

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Moushumi Bhattacharya

W. P.A. No. 9597 of 2019

I.A. No. CAN 1 of 2019 (Old No. CAN 5957 of 2019)
CAN 2 of 2019 (Old No. CAN 9609 of 2019)
CAN 3 of 2020 (Old No. CAN 1308 of 2020)
CAN 4 of 2020 (Old No. CAN 3239 of 2020)

Aktarul Islam Kayal & Ors.

Vs.

State of West Bengal & Ors.

With

W.P.A. 11944 of 2019

CAN 1/2019 (Old No. CAN 11642/2019)
CAN 2/2019 (Old No. CAN 11643/2019)
CAN 3/2019 (Old No. CAN 11645/2019)
CAN 4/2019 (Old No. CAN 11646/2019)
CAN 5/2019 (Old No. CAN 11648/2019)
CAN 6/2019 (Old No. CAN 11649/2019)
CAN 7/2019 (Old No. CAN 11650/2019)
CAN 8/2019 (Old No. CAN 11651/2019)
CAN 9/2019 (Old No. CAN 11656/2019)
CAN 10/2019 (Old No. CAN 11657/2019)
CAN 11/2019 (Old No. CAN 11659/2019)
CAN 12/2019 (Old No. CAN 11662/2019)
CAN 13/2019 (Old No. CAN 11663/2019)

CAN 14/2019 (Old No. CAN 11681/2019)

Snehansu Rakshit & Ors.

-vs-

State of West Bengal & Ors.

With

W. P.A. No. 20928 of 2019

Kishor Sarkar & Ors.

-vs-

State of West Bengal & Ors.

With

W. P.A. No. 20931 of 2019

Sadananda Chatterjee & Ors.

-vs-

State of West Bengal & Ors.

With

W. P.A. No. 5525 of 2020

Bhanu Roy & Ors.

-vs-

State of West Bengal & Ors.

With

W. P.A. No. 9180 of 2019

I.A. No. CAN 1 of 2019 (Old No. CAN 5948 of 2019)

CAN 2 of 2019 (Old No. CAN 6893 of 2019)

Sangita Maiti & Ors.

-vs-

State of West Bengal & Ors.

For the Petitioners
(in WPA 9597 of 2019 and
in WPA 11944/2019)

: Mr. Bikash Ranjan
Bhattacharya, Sr. Advocate
Mr. Subir Sanyal, Advocate
Mr. Dibyendu Chatterjee,
Advocate
Mr. Sumoli Sarkar, Advocate
Mr. Vishak Bhattacharya,
Advocate
Mrs. Ruchira Chatterjee,
Advocate
Mr. Sagnik Roy Chowdhury,
Advocate
Mr. Anindya Bose, Advocate
Mr. Chandrachur Chatterjee,
Advocate
Mr. Diptendu Mondal, Advocate
Mr. Siddhartha Roy, Advocate

For the Petitioners (in WPA 5525
of 2020)

: Mr. Bikash Ranjan
Bhattacharyya, Sr. Advocate
Mr. Firdous Samim, Advocate
Mrs. Gopa Biswas, Advocate

For the Petitioners (in WPA
20928 of 2019 and in WPA 20931 of
2019)

: Mr. Bikash Ranjan
Bhattacharyya, Sr. Advocate
Mr. Bikram Banerjee, Advocate.
Mr. Sudipto Dasgupta,
Advocate
Mr. Arkadeb Biswas, Advocate
Ms. Dipa Acharyya, Advocate

For the Petitioner	: Mr. Bikash Ranjan Bhattacharyya, Sr. Advocate Mr. Samim Ahmed, Advocate
For the SSC	: Mr. Kishore Dutta, Learned Advocate General Dr. Sutanu Kumar Patra, Advocate Mr. K.K. Bandopadhyay, Advocate Mrs. Supriya Dube Chakraborty, Advocate
For the State in WPA 9597 of 2019 And in WPA 11994 of 2019)	: Mr. Bhaskar Prasad Vaisya, Advocate. Mr. Suman Dey, Advocate.
For the State (in WPA 20931 of 2019)	: Mr. Bhaskar Prasad Vaisya, Advocate Mr. Sagnik Chatterjee, Advocate.
For the Applicant/Addition of Party (in W.P.9597 of 2019 & CAN 1308 of 2020)	: Mr. Ekramul Bari, Advocate Ms. Asha Ghutghutia, Advocate Mr. Syed Mausum Ali, Advocate

Others who have appeared : Mr. Tariq Ahmed, Advocate
 in the matter Mr. Robson Jani, Advocate
 Mr. Bikram Banerjee,
 Advocate
 Ms. Ruchira Chatterjee,
 Advocate
 Mr. Anindya Bose, Advocate
 Mr. S. Naskar, Advocate
 Mr. Ashis Kumar Chowdhury,
 Advocate
 Mr. Tanmoy Basu, Advocate
 Ms. Sumouli Sarkar, Advocate
 Mr. Kanak Kiran
 Bandopayhyay, Advocate
 Mr. Siddhartha Roy, Advocate
 Mr. Subhaya Das, Advocate
 Mr. Soumyajyoti, Advocate

Last Heard on : 20.11.2020

Judgment on : 11.12.2020

Moushumi Bhattacharya, J.:

1. The writ petitions relate to the 1st State Level Selection Test, 2016 for recruitment of Assistant Teachers in Upper Primary schools in the State of West Bengal. The writ petitioners, 116 in number (in W.P.A. 9597 of 2019), participated in the SLST, 2016 and now seek cancellation of the entire

selection process. The primary relief in the writ petitions have been sought against the West Bengal Central School Service Commission (the Commission) which has been designated to conduct the first State-Level Selection Test (SLST) for recruitment of Assistant Teachers in the Upper Primary level except Physical Education and Work Education.

2. The petitioners in all the writ petitions, which fall for consideration in this decision, applied in response to a Notification dated 23rd September, 2016 issued by the West Bengal Central School Service Commission relating to recruitment of Assistant Teachers for Upper Primary level (except Physical Education and Work Education) in non-Government aided/sponsored schools in West Bengal. In the Notification, the selection process was to be governed by the West Bengal School Service Commission (Selection for Appointment to the Posts of Teachers for Upper Primary Level of Schools) Rules, 2016, framed under the West Bengal School Service Commission Act, 1997. It should be stated at the outset that under the 1997 Act, “School” has been defined as a recognised non-Government aided school and includes a sponsored school; “Recognized” has been defined as recognized or deemed to be recognized under the State Acts mentioned in Section 2(n) of the 1997 Act. “Sponsored School” has been defined to mean a school declared as a sponsored school by the State Government by notification. Section 3 of the 1997 Act provides that the State Government shall, with effect from such date as may be notified, appoint and constitute a Central Commission by the name of the West Bengal Central School

Service Commission under the 1997 Act. The Commission is a statutory body under the 1997 Act and has been designated for conducting the entire selection process which is the subject-matter of the present dispute.

