
(2010) 06 CAL CK 0006
In the Calcutta High Court
Case No : Writ Petition No. 2580 (W) of 2010

Tumpa Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 3 CALLT 561

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Ashok Banerjee, Mr. Kalyan Bandhopadhyay, Mr. P.S. Deb Barman, Mr. Anindya Bose, Mr. A. Roy and J.P. Chatterjee, for the Appellant; Jayanta Mitra for the Council, Mr. Saikat Banerjee, Jasojeet Mukherjee, Ms. Juin Chakraborty (Dutta) and Mr. Rajib Pal for the West Bengal Board of Primary Education, Mr. Balai Chandra Ray (Advocate General), Mr. Jaydip Kar, Tapabrata Chakraborty and Mr. Saikat Banerjee for the State Mr. Abhijit Gangopadhyay for the Commission, for the Respondent

Judgement

Biswanath Somadder, J.—The petitioner in the instant application passed her Madhyamik Examination in the year 1999. Subsequently, the petitioner decided to obtain Primary Teachers' Training Certificate issued by West Bengal Board of Primary Education. Accordingly, the petitioner got admitted in a Primary Teachers' Training Institute, namely, Khamargachi Primary Teacher Training Institute, situated in Burdwan, and successfully completed her course in the year 2005 and was issued a certificate as a trained primary teacher.

2. It has been stated by the writ petitioner that in the year 2006, her name was sponsored by the office of the concerned Employment Exchange as an eligible candidate for the post of primary teacher sought to be filled up by the District Primary School Council, Burdwan. She has further stated that though she was invited in the year 2006 as an eligible candidate to be considered for the post of primary teacher and had duly submitted her bio-data and testimonials, no decision - either for completion or withdrawal or cancellation of the selection

process - was ever disclosed by the District Primary School Council, Burdwan. Subsequently, however, on a basis of a newspaper advertisement issued on 30th August, 2009, the writ petitioner, under compelling circumstances, obtained a prescribed application form distributed for the purpose of making an application for filling up of the post of primary teacher under the District Primary School Council, Burdwan and duly submitted the same. Consequently, she was issued a admit card to participate in a written test, which was held on 29th November, 2009, wherein she duly appeared.

3. It has been stated by the writ petitioner that although the written test was held on 29th November, 2009, no result of such test was declared. However, she could learn from the office of the respondent No. 4, that on the basis of the selection process held on 29th November, 2009, about 1450 posts of primary teachers were going to be filled up including the vacancies but relying upon the interim order dated 3rd March, 2006, passed in W.P. No. 4107(W) of 2006, candidates who obtained Primary Teachers' Training Certificates in the year 2003-04 as well as 2004-05, were not awarded any marks for their training qualification, in spite of holding valid certificates to that effect.

4. It is the non-awarding of such marks in favour of the writ petitioner on the basis of her primary teachers' training qualification, for the purpose of being selected for filling-up the post of primary teacher under the District Primary School Council, Burdwan, which has prompted the writ petitioner to file the instant writ petition.

5. The learned senior counsel appearing on behalf of the writ petitioner submitted that the decision of the authorities not to allot ratio of 22 marks out of 100 in favour of the writ petitioner, on the basis of her Primary Teachers' Training Certificate, in view of the interim order dated 3rd March, 2006, passed by the Division Bench of this Court in W.P. No. 4107(W) of 2006 (Tulsi Baksi and Anr. v. State of West Bengal and Ors.) was wrongful and without any legal basis after the final judgment and order was passed in the matter by the Division Bench of this Court on 1st October, 2008. He then referred to the said interim order, which reads as follows:-

Considering the arguments of all the learned Counsels appearing on behalf different parties, we would have to point out that so far there has been no evidence before us that the institutes though not recognised under the NCTE Act has not been recognised by the State Government also. It is an admitted fact all these institutes are recognised under the Act. It is reported that the examinations are to be held in June, 2006. Therefore, instead of expressing anything in respect of the examination we would choose to limit the interim relief in the following terms:

(a) There shall be an interim order restraining the non-recognised primary teachers' training institutes from admitting any further student for primary teachers' training course till the disposal of this writ petition.

(b) There shall be a direction against the respondent Nos. 1 and 2 that the certificates issued by the non-recognised respondent institutes shall not be accepted as a qualification for appointment as trained candidate.

6. According to the learned senior counsel for the writ petitioner, the above interim order was not confirmed in-toto by the Division Bench of this Court while passing the final judgment and order in the matter on 1st October 2008. In this regard, he referred to the declaration of the Court as well as the directions given in the final judgment and order passed by the Division Bench on 15th October, 2008 in Tulsi Baksi's matter, (reported in Tulsi Baksi and Another Vs. State of West Bengal and Others, , which reads as under:

98. On these grounds, this petition deserves to be allowed and we declare that all the respondent institutions which are not recognised by the NCTE could not be given affiliation by the Board. The Institutions, which have not followed the provisions of the NCTE Act and are not recognised by the NCTE Authority, had no right to admit students in the said training programme.

