

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WP 14326 (W) of 2017

Md. Mister Reja

-Vs.-

The State of West Bengal & Ors.

With

WP 12238 (W) of 2017

Monalisha Kapat

-Vs.-

The State of West Bengal & Ors.

With

WP 7126 (W) of 2017

Md. Farhad Shahab

-Vs.-

The State of West Bengal & Ors.

With

WP 9709 (W) of 2017

Tarique Anwer

-Vs.-

The State of West Bengal & Ors.

With

AST 235 of 2017

Sarjan Yadav

-Vs.-

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

For the Petitioners : Mr. Joydeep Kar, Sr. Adv.
 Mr. Syed Mansur Ali, Adv.
 Ms. Tanuja Basak, Adv.
 Mr. Ekramul Bari, Adv.
 Mr. S.S. Mondal, Adv.
 ... In WP 14326 (W) of 2017

Mr. Arunava Ganguly, Adv.
 Mr. Sidhartha Banerjee, Adv.
 ... In WP 7126 (W) of 2017
 & WP 9709 (W) of 2017

Mr. Tulsi Das Maiti, Adv.
 Mr. Prodip Kumar Ghosh, Adv.
 ... In WP 12238 (W) of 2017

Mr. Tarun Kumar Das, Adv.
 ... In AST 235 of 2017

For the Board : Mr. L.K. Gupta, Sr. Adv.
 Mr. Subir Sanyal, Adv.
 Mr. Ratul Biswas, Adv.

For the State : Mr. Bhaskar Prasad Vaisya, Adv.
 Mr. Suman Dey, Adv.
 Mr. Gourab Das, Adv.
 ... In WP 14326 (W) of 2017
 & WP 7126 (W) of 2017

Mr. Santanu Mitra, Adv.
 Ms. Jyotsna Roy Mukherjee, Adv.
 ... In WP 9709 (W) of 2017

For the DPSC, Burdwan : Mr. Bhaskar Prasad Vaisya, Adv.
 Mr. Gourav Das, Adv.
 Mr. Nilay Barman Mandal, Adv.
 ... In WP 7126 (W) of 2017
 WP 9709 (W) of 2017

For the DPSC, Uttar Dinajpur : Mr. Biswabrata Basu Mallick, Adv.

Heard On : 19.05.2017, 16.06.2017, 19.06.2017,
06.07.2017, 13.07.2017, 20.07.2017,
10.08.2017, 24.08.2017, 08.09.2017,
21.09.2017, 05.07.2018, 16.11.2018,
16.01.2019, 18.01.2019, 30.01.2019,
05.02.2019, 15.02.2019, 27.06.2019,
05.09.2019, 19.11.2019 & 02.12.2019

CAV on : 02.12.2019

Judgment On : 16.09.2020

Arijit Banerjee, J.:

1. All these five writ petitions involve the same issue and hence they were taken up for hearing and disposal together. In all the writ petitions the petitioners have challenged letters of cancellation of appointment of the petitioners as Assistant Teachers in Primary Schools in West Bengal. The appointment letters were issued in favour of the petitioners by the concerned District Primary School Councils (in short, 'DPSC'). After the petitioners served as Assistant Teachers in various Primary Schools for different periods of time, their appointments were cancelled with effect from the dates of appointment. Arguments have been advanced by Learned Counsel on the basis of the records of WP No.14326 (W) of 2017. Hence, in this judgment, I shall proceed on the basis of the records of that writ petition. However, this judgment shall govern all the writ petitions.

2. The petitioner passed Madhyamik Examination with Urdu as a subject, in the year 2001. He completed his Intermediate in the year 2007 with General Hindi as the First Language. He was unsuccessful in the

Teacher Eligibility Test (in short, ‘TET’), 2012, but qualified in TET, 2014. The West Bengal Primary School Teachers Recruitment Rules, 2016 (in short, ‘the 2016 Rules’) came into force on March 02, 2016. A notification for appointment of Primary Teachers was issued on September 24, 2016, for selection and appointment of Primary Teachers as per the 2016 Rules and the Guidelines issued by the National Council for Teacher Education (in short, ‘NCTE’).