3. Mr. Subir Sanyal, learned Senior Counsel appearing for all the writ petitioners, seeks to challenge the selection process by stressing on the failure of the respondents in complying with the West Bengal School Service Commission (Selection for Appointment to the Posts of Teachers for Upper Primary Level of Schools) Rules, 2016 (the Rules) at every stage. Counsel launches a 6-pronged challenge to the selection process which are:

a) Lesser qualified candidates with inferior academic qualifications and lower TET (Teacher Eligibility Test) weightage have been included in the Merit List.

b) The Interview List has been published without disclosing the specific marks obtained by the candidates.

c) The Commission failed to prepare the Merit List in terms of the Rules. The Commission also failed to prepare the Interview List in the ratio of 1:1.4 of the final vacancies as mandated under the Rules.

d) Untrained candidates were brought into the zone of consideration in violation of the Rules.

e) Arbitrary awarding of marks in the Personality Tests/Interviews which would be evident from identical marks awarded to several candidates.

f) The Commission commenced the Personality Test of candidates in the Interview List without first publishing the final vacancy list.

4. Learned Counsel has cited a number of cases on the consequences of violation of Rules and arbitrary practices in selection processes. In *P. Mohanan Pillai vs State of Kerala (2007) 9 SCC 497*, the issue was in relation to selection of 12 posts for watchmen in a government company where the Supreme Court considered the reason for lowering of the cut-off mark and enlarging the zone of consideration from 1:3 to 1:4. In that case call letters were issued to the next 11 candidates after the first 36 candidates who had scored the highest in the written test had been called for interview. The Supreme Court drew an inference of favouritism on the basis of misuse of allocation of marks for the interview. The selection process for 96 Taxation Inspectors in the State of Haryana was set aside by the Supreme Court in *Krishan Yadav vs. State of Haryana AIR 1994 SC 2166* on the ground of violation of the Rules concerning publication of the selection lists for the posts in question. Relying on the findings of a CBI report highlighting several departures from the rules, the Court concluded that the only recourse available was to set aside the entire process. *Orissa Public Service Commission & Anr. vs Rupashree Chowdhary & Anr. (2011) 8 SCC 108* dealt with a selection for the post of Civil Judge to the Orissa Superior Judicial Service and the relevant Service Rules. Rule 24 of the Orissa Judicial Service Rules, 2007 dealt with the criteria for determining the number of candidates for interview and the Supreme Court found that the High Court had committed an error in allowing two persons to be called for the interview

who were not parties before it and who had not shown interest in being appointed subsequent to the declaration of the results of the examination. *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi* (1990) 3 SCC 655 was concerned with the appointment for Grade I and Grade II teachers pursuant to a newspaper advertisement. The Supreme Court held that the qualifications mentioned in the advertisement must be followed and that disregarding the criteria mentioned would prejudice all those who had similar or better qualifications. *Chairman, Indore Vikas Pradhikaran v M/S Pure Industrial Coke & Chemicals Ltd.* AIR 2007 SC 2458, has been relied upon for highlighting the duties of public authorities and *Punjab State Electricity Board v Zora Singh* AIR 2006 SC 182 for the concept of 'Malice in Law' in that a 'State' within the meaning of Article 12 of the Constitution of India, must act fairly and for a purpose which is relevant to the object professed. *Ravi Yashwant Bhoir v District Collector Raigad* AIR 2012 SC 1339 has been relied upon for the same proposition i.e. something done without lawful excuse as a deliberate act in disregard to the rights of others would amount to Malice in Law. In *Pramod Kumar vs U.P. Secondary Education Services Commission* (2008) 7 SCC 153 the Supreme Court held that an appointment contrary to statutory rules would be void and that an irregularity in the appointment procedure cannot be condoned.

5. The decisions relied on by Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel appearing for the petitioners in W.P. 5525 of 2020, proceed

on the basis that a selection process can be set aside if the court finds sufficient reasons to do so. Counsel cites *Krishan Yadav and Anr. Vs. State of Haryana (1994) 4 SCC 165* where several illegalities were committed in selection of Taxation Inspectors by the subordinate Selection Board in the State of Haryana. In *Union of India Vs Hemraj Singh Chauhan (2010) 4 SCC 290*, the Supreme Court reiterated that both the Central Government and State Government should act as model employers and the right of eligible employees to be considered for promotion is a part of their fundamental right guaranteed under Article 16 of the Constitution. *Bhupendra Nath Hazarika Vs. State of Assam* reported in *(2013) 2 SCC 516* dealt with a challenge to certain appointments made in the Assam Police Service (Junior Grade) and the Supreme Court considered the question whether the appointments had been made in violation of the Rules. Counsel, relies on *Alka Ojha Vs. Rajasthan Public Service Commission (2011) 9 SCC 438* and *Rakesh Kumar Sharma Vs. State (NCT of Delhi) (2013) 11 SCC 58*, where the issue before the Supreme Court was whether the candidate had the prescribed educational and other qualifications as on the particular date specified in the Rule or the Advertisement. *Vikas Pratap Singh Vs. State of Chhattisgarh (2013) 14 SCC 494* has been placed for the principle that a person appointed erroneously to a post must not reap the benefit of a wrongful appointment jeopardizing the interests of the worthy candidates. *Gohil Vishvaraj Hanubhai Vs. State of Gujarat (2017) 13 SCC 621* has been relied upon for the doctrine of proportionality where the Supreme Court, upon considering the large-scale malpractices, opined that the innocent

candidates including the wrongdoers should get an opportunity of participating in a fresh examination process. Counsel has cited *Bipul Kumar Biswas vs. Union of India* in W.P.C.T. No.49 of 2017 (along with a batch of other writ petitions) where a Division Bench of this Court held that the selection process to the Railway Recruitment Board had been vitiated by arbitrariness but was of the view that it would not be proper to set aside selection process entirely as it would affect those who were not parties before the Court.

6. Learned Advocate General appearing for the West Bengal Central School Service Commission, ably assisted by Dr. Sutanu Kumar Patra, Mr. K.K. Bandopadhyay and Mrs. Supriya Dube Chakraborty, counsel, have relied on several cases with regard to maintainability of the writ petitions. According to learned Advocate General, Rules 18 and 20 of the 2016 Rules provide for a grievance-redressal mechanism under which an aggrieved candidate can approach the Central Commission from which a further reference can be made to the State Government. *Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal* (2014) 1 SCC 603, *Nivedita Sharma vs. Cellular Operators Association of India & Ors.* (2011) 14 SCC 337, *State of Uttar Pradesh & Anr. v. Uttar Pradesh Rajhya Khanij Vikas Nigam Sangharsh Samiti & Ors.* (2008) 12 SCC 675, *U.P. State Spinning Co. Ltd. v. R. S. Pandey & Anr.* (2005) 8 SCC 264, have been cited in this connection.