99. Accordingly, we direct that unless these institutions are recognised, they shall not have any authority to admit any student in their institutions. It is clear from the facts that these institutions have acted in flagrant disregard of the provisions of the Act and Rules. All these institutions are bound to be aware of the provisions of the NCTE Act and could not have merely on the basis of the affiliation granted by the Board admitted the poor students. We are aware that the students are now going to lose one year which is very precious in their young lives. But the law must prevail and, accordingly, we direct all these unrecognised institutions to return all the fees to each and every student.

100. Before we part we also make it clear those Institutions who are already recognised under the NCTE Act, there are no impediments for them to run their Institutions. We further direct the State Authorities to render all assistance to the said Institutions.

7. Referring to the above, he submitted that it would be apparent therefrom that the interim order dated 3rd March, 2006, as regards non-acceptance of certificates already issued by non-recognised institutes as a qualification for appointment as trained candidates was not made a part of the final judgment and order rendered by the Division Bench of this Court on 1st October, 2008, in Tulsi Baksi's case.

8. In this context, he also referred to a latter judgment and order passed by the Division Bench of this Court in a Public Interest Litigation, being W.P. No. 23077(W) of 2009 on 26th February, 2010, and submitted that it would be clear therefrom that the Division Bench of this Court in Tulsi Baksi's case, was concerned only with the academic session of 2005-06 onwards and for not any prior period, and therefore, the writ petitioner, who obtained her Primary Teachers' Training Certificate in the year 2005, ought to have treated as a trained candidate on the basis of her qualification and should have been allotted

22 marks out of 100, at the time of evaluating her merit for participation in the selection process.

9. Referring further to the aforementioned judgment, he submitted that it would be apparent from the submissions made by the learned Advocate General before the Court in that matter that in view of the instructions of NCTE it was clear that State recognised institutions which had imparted primary teachers' training, without obtaining affiliation or recognition under the National Council for Teacher Education Act, 1993, upto 2004-05, could not be treated as having imparted training illegally. In any case, the students who had prosecuted their studies and obtained certificates from such institutes prior to the date of the final judgment in Tulsi Baksi's case, were not visited with adverse consequences and nor were they required to surrender their certificates. He thus, submitted that the submission of the learned Advocate General, to the effect that the students who had already obtained their Primary Teachers' Training Certificates prior to the judgment in Tulsi Baksi's case, could not be visited with any adverse consequences, was a clear pointer to the fact that the State Government's stand in respect of such students was unambiguous and, therefore, in the facts and circumstances of the instant case, the writ petitioner could not be deprived of the 22 marks, which she was otherwise entitled to get, on the basis of her Primary Teachers' Training Certificate.

10. In this regard, he relied on paragraph 10 of the judgment and order dated 26th February, 2010, wherein the submissions of the learned Advocate General was recorded by the Division Bench, which reads as under:

10. Without prejudice to the above submission, the learned Advocate General has submitted that in view of the instructions of NCTE, it was clear that State recognised institutions which had imparted training in primary teachers training, without obtaining affiliation or recognition under the NCTE Act, up to 2004-05 could not be treated as having imparted training illegally. In any case, the students who had prosecuted their studies obtained certificates from the institutions prior to the date of the judgment in Tulsi Baksi's case were not visited with any adverse consequences nor were they required to surrender their certificates. In the premises, the students who had already obtained their primary teachers training certificates prior to the date of the judgment in Tulsi Baksi's case could not be treated as disqualified for the post of primary teachers.

11. He submitted that in view of the above submissions made by the learned Advocate General in W.P. No. 23077(W) of 2009, the Division Bench had proceeded to dismiss the writ petition. He submitted that the learned Advocate General, being the Law Officer of the State, could not just simply turnaround now and do a volte-face and take a wholly contradictory stand before this Court in the facts of the instant case.

12. He also referred to the stand taken by the State in the affidavit-in-opposition affirmed by Uttam Kumar Choubey and submitted that it would be clear

therefrom that the State was simply taking shelter behind the judgment of the Division Bench in Tulsi Baksi's case. He submitted that nowhere in Tulsi Baksi's case did the Division Bench observe that 22 marks ought not to be given to those like the writ petitioner in the instant case, who had obtained Primary Teachers' Training Certificates prior to academic session of 2005-06. He further submitted that the State Government in the said affidavit-in-opposition has stated that if any order as prayed for in the instant writ petition was passed it would affect 1241 primary teachers who have already been appointed in the district of Burdwan through the recruitment process and who are now working as primary school teachers. He submitted that this is a clear indication that the State has practically no case to defend and the very basis of their stand, as reflected from the affidavit-in-opposition, was unsustainable in law.