3. As per the requirement an aspiring candidate was required to be able to read, write and speak in the language relating to the medium for which he/she was intending to apply. The petitioner claims that he had fulfilled all the eligibility criteria prescribed in the appointment notification and has the ability to read, write and speak in Urdu. Accordingly, the petitioner participated in the selection process in Urdu medium. The petitioner was successful in the selection process and a letter of appointment was issued in his favour by the concerned DPSC on 05 February, 2017. After about three months, a Memo dated May 2, 2017 was issued by the concerned DPSC which reads as follows:

“As per West Bengal Primary School Teachers Recruitment Rules, 2016 all the candidates must have studied English and Mathematics at the Secondary level and they must have studied the language as the First or the Second Language for the medium of instruction they have opted for at the 10+2 level.

But after proper verification of all testimonials and other relevant papers it is found that you are appointed under OBC – A category in URDU medium. As per your testimonials it is found that you have not studied at the 10+2 level with URDU language as the First or the Second

language for the medium of instruction.

Therefore, as per memo no.: 249(35)/BPE/2017 dt. 09.02.2017 your appointment, vide memo no.: 3047 12.04.2017 is hereby cancelled with effect from abinitio"

It is this Memo which is under challenge in this writ petition.

4. Appearing for the respondent Authorities, Learned Counsel relied on Note 1 to Rule 6(2) of the 2016 Rules and contended that unless a candidate studies the language relating to the medium for which he/she aspires to be appointed as an Assistant Teacher and passes in such language in the Higher Secondary or equivalent examination, he/she does not become eligible to be appointed as an Assistant Teacher under any DPSC. In this connection, Learned Counsel also relied on a Notification bearing No.285-SE(E)/P/10M-6/09 (Pt.) dated 24 July, 2012 issued by the School Education Department, Government of West Bengal and gazetted on 13 August, 2012. By the said Notification, The West Bengal Primary School Teachers Recruitment Rules, 2001 (in short, 'the 2001 Rules') was amended and *inter alia*, Note 5 to Rule 6(2) was incorporated, the relevant portion of which reads as follows:

"Note 5 – Any candidate seeking appointment to the post of Primary School teacher shall have studied and passed in the specific language as the first or the second language in the Higher Secondary Level or equivalent for which medium of instruction, the candidate is seeking appointment.

....."

5. In response Learned Counsel for the petitioner submitted that the

Notification dated 24 July, 2012, suggests that such Notification was issued in exercise of powers conferred by the West Bengal Primary Education Act, 1997. Hence, such Notification is State Legislation. Initially, 'Education' was a subject matter in the State List of the 7th Schedule to the Constitution of India. After the 42nd amendment of the Constitution, 'Education' became a subject matter of the Concurrent List of the 7th Schedule. 'Education' now comes under Serial No.25 of the Concurrent List.

In terms of Article 254 of the Constitution of India if there is an inconsistency between a law made by the Parliament and a law made by a State Legislature pertaining to a subject/matter enumerated in the Concurrent List of the 7th Schedule to the Constitution, it is the law made by the Parliament which would prevail over the State law. The provisions contained in Note 5 appended to Rule 6(2) of the 2001 Rules stand in clear conflict with the provisions laid down in the Notification issued by the NCTE on 23 August, 2010 in exercise of power conferred on it by Section 23 (1) of Right of Children to Free and Compulsory Education Act, 2009. The said NCTE Notification is a piece of Central legislation and is also prior in time *vis-a-vis* Note 5 to Rule 6 (2) of the 2001 Rules introduced by way of amendment of the Rules in 2012. Since there is an apparent and irreconcilable conflict between the NCTE Notification dated 23 August, 2010 and Note 5 appended to Rule 6(2) of the 2001 Rules, as regards the eligibility criteria of a candidate intending to be appointed as an Assistant Teacher in a Primary School, the provisions of Note 5 cannot be sustained.