7. The second proposition urged is that the petitioners do not have a right to invoke the jurisdiction of this Court during an ongoing selection process. This proposition is buttressed by the legal principle that an applicant in a selection process does not have a right to appointment even if such person has been empanelled in the selection; *Shankarshan Dash vs. Union of India* (1991) 3 SCC 47, *Punjab State Electricity Board & Ors. vs. Malkiat Singh* (2005) 9 SCC 22, *Vijay Kumar Mishra & Anr. vs. High Court of Judicature at Patna & Ors.* (2016) 9 SCC 313, *State of U.P. & Ors. vs. Rajkumar Sharma & Ors.* (2006) 3 SCC 330.

8. Learned Advocate General next contends that it is impermissible for a Court to make a roving inquiry and a fact-finding exercise into a selection process where a large number of candidates are involved. It is submitted that in such processes, there is a presumption in favour of the validity of civil and judicial acts unless otherwise proved; *Sadananda Halo & Ors. vs. Momtaz Ali & Ors.* (2008) 4 SCC 619, *The State of West Bengal & Ors. vs. Chandra Kanta Gunguli* 2017 SCC Online Cal 3799.

9. It is further submitted that the order passed by this Court on 1st October, 2019 permitted the Commission to publish a tentative Merit List, and the petitioners were granted liberty to point out errors in the Merit List and approach the Commission through written representations. The present writ petitions, therefore, can only be confined to the disposal of the representations subject to any error being mentioned therein. The Advocate General submits that the principle of Res judicata would apply to the

present proceedings since all the issues raised by the petitioners were decided in the order dated 1st October, 2019.

10. I have considered the submissions made on behalf of learned Senior Counsel appearing for the writ petitioners and learned Advocate General for the West Bengal Central School Service Commission. The journey of these matters from their inception to the present should be briefly stated.

11. The Notification for the first State Level Selection Test (SLST) 2016 was published on 23rd September 2016. The last date of submission of the online application form was 24th October 2016. The first and second phase of verification was conducted in February and March, 2019. W.P. No of 9597 of 2019 was filed on 20th April 2019. The third phase of verification was conducted in June 2019. The Interview List was published on 28th June 2019. The first phase of Personality Tests was conducted from 2nd July 2019 to 15th July 2019. The second phase of Personality Tests was conducted between 20th August 2019 and 22nd August 2019. On 1st October 2019 the Commission was permitted to publish a tentative Merit List subject to errors being pointed out by the concerned candidates by way of written representations and the Commission was restrained from conducting counselling without the leave of the court. The Merit List was published on 4th October 2019 and the final vacancy list was published on 11th November 2019.

12. Numerous issues were initially raised on behalf of the petitioners which were narrowed down at the time of the final hearing. The challenge in these writ petitions is to the selection for Upper Primary teachers in schools across the state of West Bengal. The Rules governing the selection of candidates for recruitment to these posts published by a Notification dated 20th September, 2016, issued by the School Education Department, Government of West Bengal, under the West Bengal School Service Commission (Selection for Appointment to the Posts of Teachers for Upper Primary Level of Schools) Rules, 2016. The petitioners urge that the selection process which continued till 1st October 2019 should be cancelled entirely due to the infraction of the Rules by the Commission. The Commission, on the other hand, insists that the prescribed Rules have been complied with and that the petitions are premature, misconceived, and deserve to be dismissed. Since the petitioners have flagged several fronts on which the prescribed Rules have been violated, it would be helpful to structure the decision under the specific heads of contention urged by the petitioners for seeking cancellation of the selection process. Although the particulars of violations given in the Supplementary Affidavit of the petitioners are for the subject “Bengali”, the petitioners contend that similar instances of violations have taken place in other subjects including Geography, Pure Science, English and Sanskrit.

13. The issues have been taken from a Supplementary Affidavit dated 18th February 2020 filed by the writ petitioners in W.P. No. 9597 (W) of 2019.

Contention No.1: Lesser qualified candidates with inferior academic qualifications and lower Teacher Eligibility Test (TET) weightage have been included in the merit list

What the petitioners say: Counsel for the petitioners has divided this contention into categories namely, 'Female General', 'Female OBC-B', 'Male General', 'Male SC', 'Male-OBC A' and 'Male OBC B'. The charge is that 21 of the 116 writ petitioners, despite scoring higher marks in the aggregate of academic qualification, professional qualification and TET weightage, failed to find a place in the Merit List as opposed to candidates with a lower aggregate who were selected for the Merit List. The same pattern is repeated for the other categories as well. It is also urged that in some cases, the writ petitioners were not even called for verification, which is before the stage of Interview/Personality Test.

Answer of the Commission: Pursuant to an order passed in a writ petition being WP No. 5189 of 2018 (Nandini Singha vs. State of West Bengal) dated 16th January 2019, the Commission decided to reassess the TET marks of the petitioner in W.P. No. 5189 of 2018. The Commission thereafter found that the marks of all candidates were required to be reassessed and accordingly decided to reassess the OMR answer scripts for TET 2015 of all the candidates. As a result of the reassessment, the TET marks of a large number of candidates were altered.

Rules violated: Rule 7(1) and 12(3)

“7. Manner of selection.- (1) Selection to the post of such Teacher (except Physical Education and Work Education) shall be made category-wise on the basis of merit (weightage of TET, academic and professional qualification and marks obtained in personality test), in the manner as specified in Part A of Schedule III.”

“12. Method of SLST for selection of candidates and preparation of panel for teachers (except Physical Education and Work Education)-

(3) The Central Commission shall verify 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 qualifications “shall” be evaluated in the manner mentioned in Part A of Schedule II.”

The Court: The sequence of events with regard to the alleged reassessment of the TET 2015 weightage of candidates across the board pursuant to a writ petition filed by a solitary candidate is required to be highlighted. The order dated 16th January 2019 passed in W. P. No. 5189 (W) of 2018 directed the Commission to consider the representation of the writ petitioner and pass a reasoned order within a certain timeframe. The Commission’s argument that it decided to reassess the OMR answer scripts in TET 2015 of all the candidates besides the writ petitioner in W. P. No. 5189 (W) of 2018 is not supported by any document which would show that a considered decision for reassessment was taken by the Commission/its Chairman at the relevant point of time based on certain factual findings.