13. Learned senior counsel for the writ petitioner relied on a judgment of the Supreme Court rendered in the case of B.P.L. Ltd. and Others Vs. R. Sudhakar and Others, , and submitted that in the very nature of things an interim order and a final order are distinct from each other and they serve different purposes. While the interim order operates during the pendency of the proceedings, final order results in adjudication of a dispute finally. He submitted that the interim order of dated 3rd March, 2006. passed in Tulsi Baksi's matter was distinct from the final order dated 15th October, 2008 and had not merged therein. He further submitted that since no specific direction was given by the Court at the time of passing the final order on 15th October, 2008, with regard to non-acceptance of certificates issued by the non-recognised primary teachers' training institutes upto the academic session of 2005-06, there was no embargo on the part of the State to allot 22 marks in favour of the writ petitioner on the basis of the Primary Teachers' Training Certificate obtained by her in the year 2005.

14. He further relied on a judgment of Supreme Court in the case of Basic Education Board, U.P. Vs. Upendra Rai and Others, and submitted that in that case the Supreme Court while considering the National Council for Teacher Education Act, 1993, had categorically observed that the qualifications for appointment as teacher in ordinary educational institutions like primary schools, could not be prescribed under the said Act of 1993, and all essential qualifications were to be prescribed by the local Acts and Rules in each State. He submitted that in view of the above judgment of the Supreme Court rendered in Basic Education Board, U.P., the State of West Bengal cannot take recourse to a policy whereby the certificates issued by the Primary Teachers' Training Institutes prior to the academic session of 2005-06, would be declared as unacceptable and not be considered as a qualification for appointment to the post of assistant primary teachers as trained candidates, especially in the context of the prevailing Recruitment Rules pertaining to recruitment of primary teachers in the State of West Bengal, which are local Rules.

15. The learned Advocate General, on the other hand, submitted that more than 130 Primary Teachers' Training Institutes were set up consequent upon being

recognised by the West Bengal Board of Primary Education, who were imparting practical training to the students in order to equip them better to become primary teachers in West Bengal. Such training never conferred any degree of higher education (as contemplated in Schedule-VII, List-I, Entry-66 of the Constitution of India) to the students, all of whom were aspiring to be contenders to the post of primary teachers, in a selection which is being conducted by the respective District Primary School Councils of West Bengal. This system was working since 2001 and the State Government had framed;the Recruitment Rules in 2001 on this basis.

16. The respective District Primary School Councils in West Bengal, for the purpose of recruiting primary teachers, requisitioned names from the respective Employment Exchanges in late 2005/early 2006. Pursuant thereto, names were sent by respective Employment Exchanges and the process was continuing.

17. Learned Advocate General, thereafter, referred to the Public Interest Litigation filed by Tulsi Baksi and another before the Division Bench of this Court, being W.P. No. 4107(W) of 2006. Learned Advocate General then referred to the interim order passed in the matter on 3rd March, 2006, which has been reproduced hereinabove. He submitted that all recruitments of primary teachers that took place upto the date of the interim order were so made following the Recruitment Rules of 2001 by allotting a ratio of 22 marks out of 100 in respect of candidates possessing such Primary Teachers' Training Certificates, as is being held by the writ petitioner in the instant case. However, in view of the interim order dated 3rd March, 2006, the recruitment process which commenced in the year 2006 was abandoned, since the State was prevented from accepting the certificates of trained candidates. Learned Advocate General, thereafter, referred to the final judgment rendered by the Division Bench of this Court in Tulsi Baksi's case on 1st October, 2008. He submitted that the Division Bench, in the said judgment has made it clear that the NCTE Act, 1993, shall prevail over the State Act of 1973 and the institutes set up under the State Act of 1973 were not validly set up and such institutes, unless recognised under the NCTE Act, could not be given affiliation by the West Bengal Board of Primary Education. The Division Bench further directed the institutes to return the fees to the students. Learned Advocate General submitted that this judgment of the Division Bench has been assailed before the Supreme Court by three of the private training institutes, who were not recognised under the NCTE Act, and one SLP was also filed by the State of West Bengal, which is still pending. He then, referred to the order of the Supreme Court dated 6th July, 2009, whereby the Supreme Court was pleased to condone the delay in filing of the SLP by the three private training institutes and issued notices and stayed the direction to return the fees to the students by the institutes, as directed by the Division Bench of this Court in the judgment and order dated 1st October, 2008.