6. Relying on a decision of this Court in the case of **Sarthak Ghosh &**

Ors. v. The State of West Bengal & Ors.: (2017) 2 CLT 155, Learned Counsel for the petitioner submitted that NCTE is a statutory body which has been given the power and duty to ensure, *inter alia*, that the teachers appointed in the schools, both Primary and Higher Secondary, across the Country have a minimum level of qualification. NCTE is the Authority which has a 'final say' regarding the minimum qualification required of candidates who aspire to be school teachers.

7. Learned Counsel for the petitioner also relied on a decision of the Hon'ble Supreme Court in the case of **Zaverbhai Amaidas v. The State of Bombay: AIR 1954 SC 752** in support of his contention that the effect of Article 254 of the Constitution of India is that a Central legislation must prevail over a State law operating in the same field when both the legislations cannot stand together. The NCTE Notification dated 23 August, 2010 and Note 5 appended to the 2001 Rules cannot stand together, nor can be reconciled since the State legislation seeks to take away the right acquired by a candidate under the Central legislation for being considered for appointment to the post of an Assistant Teacher. The State law being wholly repugnant to the Central legislation, must give way to the latter. In this connection, Learned Counsel also relied on the Hon'ble Supreme Court's decision in the case of **State of Kerala & Ors. v. Mar Appraem Kuri Co. Ltd. & Ors.: (2012) 7 SCC 106** in support of his contention that in case of inevitable conflict between the Union and the State powers, the former shall prevail.

8. Learned Counsel submitted that there is no quarrel with the

proposition that State law can supplement Central law but there can also be no quarrel with the proposition that in the guise of supplementing the Central law, the State law cannot lay down something which is irreconcilable with the Central legislation. The inconsistency between the NCTE Notification of 2010 and Note 5 to Rule 6(2) of the 2001 Rules is not a benign inconsistency and the two pieces of legislation cannot go hand in hand. The State legislation in the present case also does not aid or assist the Central Policy and on the contrary, seeks to take away the right of a candidate conferred by the Central legislation.

9. Learned Counsel then submitted that the stand of the respondents that the appointment letter was issued in favour of the petitioner by mistake, cannot be accepted. The petitioner was appointed by the respondents with their eyes wide open and strictly in terms of the eligibility criteria prescribed in the appointment Notification. While appointing the petitioner, the respondents adhered to the eligibility criteria specified by the competent authorities. There was no mistake on the part of the respondents.

10. It was further submitted that Note 5 appended to Rule 6(2) of the 2001 Rules, does not and cannot have a binding effect, not being a part of the State legislation. At best, the Note could have had a persuasive effect, had there been no conflict with the Union law. In support of his contention that a footnote does not have a binding effect, Learned Counsel relied on a decision of the Hon'ble Supreme Court in the case of **Smt. Mary Oommen v. Manager, M.G.M. High School, Kuruppampaddy, Kerala & Ors.: (1987) 2 SCC 214.**

11. It was finally submitted by Learned Counsel for the petitioner that even though the vires of Note 5 appended to Rule 6(2) of 2001 Rules has not been specifically challenged in the writ petition, this Court can nonetheless look into the sustainability of such a provision. The Court should not remain a mute spectator ignoring the illegality perpetrated by the respondents in terminating the appointment of the petitioner. In ***State of Uttar Pradesh v. District Judge & Ors.: (1984) 2 SCC 673***, it was held that Articles 226 & 227 of the Constitution were designed to advance justice and not to thwart it.