There are several factors which are of significance in the case sought to be made out by the Commission in its affidavit affirmed on 13th October 2020. First, the order dated 16th January 2019 was in relation to only one aggrieved candidate. This fact is reinforced by the report of the Chairman of the Commission dated 29th November 2019, wherein the writ petitioner was

declared as “TET qualified” in compliance with the order of Court. Since there is no indication either in the order passed by the Court or in the report of the Chairman of the Commission (filed after 10 months from the date of the order) that the Commission had reasons to believe that other candidates had been similarly prejudiced as the writ petitioner in W.P. No. 5189(W) of 2018, it was incumbent upon the Commission to produce evidence of a unanimous decision or a resolution taken in the presence of and with the consent of its members for revisiting the TET marks of all 2,28,670 candidates. The affidavit of the Commission does not enclose any such document besides a decision taken with reference to the petitioner in W. P. No. 5189 (W) of 2018. Second, the Commission has filed several affidavits in response to various allegations/issues raised by the writ petitioners since the time these matters were taken up for hearing. Pursuant to the order dated 1st October 2019 permitting the Commission to publish a tentative merit list and the petitioners to communicate their objections/representations, the Commission filed a comprehensive affidavit dated 23rd December 2019 which did not contain any explanation on the decision to reassess the TET marks of all the candidates. The first time that the Commission indicated that such a step was taken in January 2019 was by way of submissions in October 2020 followed by an affidavit of 9th October 2020. The Commission has not given any satisfactory reason as to the basis of its failure to disclose such a relevant fact which would have a bearing on the fates of the candidates who had taken the Test. Third, the Commission cannot now contend that the conduct of TET is a different

process and not connected to the present selection process. Rule 12 (5) of the 2016 Rules gives weightage to a candidate's TET marks and makes it clear that TET weightage would have a bearing on a candidate being selected for the Merit List as detailed further in Part A of Schedule III. Therefore, any alteration of the TET marks would directly impact a candidate successfully proceeding from the Interview List to the next stage of the Merit List under Rule 12(5). Fourth, no notice or intimation was given to the candidates prior to carrying out the reassessment. The candidates were also not informed of the results of the reassessment. This assumes importance since Clause 11 of the Information Brochure published by the Commission for candidates appearing for the State Level Teacher Eligibility Test, 2015 specifically states that

“No request for re-checking, re-assessment, re-evaluation or scrutiny of OMR Answer Sheets will be entertained. No correspondence in this regard will be entertained.”

Moreover, Clause 6 of the 1st SLST (AT) for Upper Primary Level Brochure provides that a candidate may give information in relation to

“...TET 2011 or TET 2015 Roll Number (Applicant can use any one among both TET result”.

Hence, there is every possibility that a re-assessment of TET 2015 may result in a candidate being deprived of the choice given to him/her under Clause 6 of the Information Brochure. For example, if a candidate who has opted to give his marks obtained in TET 2011 which are higher compared to TET 2015, the candidate may be irrevocably prejudiced if his

TET 2015 marks are subsequently enhanced to a level higher than his TET 2011 marks. The converse may also apply where a candidate has opted to give his TET 2015 marks instead of 2011 and finds that upon re-assessment, his 2015 marks have been reduced to a level lower than his TET 2011 marks. The net result of all these possibilities is that a candidate is deprived of exercising an effective choice under Clause 6 of the Brochure. The question is can a candidate be unfairly prejudiced by an act of the Commission without the candidate being informed, in advance, of the nature of the act.

Contention No.2: No reason has been given by the Commission for publishing the Interview List without disclosing the specific marks obtained by the candidates. Candidates with inferior academic qualifications and lower TET percentage have been placed in the Merit List compared to several of the writ petitioners who have got a lower rank in the Merit List.

What the petitioners say: Candidates with inferior academic qualifications and TET weightage have been included in the higher merit position/higher serial/rank number in the Merit List by illegally enhancing/inflating marks/TET weightage in violation of Rule 12(5) read with Schedule II Part A of the Recruitment Rules, 2016. The petitioners on the other hand, despite having better academic qualifications and TET weightage have been placed in the lower position/serial/rank number in the Merit List.

Answer of the Commission: The conduct of TET and assessment of the marks is an independent method of assessment conducted as per the National Council for Teachers' Education (NCTE) guidelines and has no connection with the recruitment of teachers in the upper primary schools.

Rule violated: 12(5)

"12. Method of SLST for selection of candidates and preparation of panel for teachers (except Physical Education and Work Education)-

(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."

The Court: The primary thrust of the second contention is that candidates with inferior academic qualifications and TET weightage have been selected for the Merit List or are higher up in the Merit List compared to the writ petitioners who, despite having better academic qualifications, have either not found a place in the Merit List or are placed much lower than some of the other candidates. The Supplementary Affidavit of the petitioners gives the names of at least seven candidates in various categories including in "General Female", "OBC-B Male", "OBC-A Male" for the subject "Bengali" showing that the particulars of the named petitioners under "academic score", "professional score" are such that the concerned writ petitioners should have been placed in the Merit List instead of the candidates selected. The tabulated statements proceed on the basis that TET marks were wrongfully inflated on a selective basis. The significant factor however is that despite such serious allegations being made with full factual particulars, the

Commission has not disputed these facts/particulars by way of an affidavit or otherwise. Taking repeated recourse to the argument that the present controversy has nothing to do with the TET selection process or that the petitioners have not challenged the selection for TET is a weak rebuttal of the presumption raised in the Supplementary Affidavit of the petitioners. The Commission is indisputably at an advantageous position of having all the material facts at its disposal which it should have used to dislodge the presumption and present a robust challenge to each and every factual contention of the petitioners. The Commission, however, has chosen not to dispute the allegations made by the petitioners in any manner whatsoever.

Contention Nos.3 and 6 : The Commission failed to prepare the Merit List from the candidates whose names featured in the Interview List in terms of rule 12(4). The Commission also failed to prepare the Interview List in the ratio of 1:1.4 of the vacancies as mandated under the Rules.

What the petitioners say: The allegation is that contrary to the relevant Rule, the Merit List has not been prepared from the Interview List when the latter has to be prepared prior to the Merit List in the ratio of 1:1.4 of the final vacancies. Counsel relies on the numbers of candidates selected for the subject 'Bengali', the tentative number of vacancies in each of the specific categories and the number of vacancies in the final vacancy list. According to the petitioner, the total "Male" and "Female" candidates interviewed/called for personality test were (702+970) 1672 while the total tentative vacancies were 344 (273+71) and the total final vacancies 305

(244+61) which makes it evident that for 344 tentative vacancies in “Bengali”, 1672 candidates were called for interview which is in the ratio of 1:5 as against the ratio of 1:1.4 (482 candidates) of the final vacancies.

Answer of the Commission: Several orders were passed by this Court in writ petitions filed in 2019 for verification of the credentials of the candidates. By the said orders, the Commission was directed to verify the documents of the writ petitioners under Rule 12(3) of the 2016 Rules. A large number of candidates were directed to submit the documents to the Commission for verification. According to learned Advocate General, due to the several hundred candidates who had to be verified pursuant to orders of the Court, the Interview List exceeded the ratio of 1:1.4 as required under Rule 12(4). The petitioners were given the liberty of approaching the Commission by way of representations following publication of the Merit List which were dealt with and disposed of by the Commission.

Rules violated: Rule 12(2) (3) (4) (5) (6); Rules 8 and 9

- “12. *Method of SLST for selection of candidates and preparation of panel for teachers (except Physical Education and Work Education)-*
- (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 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 qualifications “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.”

“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 sent 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 complied 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.”*

“9 *Advertisement. – (1) The Central Government 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 issued specifying in 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.”

