because vacancy exists. In the instant case none of the petitioners have been able to demonstrate that there were qualified candidates to be appointed. This Court cannot enter into roving enquiry as regards marks and rank of each individual candidate.

55. Also relevant case of *Jitendra Kumar and Ors. Vs. State of Haryana and Anr.* Reported in (2008) 2 SCC 161 where the Supreme Court has held that State for valid reasons can refuse to fill up vacancies as already stated hereinabove, the SSC has indicated on affidavit that they did not find suitable candidates to fill all 46401 vacancies. At paragraph 47 it was held as follows :-

"47. It is, therefore, evident that whereas the selectee as such has no legal right, the superior court in exercise of its judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of mala fide or arbitrariness on its part. Each case, therefore, must be considered on its own merit."

56. The petitioners have not been able to demonstrate any malafides on the part of the SSC in the process of selection. There could be at the most a case of some unnecessary publication of the combined merit list but the subsequent steps

cannot be called a complete infraction of Rules. No specific illegality or improper selection has been pointed out the petitioners.

57. It is in the light of the above discrepancies found by this Court that the SSC was directed to produce all the panels prepared by it as mandated under Rule 12 of the 2007 Rules. The same have been duly produced. However none of the petitioners before this Court were able to indicate any specific case of any individual who ought not to have been selected or be empanelled or in the waiting list concern. In those circumstances, no relief can be granted in the instant writ petitions.

58. This Court however has however found that the WBSSC has deviated from Rules prescribed for selection i.e. the 2007 Rules in the 12th RLST. The observation of the Audit Department as discussed hereinabove definitely leave grey areas that are is capable of being used for manipulation by vested interests. Rules and strict adherence thereof are meant to ensure transparency. The SSC shall, therefore, ensure strict compliance of the Rules in future.

59. As already stated hereinabove, it is however, well-settled that not every infraction would invalidate the final result of any selection procedure. Specific instances of impropriety must be demonstrated to compel a Court of law to interfere with the selection process. The petitioners have not been able to do so.

60. There is yet another aspect that cannot be ignored. The writ petitioners have not impleaded, the selected candidates or notified them of the instant proceedings. The writ petitions could not have been admitted or entertained in the absence of the actual appointees who are about 30,000 in number. The said 30000 and odd persons would be condemned unheard.

61. The Hon'ble Supreme Court in J.S. Yadav Vs State of U.P. & Anr reported in (2011) 6 SCC 570 in Paragraph 31 it has been held thus:-

"31. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the petitioner-plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person are terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the petitioner-plaintiff succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by the petitioner-plaintiff. (Vide Prabodh Verma v.

State of U.P. [(1984) 4 SCC 251 : 1984 SCC (L&S) 704 : AIR 1985 SC 167] , Ishwar Singh v. Kuldeep Singh [1995 Supp (1) SCC 179 : 1995 SCC (L&S) 373 : (1995) 29 ATC 144] , Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] , State of Assam v. Union of India [(2010) 10 SCC 408 : (2010) 2 SCC (L&S) 812 : (2010) 4 SCC (Civ) 187] and Public Service Commission v. Mamta Bisht [(2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208 : AIR 2010 SC 2613] .) More so, the public exchequer cannot be burdened with the liability to pay the salary of two persons against one sanctioned post."

62. In Tridip Kumar Dingal and other v. State of West Bengal and Others 2009) 1 SCC 768 At Paragraph 41 the Supreme Court stated as follows :-

"41. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as respondents in the original application, which was not done. In any case, some of them ought to have been arrayed as respondents in a "representative capacity". That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside."

63. Hence even otherwise the writ petitions could not have been entertained.

64. The writ petitions are hereby dismissed. All interim orders shall stand vacated. In view of the dismissal of the Writ Petitions, CAN 7380 of 2018 shall stand disposed of as infructuous. CAN 4 of 2020 is disposed of without any order. There shall, however, be no order as to costs.

65. Urgent Photostat Certified server copy of this judgment, if applied for, be supplied to the parties on urgent basis.