18. He further submitted that, following the judgment and order rendered by the Division Bench in Tulsi Baksi's case, the statutory Recruitment Rules regulating

recruitment of primary teachers in West Bengal were amended on two dates, i.e., on 20th May, 2009 and 27th July, 2009, respectively. By such amendment, the recruitment qualification was changed as well as the method of assessment of the candidates aspiring to be primary teachers in West Bengal.

19. He then, referred to a batch of writ petitions filed by independent writ petitioners, subsequent to publication of advertisement in leading newspapers on 30th August, 2009, by eighteen District Primary School Councils, whose names were sponsored in the year 2006 or thereafter by the Employment Exchanges. He submitted that these writ petitions were heard analogously. The common contention raised in this batch of writ petitions, inter alia, was that in 2005 and 2006, different District Primary School Councils who wanted to recruit primary teachers, requisitioned candidates from the respective Employment Exchanges in the ratio as stipulated in the statutory Recruitment Rules and pursuant thereto names of eligible candidates, were sent to the Councils by the respective Employment Exchanges. According to the writ petitioners, the Councils, on receipt of such names, invited the sponsored candidates for submitting their respective bio-datas/testimonials for the purpose of short - listing. The concerned sponsored candidates submitted their respective bio-datas/testimonials, but thereafter they were not called to appear in the written test of 10 marks, in terms of the then Recruitment Rules. They alleged that nothing progressed thereafter. It was their contention that the recruitment process having commenced in 2006, is required to be concluded according to the unamended Rules of 2001. According to the writ petitioners, by the common advertisement dated 30th August, 2009, the recruiting authorities attempted to club all available vacancies up to 2009 and the anticipated vacancies for the next twelve months, and throw it open to all eligible candidates, which the recruiting authorities were not entitled to. According to the writ petitioners, the sponsorship having taken place prior to the amendments of the Recruitment Rules, when the bio-datas/testimonials were submitted, substantial portion of the recruitment process had progressed, and those vacancies cannot be filled up by the amended Recruitment Rules of 2009.

20. Referring to the order dated 23rd September, 2009, passed by Soumitra Pal, J., he submitted that the Hon"ble Judge was pleased to entertain this batch of writ petitions and passed an interim order to the effect, inter alia, that the respondents were restrained from cancelling the selection process initiated in the year 2006 under the un-amended Rules for the post of primary school teachers and from filling up the vacancies for which the selection process was initiated in 2006 by any process other than amongst the candidates who had submitted their bio-data in 2006. Learned Advocate General, thereafter, submitted that against the aforesaid interim order dated 23rd September, 2009, two writ appeals were preferred. By orders dated 30th November, 2009, and 4th December, 2009, respectively, two different Division Benches of this Court confirmed the said interim order. He also relied on the subsequent judgment and order dated 24th December, 2009 passed by Dipankar Datta. J., who was pleased to dispose of the

above mentioned batch of writ petitions by making the interim order dated 23rd September, 2009. absolute. He submitted that pursuant to the interim order dated 23rd September, 2009, which was subsequently made absolute by Dipankar Datta. J., all the District Primary School Councils bifurcated the recruitment process for which requisitions were sent to the Employment Exchanges in 2005-06, for vacancies which occurred and/or were subsisting prior to the 2009 amendments of the Recruitment Rules in one slot in accordance with the old Rules of 2001, and have completed the entire process of selection of primary teachers. He further submitted that panels have been approved and selected candidates, whose candidatures were duly approved, have already been issued appointment letters by the respective District Primary School Councils. As of the date of affirming the affidavit-in-opposition, learned Advocate General submitted that more than 28,000 selected candidates have been appointed to the post of primary teachers in West Bengal, following the recruitment made according to the un-amended Rules of 2001.

21. Learned Advocate General, thereafter, proceeded to refer to the subsequent Public Interest Litigation which was filed before this Court being, WPNo. 23077 (CW) 2009 (Hiranmoy Bhowmik v. State of West Bengal &Ors.). wherein it was prayed, inter alia, for issuance of a writ in the nature of mandamus for cancelling the appointments of those primary teachers who had been so appointed between 1998 and 2005, as per the Rules prevalent at that time, which provided, inter alia, grant of the ratio of 22 marks for training based on Primary Teachers' Training Certificates. He submitted that it was the contention of the writ petitioner therein that undue favour was shown to the candidates possessing Primary Teachers' Training Certificates, since they could possibly have come within the zone of selection process, had the ratio of 22 marks for training qualifications not been granted. In short, grievance of the writ petitioner in W.P. No. 23077(W) of 2009 was that in Tulsi Baksi's judgment, it has been declared that the institutes which were granted affiliation by the West Bengal Board of Primary Education, under the West Bengal Primary Education Act, 1973, were set up illegally and consequently the wait petitioner claimed that certificates issued by the said institutes were void and no marks on the basis of such certificates could be given and as such, the petitioner sought cancellation of appointments. Learned Advocate General, thus, submitted that the object of filing the Public Interest Litigation was to seek cancellation of employment of those primary teachers who were already appointed and who obtained such appointments as primary teachers on the strength of their certificates and marks allotted to them on the basis of Recruitment Rules of 2001. He further submitted that the said writ petition was dismissed on merits by an order dated 26th February, 2010, by the Division Bench of this Court presided over by the then Hon'ble Chief Justice. Referring to the stand taken by him before the Division Bench of this Court in the above matter, he submitted that such stand was relevant in the facts of the case, especially after Tulsi Baksi's case, which was concerned only with the academic session of 2005-06, as requisitions were sent by the respective District Primary