The Court: The answer of the Commission, in essence, is that Rule 12(4) is a procedural provision and is directory in nature and further, that the infraction of such Rule did not infringe any right of the candidates. On the factual score, the Commission urges that the Interview List exceeded the ratio of 1:1.4 due to the directions passed by the Court following which the Commission filled up the vacancies from the candidates who had been verified by orders of court. The Commission also says that a final Merit List was prepared from amongst the candidates interviewed maintaining the ratio of 1:1.4 of the final vacancies in compliance with Rule 12(5).

To understand if the Commission’s contentions are legally tenable, the intent and positioning of Rule 12(5) has to be understood in the overall structure of Rule 12 of the 2016 Rules.

Rule 12 envisages a pyramidal structure with a base of the largest pool of candidates whose applications have been received under Rule 12(2),

verification of credentials of eligible candidates under Rule 12(3), moving up the pyramid with a gradual narrowing of the circumference of the pyramid as the candidates are shortlisted for the Interview List from amongst the base-pool under Rule 12(4). A further narrowing down takes place when the candidates from the Interview List are selected to form the Merit List under Rule 12(5) and finally a Panel of candidates is selected from the Merit List under Rule 12(6) which is the top of the pyramid. The structure of Rule 12 is premised on the base of the pyramid consisting of the largest number of candidates whose credentials have been verified and then a stage-wise elimination of candidates with successive phase of evaluation under Rules 12(4) and (5), namely the Interview List, Personality test and the Merit List. The presumption therefore, is that the candidates who are successful in constituting the Panel must be from the largest pool under Rule 12(3) and must have cleared all the successive stages to reach the top of the pyramid, namely, empanelment under Rule 12(6). The Commission's contention that the candidates selected for the Merit List were culled from the Interview List starts from the stage of Rule 12(4) and not from 12(3). This is due to the admitted position of the Commission that it prepared the Merit List with the required 1:1.4 of the final vacancies from amongst the candidates in the Interview List which in turn was prepared from the candidates verified pursuant to orders of court.

It would further be evident from the above Rules that the selection of candidates for the Test starts from the point of receipt of the application forms of the candidates by the Commission from which a database of eligible

candidates is prepared. The words used in connection with “database” in Rule 12(2) are “*all the candidates*”. Rule 12(3) mandates verification of the validity of the credentials and certificates stipulated under the said Rule by the Commission. Rule 12(3) does not provide for any sifting or short-listing of candidates under the said Rule before the candidates progress to the next stage which is preparation of the Interview List under Rule 12(4). The framework of the Rules does not allow the Commission to pick and choose from the general pool of candidates reflected in the database conceived under Rule 12(2). The first selection from the pool of candidates is permitted only after the stage of verification under Rule 12(3). In the present case, it is the admitted position of the Commission that the Interview List under Rule 12(4) was prepared from the pool of candidates who had been verified pursuant to orders of Court. According to the Commission, the ratio of 1:1.4 of the final vacancies has been filled up from the candidates whose certificates/credentials have been verified in compliance with the directions passed by the Court.

It is also an admitted position that approximately 2030 candidates approached the court from April 2019 onwards seeking orders for verification, which is less than 1 per cent (0.89% to be precise) of the total number of candidates who had applied for the posts. Thus, only a small proportion of the candidates had been cleared for verification by reason of filing writ petitions before the court. The majority of candidates who had not come before the court had hence been excluded from the purview of Rule 12(3) which is verification of certificates and other credentials. It is clear

therefore that the Interview List was prepared and published by the Commission from an incomplete pool of candidates namely only those who had been permitted to be verified under court orders. The Commission cannot expect the Court to be treated as a pit-stop in the detour to the evaluation process under Rule 12(3).

The contention of the Commission that it had shortlisted candidates for the interview list under Rule 12(4) and filled up the vacancies in the stipulated ratio is entirely unacceptable since candidates who had not approached the court and obtained orders for verification, had been left out of the selection process altogether. Rule 12(3) does not permit the Commission to create a sub-set of candidates who would be favoured with verification of documents while others would be excluded from the process.

Indeed, if the starting point of the selection process was irregular and *de hors* the Rules, each and every stage subsequent to the verification-stage would come under the shadow of arbitrariness and foul-play. It matters little if candidates were correctly evaluated in the Personality Test or were informed with sufficient particulars at the stage of the Merit List once it is found that the Commission, from the very inception, had done something which it was not empowered to do under the Rules.

Requirement of publication of tentative and final vacancies under Rule 9(3):

The second limb of the petitioners' contention

The stipulation in Rule 9(3) with regard to publication of tentative vacancies at the time of inviting applications for the SLST and a final

vacancy list at the time of publication of the Interview List (except Physical Education and Work Education) has a purpose built into the framework of the Rules, which is set out below:

The objective of the timing of publication of the final vacancy list is for the candidates to exercise an effective choice in the selection of subjects mentioned in each subject-category of the list of final vacancies. Availing of the choice at the stage when the Interview List is prepared is important since the shortlisted candidates would also be in a position to know the actual number of vacancies together with the total number of candidates considered for the vacancies in the ratio of 1:1.4 of the final vacancies. In the present case, the Interview List was published on 28th June 2019, the Merit List was published on 4th October 2019 pursuant to an order of Court and the final vacancy list was published on 11th November 2019. Hence, the candidates, in violation of Rule 9(3), were deprived of knowing the final number of vacancies for each subject simultaneously with the publication of the Interview List and availing of the option given under the Rules in the matter of choosing their subjects.

For the above reasons, the contentions of the Commission on both the issues are rejected.

Contention No.4: Untrained candidates were brought within the zone of consideration in violation of the 3rd proviso to rule 4(1).

What the petitioners say: According to counsel, the Commission's report of 27th September 2019 states that almost 600 candidates were brought within

the zone of consideration on the basis of information which was not provided in their respective application forms. The petitioners contend that the candidate's training qualifications should have been mentioned in the online application forms and could not be enhanced subsequently.

Answer of the Commission: The answer of the Commission is that several candidates had acquired their B.Ed degrees before the last date of submission of the application forms and hence the Commission treated these candidates as B.Ed qualified. It is also urged that the 3rd proviso to Rule 4(1) is directory in nature since it does not provide for any consequences in case of default of the said Rule.

Rules violated: Rule 4(1) 3rd proviso

“4. (1).....

Provided also that certificates received on or before the last date of the application and mentioned in the application form, shall be counted for academic and professional qualification.”

The Court: The significance of a cut-off date in responding to an advertisement for recruitment was considered in *Alka Ojha* and *Rakesh Kumar Sharma* where in the former decision, the Supreme Court relying on *Bhupindar Paul Singh (2000) 5 SCC 262* held that in the absence of a cut-off date, the eligibility criteria shall be applied with reference to the last date appointed by which the applications have to be received by the competent authority. *Rakesh Kumar Sharma* reinforced the position that a person (on his eligibility as on the last date of submission of the application) has a right

to be considered against the particular vacancy provided. In the present case, the third proviso to Rule 4(1) of the 2016 Rules stipulates that certificates received on or before the last date of the application shall be counted for academic and professional qualification. Clause 3 of the recruitment Notification/advertisement for the posts in question dated 23rd September, 2016 provides

“.....after submission of online application form no further rectification will be allowed”.