12. Appearing for the writ petitioners in WP No.9709 (W) of 2017 and WP No.7126 (W) of 2017, Mr. Siddhartha Banerjee, Learned Advocate adopted the submission made on behalf of the writ petitioner in WP No.14326 (W) of 2017. In addition, he submitted that the writ petitioner in WP No.9709 (W) of 2017 passed Bachelor of Arts examination with Urdu as a subject. In B.A. Examination, he secured 56 out of 100 marks in Urdu. The petitioner passed Madhyamik Examination with Urdu as a subject but admittedly did not have Urdu as a subject in Intermediate Examination. However, this would not matter since in the B.A. Examination the petitioner had Urdu as a subject and cleared the Urdu paper with good marks. The petitioner also completed Primary Teacher's Training course in Urdu medium. In terms of Clause 2.2(e) of the Information Booklet, an intending candidate willing to be appointed to the post of an Assistant Teacher was required to have the ability to read, write and speak in Urdu in the language relating to the medium for which the candidate was inclined to apply. The petitioner had

and has the ability to read, write and speak in Urdu. Hence, cancellation of his appointment letter cannot be justified.

13. Appearing for the West Bengal Board of Primary Education (in short, ‘the Board’), Mr. L.K. Gupta, Learned Senior Advocate submitted that the appointment of the petitioner was cancelled since the same was contrary to the 2016 Rules. The petitioner did not have Urdu either as first or second language in his Intermediate Examination but he had opted for Urdu as a medium of instruction for appointment as an Assistant Teacher. He submitted that there is no conflict between the NCTE Notification dated 23 August, 2010 and the 2016 Rules or the 2001 Rules. The NCTE Notification provides a broad guideline for appointment of Primary Teachers and Upper Primary Teachers. The same does not lay down the detailed parameters on every aspect and is not intended to be exhaustive. That Notification only fixes the minimum qualification.

14. Mr. Gupta submitted that ‘Education’ as a field of legislation is included in List 3 (concurrent list) of the 7th Schedule to the Constitution of India. As per Article 246 of the Constitution, both the Parliament and the Legislature of a State may make laws with respect to ‘Education’. The effect of Article 254 is that if a State enacted law is repugnant to a Central legislation, the State law, to the extent of repugnancy shall be void. He submitted that Note-1 under Rule 6(3) of the 2016 Rules which requires a candidate to “...*have studied and have passed in the specific language as the first or the second language in the Higher Secondary Level or equivalent for*

which medium of instruction the candidate is seeking appointment” is not an aspect dealt with by the NCTE Notification. Hence, the said provision in the 2016 Rules cannot be said to be repugnant to the NCTE Notification. In support of his submission that a State law may supplement a Central law, Mr. Gupta relied on the decision of the Hon’ble Supreme Court in the case of ***Ram Chandra Mawa Lal, Varanasi & Ors. v. State of Uttar Pradesh & Ors.: 1984 (Sup) SCC 28 (Paras – 40B, 45-52)***. He also referred to the Federal Court decision in the case of ***Shyamakant Lal v. Rambhajan Singh & Ors: AIR 1939 Federal Court 74 (Para – 83)***, in support of his submission that the real test of repugnancy is whether or not the two legislations can stand together. If they can, there is no repugnancy. Reference was also made to the decision of the Hon’ble Supreme Court in the case of ***Kanaka Gruha Nirman Sahakara Sangha v. Narayanamma (since deceased) by Lrs. & Ors.: (2003) 1 SCC 228 (Paras – 10-12)***, in support of the submission that when the Central law is not intended to cover the whole field, a State legislation can supplement the Central law without contradicting the latter. The NCTE prescribed minimum qualification and the requirement of having passed in a subject at the Higher Secondary Level consistent with the medium of instruction chosen, can both stand together. The State Rules merely legislate in an uncovered field.

15. Regarding the contention of the petitioners that the Board’s Notification dated 25.05.2015 (Page 71 of the writ petition) did not have any such condition prescribed by Note 1 under Rule 6(3) of the 2016 Rules, Mr.