School Councils for sponsoring of all eligible candidates by the Employment Exchanges. Such a stand was taken considering the fact that no challenge was raised by anybody to the recruitment of those candidates who prosecuted their training qualification up to the academic session of 2004-2005 in the institutes not recognised by NCTE and as a result of which, the recruitment process stood completed. The recruitment process concerning candidates upto the academic session of 2004-05 having been completed prior to that, the same was not and could not have been the subject matter of Tulsi Baksi's case. It was in those circumstances, he had submitted on behalf of the State in that matter that the training which was imparted to persons aspiring to be primary teachers and who have already been recruited by the respective District Primary School Councils, could not be said to be illegal and those appointed/recruited on the basis of such certificates, could not be visited with any adverse consequences nor were they required to surrender their certificates.

22. Referring further to the judgment and order dated 26th February 2010, learned Advocate General, submitted that before the Division Bench of this Court in that matter he had submitted that the judgment in Tulsi Baksi's case could not disqualify the persons already appointed for the post of primary teachers and considering such submission, the Division Bench had dismissed W.P. No. 23077(W) of 2009, on merits by holding that appointment of primary teachers already made according to the Recruitment Rules prevailing at that point of time and upon allotting the ratio of 22 marks for their training qualifications could not be reopened and in fact, the Division Bench did not reopen the said appointments. Learned Advocate General also submitted that before the Division Bench, in Hiranmoy Bhowmik's matter, his stand was restricted to the recruitment and/or appointment of primary teachers already made, prior to the judgment of the Division Bench in Tulsi Baksi's case, when the institutions imparting practical training recognised under the State Act were not declared to be illegally set up. Learned Advocate General, thus, submitted, that the decision of the Division Bench of this Court rendered in Hiranmoy Bhowmik's case, is not binding decision, but a decision restricted to the facts of that case.

23. Learned Advocate General also submitted that subsequent to the judgment rendered in Tulsi Baksi's case, the Primary Teachers' Training Institutes having been declared illegal and unauthorised and further such institutes having been prohibited from admitting students, the situation has become totally different. Once there is a declaration by the Division Bench that these institutes were illegal or unauthorisedly set up, it operates in full force unless the judgment is set aside.

24. Referring to the instant case, learned Advocate General submitted that the grievance of the writ petitioner was that she obtained the certificate of Primary Teachers' Training after studying in Khamargachi Primary Teachers' Training Institute. Burdwan. in the year 2005, and was certified as a trained candidate. In the year 2006. pursuant to her sponsorship by the Employment Exchange, she

had submitted bio-data/testimonials for the post of Primary Teacher before the Burdwan District Primary School Council and by reason thereof, the said Council issued her an admit card for participating in the written test which was scheduled on 29th November, 2009, for the 2006 slot. It was her grievance that the recruitment authority, in considering her training certificate under the un-amended Rules of 2001, had not allotted 22 marks which she was entitled to receive. She, thus, challenged the recruitment process. Learned Advocate General submitted that in view of the judgment of the Division Bench in Tutsi Baksi's case, declaring the Primary Teachers' Training Institutes as illegal and unauthorisedly set-up, the selectors could not have given 22 marks to the writ petitioner, as granting such marks to the writ petitioner or any other candidate who stood in the same footing as that of the writ petitioner, would have amounted to wilful and deliberate violation of the judgment of the Division Bench in Tulsu Baksi's case. He submitted that the said judgment and order was operating in full force and vigour in so far as the declaration of the Court was concerned that such institutes, which were set-up under the State Act of 1973, were so done illegally and unauthorisedly and in violation of the constitutional mandate. He further submitted that the District Primary School Council, Burdwan, ""being the concerned authority, in its wisdom refrained from granting 22 marks in deference to the judgment of the Division Bench passed in the case of Tulsu Baksi's case. He submitted that if the State Government or the authority concerned granted such marks, then the same would have been an affront and in violation of the judgment of the Division Bench passed in TulsuBaksi's case. He then, once again, referred to the SLP filed by the State of West Bengal before the Supreme Court, being SLP (Civil) 28977 of 2009. against the said judgment and order of the Division Bench and submitted that the State of West Bengal has failed to obtain any stay of that portion of the declaration contained therein.