Even if the contention of the Commission that certain candidates were allowed to add to their qualifications since the said qualification had already been obtained by the candidate before the last date of submission of the application form is accepted as correct, it is undeniable that the cut-off date was relaxed for several of the candidates to the exclusion of others. It is equally correct that apart from several candidates being treated as B.Ed qualified, the marks under the other heads namely TET weightage was modified after the last date of submission of the application forms. The answer of the Commission that the third proviso to Rule 4(1) is directory and procedural in nature or that no candidate had suffered infraction of his right, is not acceptable. The Rules prescribed cannot be complied on a selective basis; either the compliance has to be uniform or alternatively selective relaxation of the Rules must be upon notice to the candidates who will be affected by such change to the Rules.

Contention No.5: Arbitrary awarding of marks to candidates in the Personality Test/Interview which would be evident from identical marks awarded to several candidates.

What the petitioners say: The contention is of arbitrary awarding of marks in the Personality Test. The petitioners have placed numerous instances such as, in the General Male category, Sadananda Pal was placed at 165 in the Merit List, was awarded 8.50 in the Interview while Bikash Roy, despite having better qualification was awarded 8.33 marks in the personality test. Similarly, Mosralim Sk and Md Mizanur Rahman were both awarded higher marks in the Personality Test to cover up inferior academic qualifications. In fact, a large number of candidates – from serial no. 97-162 (except 136 and 154) were all awarded 8.83 marks in Personality Test bringing their total scores to 86.83 and in OBC-A (Male and Female) category, serial nos. 24-40 were all awarded 8.83 marks in Personality Test. In “General-Female” category serial nos. 157-195 in the Merit list were all awarded 8.50 marks in the Personality Test and serial nos. 205- 290 were awarded 8.17 marks in Personality Test and serial nos. 373-459 were all awarded 8.83 marks.

Answer of the Commission: The contention of the Commission in this regard is to the effect that 40 Personality Test Boards were constituted comprising of three members each as prescribed in Schedule IV and Rule 14(1)(vii) which were simultaneously interviewing the candidates. Therefore 120 interviewers were interviewing 40 candidates at any given point of time leaving little scope for manipulation of

marks unless such manipulation has been specifically proved by the petitioners.

Rules violated: 12(4) read with Schedule II Part A

- “12. *Method of SLST for selection of candidates and preparation of panel for teachers (except Physical Education and Work Education)-*
(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.”

The Court: The answer of the Commission is that 40 Personality Test Boards were constituted under the Rules for simultaneous interview of the candidates, which means 120 candidates were being interviewed at any given point of time. The Commission states that the petitioners have not been able to prove any manipulation.

This Court is of the view that the stand of the Commission is neither satisfactory nor sufficient to dispute the allegation. The petitioners have provided the names and marks in the Interview List/Personality Test and Merit List of at least 5 candidates to establish that marks in the Personality Test were manipulated to secure a better position to certain named candidates in the Merit List. This is a serious allegation. The Commission, in choosing not to dispute the allegations with reference to the individual cases, has left the allegation un-rebutted. The blanket assertion that a large number of candidates would lead to an automatic assumption that there

was no scope of manipulation is not acceptable without evidence and sufficient particulars.

Relevant orders passed in these proceedings:

14. Most of the Writ Petitions were filed in 2019. Of the several orders passed in the batch of writ petitions, a few are of consequence in the build-up of the petitioners' case to the present moment. By an order dated 1st July 2019 in W.P. 91144 (W) of 2019, the Commission was restrained from taking a decision on the appointment of candidates or preparing the final Merit List. By the said order, interviews were allowed to proceed. On 4th July 2019, by an order passed in W.P. 9180 (W) of 2019, the Commission was directed to publish the Interview List of the candidates in accordance with the definition in Rule 2(e) of the Rules and a supplementary Interview List by 10th July 2019. On 19th July 2019, the Commission was directed to file an affidavit in answer to the allegations raised by the petitioners. On 9th August 2019, the verification of the candidates who had not been heard was put on hold until a final decision was given in W.P. 9597 (W) of 2019. This was on the basis of the submission that the Commission was overburdened with pending verifications which had already reached a substantial number. On 20th September 2019, the Commission made certain proposals, notably that it may be allowed to publish a final Merit List subject to errors being pointed out by the candidates and that counselling and appointments in furtherance to the Merit List would only be made with the leave of the Court. By an order dated 1st October 2019, the Commission

was permitted to publish a final Merit List within 7 days containing information on the marks obtained by the candidates category-wise including in TET, academic and professional qualification and in the Personality Test. The petitioners were given the liberty to point out the errors in the Merit List and write to the Commission in case of any complaints within a certain time-frame. Counsel for the parties addressed the Court on the merits of the 5 writ petitions on different dates thereafter.

Arguments of learned Advocate General on behalf of the West Bengal Central School Service Commission.

1. The petitioners do not have a right to invoke the jurisdiction of the court during an ongoing selection process and further the 2016 Rules provide the petitioners with an effective remedy.

This contention is based on the premise that since an applicant in a selection process does not have a right to be appointed; candidates who have merely participated in a selection process cannot have a better right than those who have already been empanelled. This reasoning is complemented by the argument that the 2016 Rules is a Code in itself and provides for an efficacious remedy to the petitioners for approaching the designated authority under Rules 18 and 20 which are as follows:

- “18. *“Cancellation or withdrawal of Recommendation.- If prior to or after recommendation or during the course of selection process, it is found that any candidate concealed or suppressed or misrepresented or made false declaration in his/her application or at any subsequent*

stage or any mistake or fault committed by the Commission in granting recommendation wrongly to any candidate in contradiction to the provisions of the Act, Rules or other conditions as may be laid down, such candidate will be treated as disqualified and his/her recommendation will be cancelled and/or withdrawn at any stage and further his/her appointment, if any, shall stand terminated/cancelled and in such cases the decision of the Central Commission shall be final. Further the Central Commission may also take steps to fill up such post/s from Waiting List within the validity period of the Panel and Waiting List, by issuing suitable direction to the concerned Regional Commission.

20. *Interpretation.- (1) If any question arises regarding any decision of Central Commission, a reference may be made to the State Government and the decision taken by it shall be final.*
(2) In regard to the interpretation of any provision of these Rules, the decision of the State Government shall be final."

The argument that Rules 18 and 20 are to be seen as an efficacious alternative remedy available to the petitioners is not acceptable for two reasons. First, the scope of Rule 18 is clearly defined; namely, where there has either been suppression or misrepresentation by a candidate or any mistake/fraud has been committed by the Commission in granting recommendation to a candidate, the Central Commission is to decide on the correctness of the recommendation in such cases and such decision shall be final. Rule 20 provides for a reference made to the State Government from a decision of the Commission or concerning interpretation of any of the rules.