Gupta submitted that the Board's said Notification is not relevant. That Notification was for holding TET. The recruitment drive was taken by the Notification dated 24.09.2016 (Page 75 of writ petition) by which time the 2016 Recruitment Rules had come into effect and the Board had to act in terms thereof. The employment Notification mentioned that the 2016 Rules would be followed. In any event, the 2016 Rules had been published in the Calcutta Gazette and the petitioner was aware of the same. The appointment letter was issued to the petitioner by mistake. Such mistake was corrected by the impugned letter by cancelling the petitioner's appointment. Mr. Gupta relied on the Supreme Court's decision in the case of ***Md. Sartaz & Ors. v. State of Uttar Pradesh & Ors.: (2006) 2 SCC 315 (Paras – 11,12,18,19 & 21)***, in support of his submission that appointment given by mistake to a teacher who did not possess the requisite qualification prescribed by the Recruitment Rules, could be cancelled and there can be no legitimate expectation on the part of such a person to continue with his job if he was not qualified for the job. For the same proposition, reliance was also placed on the decision of the Hon'ble Supreme Court in ***Ashok Kumar Sonkar v. Union of India & Ors.: (2007) 4 SCC 54 (Paras – 4,16,25-28 & 35)***.

16. As regards the petitioners' contention that a Note appended under a Rule cannot be treated as a part of the Rule, Mr. Gupta submitted that a Note appearing in any statutory or non-statutory document forms part of the document itself as the same is not meant by the draftsmen to be ignored. In interpreting any statutory document, the accepted principle is

that the Legislature does not use any superfluous words. To say that a Note is not part of the document is to deviate from this well recognized and universally accepted principle. In support of the contention that a Note forms part of the Rule, reliance was placed on the decision of the Hon'ble Supreme Court in the cases of ***H.C. Sarin v. Union of India & Ors.: AIR 1976 SC 1686 (Para – 21)*** and ***Baldev Raj Chandha v. Union of India & Ors.: AIR 1981 SC 70 (Paras 3 & 5)***. Learned Senior Counsel relied on a Constitution Bench Judgement of the Hon'ble Supreme Court in ***Hyderabad Industries Ltd. & Ors. v. Union of India & Ors.: (1999) 5 SCC 15***, in support of his submission that even the Notes to Clauses in a Bill have been held to show the legislative intent.

17. Mr. Gupta finally submitted that the appointment initially given being on the teeth of the Recruitment Rules, the cancellation of such appointment was legal and valid. In fact, the continuance of an illegal appointment would have been arbitrary. The writ petition has no merit and should be dismissed.

Court's View

18. I have given my anxious consideration to the rival contentions of the parties. I shall deal with AST 235 of 2017 separately since the facts of that case are slightly different from the facts of the other four writ petitions.

Re: WP 14326 (W)/2017, WP 12238 (W)/2017, WP 7126 (W)/2017 & WP 9709 (W)/2017

19. It is not in dispute that the petitioners did not study in the Intermediate course, the language that they chose as medium of instruction for being appointed as Assistant Teacher. The contention of the petitioners is that the NCTE guidelines do not prescribe such requirement. The Recruitment Rules framed by the State cannot prescribe additional conditions as that would be contrary to the NCTE guidelines. Note 1 under Rule 6(3) of the 2016 Rules or Note 5 under Rule 6(2) of the 2001 Rules are repugnant to the NCTE guidelines and hence, void by operation of Article 254 of the Constitution of India.