25. Learned Advocate General also submitted that the writ petitioner was well aware of the developments but was waiting on the wings. After the order of Dipankar Datta, J. dated 24th December, 2009, the State started recruiting candidates who were part of the recruitment process of the 2006 slot. The petitioner was definitely one of them. She participated in the selection process, but was unsuccessful. The written test was held on 29th November, 2009, which has been admitted by her. After the selection process was concluded, the concerned District Primary School Council placed the panel before the Director of School Education, West Bengal on 15th January, 2010, for approval. The Director of School Education, in turn, approved the panel on 21st January, 2010. Pursuant to such approval granted by the Director of School Education, West Bengal, selected candidates were duly given appointments and those candidates have already joined as Primary Teachers and have been working since February, 2010. All along the writ petitioner waited. It was well within her knowledge that the earlier recruitment process had to be bifurcated into two different slots, namely, the slot of 2006 which was to be guided by the un-amended Rules of 2001. and the other slot, meant for eligible general public under the amended Rules. The

writ petitioner, after appearing in the written test on 29th November, 2009, came to know that she was not selected in the month of January, 2010. The writ petitioner, thus, has taken a chance and had participated in the selection process with her eyes open. Having done so, she is now estopped from contending to the contrary and is legally precluded from maintaining the instant writ petition.

26. Learned Advocate General submitted that if any order, as prayed for, in the instant writ petition is passed, it will affect 1241 primary teachers, who have already been appointed in the district of Burdwan through the recruitment process and are now working as primary school teachers. Therefore, those primary teachers were proper and necessary parties to the instant writ proceeding and the writ petitioner has moved the instant writ petition without impleading them as respondents. Thus, he submitted that on this score alone the writ petition is liable to be dismissed for mis-joinder and/or non-joinder of necessary parties.

27. He submitted that after the Division Bench judgment in Tulsi Baksi's case, the question of allotment of ratio of 22 marks to the writ petitioner or any other candidates holding any certificate from any institute not recognised under the NCTE Act, would be an illegal act and contrary to the judgment of the Division Bench and as such, the stand of the writ petitioner claiming the ratio of 22 marks for training was wholly untenable. However, the situation was entirely different in respect of appointments given prior to Tulsi Baksi's case. He also submitted that the State has taken a consistent stand in compliance with the judgment and order rendered by the Division Bench in Tulsi Baksi's case and no marks have been allotted to any candidate having a training certificate from any institutes not recognised by the NCTE, set-up after the coming into force of the NCTE Act, 1993. This consistent and uniform stand has been taken by the State in compliance with the judgment and order of the Division Bench in Tulsi Baksi's case.

28. He finally submitted that the stand taken by the State of not allotting the ratio of 22 marks to candidates who possess such Primary Teachers' Training Certificates was taken as a policy decision of the State while accepting the judgment of the Division Bench in Tulsi Baksi's case, subject, however, to the outcome of the pending SLP of the State against the said judgment. This policy decision, according to the learned Advocate General, was taken in consonance with the judgment of the Division Bench in Tulsi Baksi's case and was not arbitrary or whimsical or taken in violation of Article 14 of the Constitution of India. On the contrary, such policy decision was sound and taken in conformity with the law declared by the Division Bench and therefore, the instant writ petition is liable to be dismissed with costs.

29. After considering the submissions made by the learned Counsel for the parties and upon perusing the instant application and the affidavits filed in connection thereto, the issue that falls for consideration is whether in the facts and circumstances of the instant case, the writ petitioner, who holds a Primary

Teachers" Training Certificate, obtained prior to academic session 2005-06, is entitled to the reliefs, as prayed for, on the basis of interpretation of the scope of the final judgment and order of the Division Bench of this Court rendered on 15th October, 2008, in Tulsi Baksi's case and in view of the submissions of the learned Advocate General, as quoted by the Division Bench, in the judgment and order passed on 26th February, 2010, in W.P. 23077(W) of 2009.

30. In order to decide this issue what is required to be looked into, at first, is whether the interim order "(b)" which was passed by the Division Bench on 3rd March, 2006, remained distinct and never merged or was confirmed in the of passing of the final judgment and order by the Division Bench of this Court in Tulsi Baksi's case on 15th October, 2008. The answer lies in the final judgment and order itself.