An alternative or efficacious remedy, by its very definition, implies a remedy effective enough to provide complete relief to an aggrieved person so much so that approaching a court of law under Article 226 of the

Constitution becomes unnecessary. In this case, Rules 18 and 20 apply on a recommendation being made and an aggrieved candidate is directed towards the Commission first and then to the State Government. This Court is of the view that the Commission, being the appointed authority for conducting the selection from the start to the finish, cannot take on the role of an independent adjudicator or be equated with a second tier of challenge as is commonly provided under several statutes. The remedy provided under the suggested Rules is akin to an in-house mechanism for dispute resolution.

The other limb of the argument namely that an aggrieved candidate, even if selected, does not have an automatic right of appointment, is unreasonable. Asking a disgruntled candidate to wait till the recommendation is made and thereafter directing that candidate to the Commission for a decision deprives the candidate of a valuable right to question an unfair and arbitrary selection process before the recommendation stage is reached. There may be several instances of arbitrary conduct at the different stages of the selection process which would warrant the intervention of a Court. It may well be that the candidate who complains against an unfair recommendation would be denied relief on the same ground which the Commission seeks to urge; namely that no one has a right of appointment to a public office. If this be the case, no candidate would have an effective window to ventilate his/her grievance against an arbitrary selection process. For the above reasons, this contention is unacceptable and is rejected.

2. Limited scope of judicial interference in cases where a large number of candidates are involved in the selection process.

According to the Commission, the recruitment for teachers in Upper Primary Schools is for 14,339 posts involving a total of 2,28,670 candidates. Learned Advocate General appearing for the Commission has urged that in matters involving a large number of aspirants to a limited number of posts, there must be a presumption of the fairness of the selection process unless a strong case has been made out by the persons challenging the selection process. This court is of the view that the argument is premised on the assumption that the recruitment body responsible for evaluating the candidates is not equipped to ensure the purity of the selection process in respect of each and every candidate aspiring for the posts. The argument further proceeds on the basis that systems of evaluation involving large numbers can afford to overlook aberrations where candidates can be permitted to slip through the selection-gates. It also assumes that the Court assessing the correctness of the selection can afford to turn a blind eye to such slips. This argument runs counter to the principle of fairness in any process of evaluation where the ultimate aim is to preserve merit and choose the best candidate in accordance with the mechanism devised by the recruiting body. This Court is of the firm view that the purity of a selection process will be irrevocably soiled even if one candidate can show that he/she has been unfairly excluded from the selection by reason of favouritism, nepotism or a pick-and-choose policy *de hors* the Rules. It is

therefore difficult to accept the argument made on behalf of the Commission.

The second limb of the argument is that since a large number of candidates are involved, the challengers to the process must successfully make out a case for cancelling the selection process. On this count it is reiterated that the Supplementary Affidavit of the petitioners dated 18th February 2020 has set out the six contentions against the evaluation process adopted by the Commission in commendable detail. Each of the contentions is supported by names of the particular candidate who has featured in the Merit List together with the marks awarded to such candidate under specific head juxtaposed with candidates who have either not found a place in the Merit List or have not even been called for verification. The candidates' names are accompanied with their serial numbers in the Merit List and their online applications have also been enclosed in the Supplementary Affidavit. The subject and the category (for example "Male-Scheduled Caste", "Male OBC-A", "Male OBC-B", "Female OBC-B" etc.) have also been mentioned in the said Affidavit. The particulars given should have made it easy for the Commission to delve into its records and ascertain the veracity of the allegations. The Commission however, has chosen not to file any affidavit to dispute the allegations and particulars made in the Supplementary Affidavit of the petitioners despite being in the best position to do so. The allegations made in the Supplementary Affidavit have raised a presumption of wrong doing which has remained un-rebutted. The extent of the particulars given in the Supplementary Affidavit certainly

cannot be seen as random instances of departures from the Rules. The extent of the data points to a trend where a substantial number of candidates may have suffered a similar fate and those named in the Affidavit only reflect the general trend of wrongdoing. This Court also takes into account the fact that it may virtually be impossible for candidates to obtain the mass of data as proof of irregularities since the only window which was made available to the candidates to collect the information opened from the publication of the tentative Merit List pursuant to the order dated 1st October, 2019.

The contention of the Commission is rejected for the above reasons.

3. Res Judicata will apply in the proceedings in relation to an order passed by the court on 1st October 2019.

The argument of the Commission is that after the order dated 1st October 2019 whereby the Commission was permitted to publish a tentative Merit List containing the information as directed by the Court and the petitioners were granted liberty to point out the errors in the Merit List and approach the Commission by way of written representations, nothing further remains to be decided in the matter. According to learned Advocate General, the only point which remains in the present Writ Petitions is the disposal of the representations of the writ petitioners and nothing more. This Court is unable to accept such contention primarily on the ground that the order dated 1st October 2019 was confined to permitting the Commission to publish a tentative Merit List under Rule 12(5) of the 2016 Rules and for the petitioners to point out the errors in the Merit List and carry their

complaints to the Commission. The Supplementary Affidavit of the petitioners affirmed on 18th February 2020 has highlighted six points according to the information obtained from the Merit List. This information/particular constitutes a material fact subsequent to the order passed on 1st October 2019 which is required to be adjudicated upon for effective closure of the present controversy. In the absence of rebutting the information given by the petitioners in the Supplementary Affidavit, the Commission cannot take the plea of *Res judicata* and urge that all the issues which are being raised by the petitioners at this stage were substantially in issue before the Court on 1st October, 2019 between the same parties and were heard and finally decided by the Court in the order of 1st October 2019.

Further, the views expressed by this court on the construction of Rules 12(4) and (5) with regard to the information required to be published by the Commission was relevant for two particular stage of the proceedings, namely, whether the Commission could be allowed to publish a tentative Merit List in October 2019. The Commission had been allowed to proceed with such publication on the admitted position that the Interview List which had been published by the Commission in June 2019 did not contain sufficient particulars which would enable the petitioners to mount a well-informed challenge to the selection process. The principle of *Res judicata* proceeds on the basis that the factual position on which a competent court had pronounced its decision remains unaltered in a subsequent proceeding between the same parties and involving the same issues. In the present case, the hearing of the writ petitions assumed a totally different *avatar* after

October 2019 with the publication of the Merit List and the furnishing of particulars which had hitherto not been made available to the candidates. For these reasons, the contention of the Commission, on the point of *Res judicata*, is rejected.