20. The qualifications required of a teacher at the Primary Level were prescribed by NCTE in a Notification dated 23 August, 2010. Such Notification was issued by NCTE in exercise of the powers conferred by Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009 and in pursuance of Notification No. S.O.750(E) dated 31 March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resources Development, Government of India. The minimum qualifications required for aspiring Primary Level Teachers are as follows:

“Minimum Qualification.-

(i) Classes I-V

- a. *Senior Secondary (or its equivalent) with at least 50% marks and 2 – year Diploma in Elementary Education (by whatever name known)*

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 – year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations, 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 – year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2 – year Diploma in Education (Special Education)

AND

- b. *Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.”*

21. The 2001 Recruitment Rules were amended in 2012. Note 5 under Rule 6(2) was introduced requiring a candidate seeking appointment as Primary School Teacher to have studied and passed in the specific language as the first or the second language in the Higher Secondary Level or equivalent for which medium of instruction, the candidate is seeking appointment. Note 1 under Rule 6(3) of the 2016 Rules is to the same effect. Although in the course of hearing there was some disagreement between the Learned Counsel for the parties as to whether the 2001 Rules would apply or the 2016 Rules would apply, it is clear that it will make no difference to the decision in this case as to which Rules will apply since both 2001 Rules and 2016 Rules contain the same requirement. The question is whether or

not this requirement could be made the basis for cancelling the appointment of the petitioners since the petitioners did not satisfy this requirement?

22. It is not in dispute that NCTE is a statutory body which has been empowered to ensure, *inter alia*, that the teachers appointed in the schools, primary, upper primary and secondary, across country, have a minimum level of qualification. The NCTE has issued the Notification dated 23 August, 2010 prescribing minimum qualifications for candidates aspiring to be teachers of Primary Schools. The said Notification is a piece of Central delegated legislation, NCTE having issued such Notification in exercise of power vested in it by the Right of Children to Free and Compulsory Education Act, 2009, which is an enactment of the Parliament/Central Legislature. No doubt, the State Legislature could not have made any legislation nor the Board, in exercise of power under West Bengal Education Act, 1973 could have made any delegated legislation inconsistent with or in derogation of the NCTE Notification. The Board has not done so. The provision in the 2001 Rules (as amended in 2012) and in the 2016 Rules requiring a candidate to have studied the language which he chose as medium of instruction, at the Higher Secondary Level, in my opinion, is not inconsistent with the eligibility criteria for teachers laid down in the NCTE Notification. This requirement in the 2001 and 2016 Rules is in addition to the requirement prescribed by the NCTE Notification and supplements the requirements contained in the NCTE Notification. There is no repugnancy between the said requirement prescribed by the Recruitment Rules of 2001 or 2016 and the requirement prescribed by the NCTE. It is important to note

that the NCTE Notification prescribes, '**minimum**' qualifications of teachers. It is not intended to be exhaustive. It is merely a guideline which provides that candidates not possessing the minimum qualification prescribed by it, will not be eligible for appointment as Primary Teachers. In my considered view, this would not prevent the State Legislatures from prescribing additional criteria which a candidate must meet for being eligible for appointment as Primary Teacher. This is what the Board has done by issuing the 2001 and the 2016 Recruitment Rules. The additional requirement prescribed by such Recruitment Rules, which has been found objectionable by the petitioners, is that a candidate must have studied the language which he/she has chosen as the medium of instruction, at the Higher Secondary Level. This, in my view, is an entirely reasonable requirement. After all, unless a candidate is reasonably proficient in speaking, reading and writing in the language which he has chosen as the medium of instruction, he would be unable to communicate with the students successfully or to effectively discharge his role and duties as a teacher. In my view, there is no conflict between the NCTE Notification and the Recruitment Rules framed by the Board. Both the NCTE Notification and the Recruitment Rules framed by the Board can stand together. Hence, the question of operation of Article 254 of the Constitution does not arise. The decisions cited by Learned Counsel for the petitioners in connection with Article 254 of the Constitution have no manner of application to the facts of the instant case.