31. The Division Bench, while rendering its final judgment and order in Tulsi Baksi's case, on 15th October, 2008, had gone into the genesis of the question as to whether the Primary Teachers' Training Institutions, which were not recognised under the NCTE Act, could be given affiliation by the West Bengal Board of Primary Education. While considering this aspect of the matter, the Division Bench had held that such institutions, which had not followed the provisions of the NCTE Act and were not recognised by the NCTE authorities, "had no right" to admit students in the training programme. The Division Bench, thereafter, proceeded to issue directions to the effect that unless such institutions were recognised, they would not have any authority to admit any student. Thus, even on a plain reading of the final judgment and order, it is patently clear that the Division Bench had unambiguously held that such training institutions, which were not recognised by the NCTE authorities, "had no right" to even admit students in the training programme. Logically, a certificate can only be issued by an institution after a student completes a particular course/programme. This has to be preceded by a valid admission of a student for that particular course/programme. Therefore, valid admission comes first and issuance of a certificate comes much later, only after a student successfully completes a particular course/programme. Thus, if the admission of a student itself becomes void, the question of issuance of a certificate will automatically become redundant. While the interim order (b), dated 3rd March, 2006, was confined only to certificates issued by the non-recognised training institutions, the final judgment and order dated 1st October, 2008, declared that such non-recognised institutions "had no right" to even admit students in the training programme. Had the intention of the Division Bench been otherwise, it would have held that such non-recognised institutions "have no right" to admit students, instead of specifically declaring that they "had no right" to admit students in the said training programme. Therefore, in view of such declaration by the Division Bench in its final judgment and order in Tulsi Baksi's case, the interim order "(b)" passed on 3rd March, 2006, became completely redundant. The interim order (b), thus, never remained distinct nor was it required to be confirmed, since it logically merged in the declaration of the Division Bench as

stated in its final judgment and order dated 15th October, 2008. Reference to the judgment of the Supreme Court rendered in the case of B.P.L. Ltd. and Others Vs. R. Sudhakar and Others, , by the learned senior counsel for the writ petitioner wherein it has been held that an interim order and a final order are distinct from each other and they serve different purposes has, therefore, no manner of application in the facts and circumstances of the instant case.

32. The other issue that is required to be addressed is whether the submissions of the learned Advocate General before the Division Bench in W.P. No. 23077(W) of 2009 could form the basis of any relief for the writ petitioner, who, admittedly, holds a Primary Teachers' Training Certificate obtained prior to academic session 2005-06. Learned senior counsel for the writ petitioner has strongly relied on the submissions of the learned Advocate General, as recorded by the Division Bench in paragraph 10 of the judgment and order dated 26th February, 2010, which has been reproduced hereinbefore. However, upon perusing the judgment and order dated 26th February, 2010, in its entirety, it appears from the facts of that case that the Division Bench of this Court was approached in its Public Interest Litigation jurisdiction by the writ petitioners who prayed for the following substantive relief:

a) A writ in the nature of Mandamus commanding the respondents to cancel the appointments of the primary teachers who have been appointed from the years 1998-2005 on the basis of the marks awarded for the Primary Teachers Training Certificates and minus the marks of training qualification they could never come in the zone of selection process too forthwith.

33. While considering the matter, the Division Bench took note of the interim order passed on 3rd March 2006 in Tulsi Baksi's matter. The Division Bench, thereafter, took into consideration the final judgment and order dated 15th October, 2008, passed in Tulsi Baksi's matter. The Division Bench also took note of the contention of the learned Counsel for the writ petitioners in that matter, who relied particularly on paragraph 98 of the final judgment and order in Tulsi Baksi's case and had submitted that out of 138 institutions only 20 institutions were recognised under the NCTE Act and, therefore, the certificates conferred by remaining 118 institutions for teachers' training were not in accordance with law and, thus, the persons who obtained such certificates and thereafter obtained employment as primary teachers in the State on the strength of such certificates, were illegally appointed between 1998-2005 and, as such, their appointments ought to be cancelled. The Division Bench, thereafter, took note of the stand taken by the learned Counsel for NCTE, who relied on the handbook issued by the National Council for Teachers' Training and in particular, Appendix 5 (Norms and Standards for Elementary Teacher Education Programme and permission to start new course or training) Regulations, 2002, as well as Instruction No. 10 under Appendix 5 of the said Regulation and went on to observe in paragraph 8 of the said judgment as follows:

8. It thus appears that in the public interest petition which was heard by the

Division Bench in *Tulsi Bakshi and Anr. v. State of West Bengal and Ors.* (supra) this Court was, therefore, concerned only with the academic session of 2005-06 onwards and not for any prior period. While allowing the petition also, the operative order of the Court was confined to the students who were prosecuting their studies in primary teachers training course in October, 2008. Admissions granted to them in the year 2008-09 were directed to be cancelled.

34. The submissions of the learned Advocate General, which has been quoted hereinbefore and which was recorded in the latter part of the judgment was obviously based on the premise that those candidates who were already appointed in the post of primary teachers, on the basis of certificates obtained of them from State recognised institutions, which had imparted training without obtaining affiliation or recognition under the NCTE Act, upto 2004, 705, could not be treated as disqualified, after being duly appointed. Thus it is palpable that the submission of the learned Advocate General is in consonance with the stand taken by the learned Counsel for NCTE and by no stretch of imagination it can be assumed that such submission amounted to regularisation of those certificates in respect of candidates already appointed and disqualification in respect of certificates obtained by candidates such as the writ petitioner in the instant case. This aspect of the matter is no more *res integra*, in view of position in law as settled in *Tulsi Bakshi's* case, More importantly, the Division Bench proceeded to dismiss the Public Interest Litigation seeking cancellation of appointments of primary teachers made between 1998-2005, not on the basis of the submissions of the learned Advocate General, as reproduced hereinbefore, but on the basis of the submissions made by the learned Advocate General to the effect that the public Interest Litigation seeking cancellation of appointments of primary teachers made between 1998-2005 suffers from gross delay, laches and acquiescence. Additionally, of course, the Division Bench took into consideration the stand of the NCTE, as reflected in Regulation No. 8 of the 2002 Regulations of NCTE, read with Appendix 5, particularly Clause 10 thereof, while dismissing the writ petition. Therefore, reliance on the submission of the learned Advocate General, as quoted earlier, cannot be of any assistance to the writ petitioner in the facts of the instant case.

35. Reliance on the judgment of the Supreme Court rendered in the case of *Basic Education Board, U.P.* (supra), by the learned senior counsel for the writ petitioner was also perhaps not necessary in the facts of the instant case. This judgment was duly considered by the Division Bench in *Tulsi Bakshi's* case, whereupon the Division Bench made the following observations:

95. We have also considered the decision reported in *Basic Education Board, U.P. Vs. Upendra Rai and Others*, . We find that the Supreme Court held that UP Basic Education Act deals with the ordinary primary schools in UP and not any Teachers Training Institute whereas the NCET Act deals with the Teachers' Training Institute. Therefore, in the present case the very question relates to Teachers' Training Institute, therefore, the said decision cannot be a help to the respondent

authorities.

36. Thus, from a reading of the above observation it is clear that Basic Education Board U.P., relied on by the learned senior counsel for the writ petitioner, has no manner of application whatsoever in the facts of the instant case, where the issue centres around a candidate who holds a certificate issued by a non-recognised Teachers' Training Institute.

37. In the facts of the instant case it appears from record that the writ petitioner affirmed the instant writ petition on 5th February, 2010 and filed it on 8th February, 2010. The writ petitioner duly participated in the selection process by appearing in the written test on 29th November, 2009, and was unsuccessful. The writ petitioner now seeks, inter alia, issuance of a writ in the nature of mandamus for awarding of marks in her favour on the basis of her training qualification for the purpose of appointment in a vacant post of primary teacher for which selection process was initiated in the year 2006. Admittedly, the selection process is already over. From the affidavit-in-opposition it is also noticed that 1241 primary teachers have already been appointed in the district of Burdwan through such selection process, and who are now working as primary school teachers. They are not even made parties to the instant writ proceedings. In such circumstances, if any mandatory order as prayed for is passed, it will simply result in a totally chaotic situation and the very purpose of recruiting primary school teachers will be frustrated, since children studying in primary schools throughout the State of West Bengal will be the ultimate sufferers and their right to get education will be severely compromised. Moreover, the writ petitioner is one of many who are similarly situated and circumstanced. All of them, in some way, have been affected by the effect of the judgment of this Court rendered in *Tulsi Baksi's* case, since the State of West Bengal has already proceeded to comply on the basis of the directions given therein.

38. However, while it is perhaps true that the State Government has acted purely on the basis of the declaration made and the directions given by the Division Bench of this Court in *Tulsi Baksi's* case and has proceeded accordingly, it is expected that the writ petitioner and Ors. who are similarly situated and circumstanced, all of whom are now put in a predicament and in a distinctly disadvantageous position for no fault of theirs, shall be treated as a special case - in other words - as a class by themselves, by the State of West Bengal, so as to ensure that an efficacious solution could be arrived at, in the shortest possible period of time, which will ensure to their benefit and not cause further adversity and which will also adequately address their grievance.

39. In such circumstances, the State of West Bengal, through the Secretary, Department of School Education, is directed to act in terms of the observations made hereinabove and announce a suitable policy in the matter, within a period of 8 (eight) weeks from date of communication of a photostat certified copy of this judgment.

The writ petition stands disposed of accordingly.