23. 'Education' is a subject contained in the Concurrent List of the 7th

Schedule to the Constitution of India. Both the Centre and the State have power to legislate in the field of Education. So long as there is no repugnancy between a provision in State legislation/delegated legislation and a provision in Central legislation/delegated legislation, there is no reason why the provision in the State legislation/delegated legislation should not be given effect to. The State Legislature empowered the Board under the West Bengal Primary Education Act, 1973 to frame Recruitment Rules. The board has done so. In its wisdom, the Board has prescribed the requirement that is objected to by the petitioners. Apart from the fact that vires of the concerned provisions of the Recruitment Rules has not been challenged, I have already expressed my opinion that I do not find anything arbitrary or unreasonable or illegal about the Rule requiring an aspiring teacher at the Primary Level to have studied the language chosen by him as the medium of instruction, at the Higher Secondary Level. The Board is a specialized and expert body which has been entrusted with the duty and power of supervising the primary education system in this State. Rules framed by the Board should not be lightly interfered with by the Courts. Interference could be warranted or would be justified only when a Rule is found to be blatantly illegal or arbitrary or totally unreasonable.

24. Primary Education is the base on which the edifice of Higher Education is built. If the primary education system is not effective enough, what a student will learn at the primary level will be weak knowledge and such a student will find it very difficult to cope with education at a higher level. Unless the foundation is strong, effective higher education would be

incapable of being imparted to a student. The qualities and qualifications of a Primary School Teacher must be prescribed and adhered to with the aforesaid in mind.

25. Regarding the point that Note 5 appended to Rule 6(2) of the 2001 Rules or Note 1 under Rule 6(3) of the 2016 Rules do not form part of the Rule and cannot be given legal effect, I am unable to agree with Learned Counsel for the petitioners. In my view, the said Notes are integral part of the Rules and have to be given full effect. The decision cited by Learned Counsel for the petitioners in **Mary Oommen** (supra) pertained to footnotes and the facts of that case were completely different from the facts of the present case.

26. In the result, the four writ petitions being WP 14326 (W)/2017, WP 12238 (W)/2017, WP 7126 (W)/2017 & WP 9709 (W)/2017 fail and are dismissed.

27. However, as regards WP 7126 (W) of 2017 and WP 9709 (W) of 2017 I wish to add a few words. It appears that in these two cases, the writ petitioners, although had not studied the medium of instruction at the Intermediate Level, had studied that language at the Graduation Level. However, since technically this did not satisfy the requirement of the Recruitment Rules, the appointments of the petitioners in those two writ petitions were cancelled by the Concerned DPSC. I am of the opinion that the Board should seriously consider amending the Recruitment Rules appropriately. Assuming that a candidate has chosen Urdu as the medium of instruction, if he/she has not studied that language at the Higher

Secondary Level but has done so at the Graduation Level and has cleared the subject with decent marks, it would be rather unfortunate that such a candidate would be considered to have not met the concerned requirement of the Recruitment Rules. This would also be anomalous. A person, who has successfully studied a subject at the Graduation Level, will normally be expected to have deeper knowledge of that subject than a person who has studied that language at the Higher Secondary Level. Higher qualification should not be a disqualification. That would be unfair and unjust. The Board should look into this aspect of the matter.

28. The concerned provision in the Recruitment Rules, as it stands today may cause injustice to candidates like the petitioners in the said two writ petitions. However, the vires of the said provision is not under challenge. Courts are expected to apply the law as it stands. Courts do not legislate. In view of the present provision in the Recruitment Rules, I am unable to grant relief to the petitioners in the said two writ petitions.

Re: AST 235 of 2017

29. In this case the petitioner had opted for Hindi as the medium of instruction. The petitioner's appointment was cancelled on the ground that he did not study Hindi as the first or second language at the Higher Secondary Level.

30. The petitioner contended that in the Mark sheet of his Intermediate Examination conducted by the Bihar School Examination Board, Patna, the first language of the petitioner has been mentioned as R.B. non-Hindi

alternative English and second language is mentioned as English. His contention was that R.B. non-Hindi is Hindi compulsory subject having 50 full marks as first language of Intermediate Examination conducted by the Bihar School Examination Board, Patna. In this connection, the petitioner relied on a Letter dated 20 February, 2017 written by the Controller of Examination (SS), Bihar School Examination Board, Patna to the Assistant Secretary, West Bengal Regional School Service Commission, Northern Region, Malda. He also relied on a Certification dated 25 March, 2017 issued by the Principal, S.A. Eklavya Mahavidalya, Jamui, Patna to the effect that the petitioner passed Intermediate Examination, 2015 in First Division from the said college. The examination was conducted by the Bihar School Examination Board, Patna. The R.B. non-Hindi and alternative English are compulsory subjects for every student carrying 50 + 50 full marks.

31. The petitioner's appointment was cancelled by the Memo dated 17 March, 2017 (wrongly mentioned as 17.03.2015 in the Memo). The petitioner claims that under cover of a Letter dated 30 March, 2017 he had sent the aforesaid two documents mentioned in the preceding paragraph, to the Chairman of the Burdwan, DPSC. However by Memo dated 7 April, 2017 the Chairman of the Burdwan, DPSC merely reiterated that the petitioner's appointment letter was issued by mistake as being contrary to Recruitment Rules, without any reference to the two documents sent by the petitioner to the Chairman of the Burdwan, DPSC.

32. No affidavit-in-opposition has been filed by the respondents in this writ application. The factual averments made in the writ petition are to be

deemed to be admitted by the respondents. If that be so then it has to be taken that the Letter dated 20 February, 2017 issued by the Bihar School Examination Board, Patna and the Certificate dated 25 March, 2017 issued by the Principal, S.A. Eklavya Mahavidalya, Jamui, were received by the Chairman of the Burdwan, DPSC. However, in the Memo dated 7 April, 2017, issued by the Chairman of the said DPSC, there is absolutely no reference to or mention of the said two documents.

33. It is not for the Court to decide whether or not the Letter issued by the Bihar School Examination Board, Patna and the certificate issued by the Principal, S.A. Eklavya Mahavidalya, Jamui are acceptable to the said DPSC and whether such documents show that the petitioner has fulfilled the relevant requirement of the Recruitment Rules. It is for the said DPSC to take such a decision. I am of the view that in the Memo dated 7 April, 2017, the Chairman of the DPSC, Burdwan should have adverted to the aforesaid two documents and in the event he found the same to be unacceptable or not demonstrating that the petitioner has met the requisite requirement, he should have recorded the same in the Memo.

34. Accordingly, I set aside the Memo dated 7 April, 2017 and remand the matter to the Chairman of the DPSC, Burdwan to reconsider the petitioner's case in accordance with law taking into account the Letter dated 20 February, 2017 written by the Controller of Examination (SS), Bihar School Examination Board, Patna to the Assistant Secretary, West Bengal Regional School Service Commission and the Certificate dated 25 March, 2017 issued by the Principal, S.A. Eklavya Mahavidalya, Jamui, referred to above. The

Chairman of the DPSC, Burdwan shall take a reasoned decision in accordance with the applicable rules / regulations / circulars / notifications within a month from the date of receipt by him of a copy of this Order along with a copy of the writ petition with all Annexures thereto, after giving an opportunity of hearing to the petitioner or his authorized representative. If the Chairman is of the opinion that the petitioner has demonstrated that he studied Hindi as first or second language at the Intermediate Level, the Letter of withdrawal/cancellation of appointment dated 17 March, 2017, shall stand withdrawn / cancelled / quashed and the petitioner shall be reinstated in service with all notional benefits. He shall however, not be entitled to any remuneration for the period he has actually not rendered service as a teacher. In the interregnum, this Order shall not be interpreted as entitling the petitioner to join service. The decision of the Chairman of Burdwan, DPSC shall be communicated to the petitioner within a week from the date of the decision.

35. AST 235 of 2017 is accordingly, disposed of. There shall be no order as to cost.

Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arijit Banerjee, J.)