Decisions: Petitioners

15. With regard to the cases cited by Mr. Subir Sanyal, learned Senior Counsel representing the petitioners, *P. Mohanan Pillai vs. State of Kerala & Ors.* (2007) 9 SCC 497 dealt with a recruitment process where the zone of consideration was enlarged by reducing the minimum qualification. The Supreme Court found that it was a case of favouritism and misuse of power for unauthorised purpose. *Ravi Yashwant Bhoir vs. District Collector, Raigad & Ors.* AIR 2012 SC 1339 has been cited as an instance of legal malice or 'Malice in Law' as something done without lawful excuse. *Orissa Public Service Commission vs. Rupashree Chowdhary & Anr.* (2011) 8 SCC 108 dealt with the Orissa Superior Judicial Service where the respondent could not clear the written test and claimed that her marks should be rounded-off to 45 per cent required for interview. The Supreme Court held that there were other candidates who got more marks than the respondent and held that when the words of a statute are clear and unambiguous, the Courts are bound to give effect to that meaning irrespective of the consequences. *Krishnan Yadav & Anr. vs. State of Haryana & Ors.* AIR 1994 SC 2166 dealt with a case where the entire selection process for recruitment of Taxation Inspectors in the Excise and Taxation Department in Haryana was found to

be fraudulent warranting the Court to set it aside. The Supreme Court found that the selection involved fake interviews, tampering with records, fabrication of documents and forgery. *Pramod Kumar vs. U.P. Secondary Education Services Commission & Ors. (2008) 7 SCS 153* was a case where the Supreme Court held that an appointment in violation of statute specifying the qualifications for holding a post, would be a nullity. *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram vs. M. Tripura Sundari Devi (1990) 3 SCC 655* was a case where the question arose whether a candidate who did not have the requisite qualification should be allowed to join as a post-graduate teacher. The Court emphasised the importance of qualifications and conditions of appointment mentioned in the advertisement which could not be disregarded. *Chairman, Indore Vikas Pradhikaran vs. M/s. Pure Industrial Cock & Chem. Ltd. & Ors. AIR 2007 SC 2458* laid down that when a public authority is asked to perform statutory duties which involves valuable rights of citizens and entails consequences, it has to be construed as mandatory in character.

16. The decisions cited by Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel appearing for the petitioners are as follows:

Bhupendra Nath Hazarika and Anr. vs. State of Assam & Ors. (2013) 2 SCC 516 was a case where appointment had been made in violation of the Assam Police Service Rules, 1966 and the Rules had been relaxed to favour certain candidates to the exclusion of others. *Alka Ohja v. Rajasthan Public*

Service Commission & Anr. (2011) 9 SCC 438 dealt with the question whether a candidate was required to have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement. *Rakesh Kumar Sharma v. State (NCT of Delhi) & Ors. (2013) 11 SCC 58*, has also been cited for the same issue where the Supreme Court stressed that the selection process commences on the date when applications are invited. *Vikas Pratap Singh & Ors. v. State of Chhattisgarh & Ors. (2013) 14 SCC 494* was concerned with the question whether persons who had assumed charge at the place of posting could be ousted from service on the basis of cancellation of their appointment by reason of a revised Merit List. The Supreme Court held that no legal right in respect of appointment accrues to a candidate who obtained the employment by fraud, mischief or mala fide. *Gohil Vishvaraj Hanubhai & Ors. v. State of Gujarat & Ors. (2017) 13 SCC 621* dealt with filling up of 1500 posts of Revenue Personnel in Gujarat for which almost eight lakhs candidates appeared in the examination. In the process of evaluating the OMR Sheets, it was noticed that a large number of OMR Sheets had specific markings which led to arrest of two persons involved in the examination process and the entire data was sent to Forensic Science Laboratory for investigation. Of the three questions considered by the Supreme Court, the 3rd question was whether the magnitude of the impugned action is so disproportionate to the mischief sought to be addressed that the cancellation of the entire examination process affecting lakhs of candidates was justified on the doctrine of proportionality. The Supreme Court held that having regard to the large

scale malpractices at the examination process, the State was entitled to take appropriate remedial action and further that innocent candidates should get an opportunity of participating in fresh examination process to be conducted by the State. A Division Bench decision of this Court in *Bipul Kumar Biswas & Ors. v. Union of India & Ors.* WPCT 49 of 2017 dealt with a case concerning recruitment of Group D employees to the Railway Recruitment Board where appointments to the post had already been made.

Decisions : The Commission.

17. The cases cited on behalf of the Commission fall into the following categories.

With regard to maintainability of the writ petitions in the face of Rules 18 and 20 of the 2016 Rules, *Commissioner of Income Tax vs. Chhabil Dass Agarwal* (2014) 1 SCC 603, *Nivedita Sharma vs. Cellular Operators Association of India* (2011) 14 SCC 337, *State of Uttar Pradesh vs. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti* (2008) 12 SCC 675, *U.P. State Spinning Co. Ltd. vs. R.S.Pandey* (2005) 8 SCC 264 have been cited on the issue of granting relief under Article 226 of the Constitution when an adequate, alternative and efficacious remedy was available to the writ petitioner. The Supreme Court found in those cases that the statutory remedy providing for a hierarchy of appeals under the specific statute was in the nature of an 'adequate' remedy which would first have to be exhausted before a writ court could intervene. In *Union of India vs. Major General Shri*

Kant Sharma (2015) 6 SCC 773, it was reiterated that judicial review of executive action was integral to our constitutional scheme.

18. As opposed to the cases cited which dealt with specific statutes providing for a hierarchy of appeals from a decision taken by an authority in a lower tier in the Act cannot be equated with the present case. The writ petitions before this Court are concerned with a selection governed by Rules framed by the Central School Service Commission under the provisions of the West Bengal School Service Commission Act, 1997 and notified by the School Education Department of the State Government. As discussed above, Rules 18 and 20 are by no means an appellate forum in built within the hierarchy of the Rules for redressal of grievance (ref: *Nivedita Sharma and Chhabil Dass Agarwal*). Directing a disgruntled candidate to the same entity which is responsible for conducting the selection process, namely the Commission, cannot be seen as giving an alternative window to the aggrieved candidates by any stretch of the imagination. Rules 18 and 20 are at best, an in-house mechanism for attending to certain specific grievances raised by a candidate. The decisions cited therefore do not assist the case of the Commission.

19. With regard to the contention that no right has accrued in favour of the petitioners for invoking the jurisdiction of a Writ Court in an ongoing selection process, *Shankarsan Dash vs. Union of India (1991) 3 SCC 47* held that a successful candidate does not acquire an indefeasible right to be

appointed unless the relevant recruitment Rules indicate to the contrary. *Punjab State Electricity Board vs. Malkiat Singh* (2005) 9 SCC 22 dealt with a subsequent change in the policy of providing employment to persons whose land had been acquired but the principle of there being no vested right of appointment was reiterated nonetheless by the Supreme Court. In *State of UP vs. Rajkumar Sharma* (2006) 3 SCC 330 and *Vijay Kumar Mishra vs. High Court of Judicature at Patna* (2016) 9 SCC 313, the Supreme Court made a distinction between selection and appointment. The principle enunciated in the decisions cited does not apply to the present case. The writ petitioners have not claimed any right to be appointed to the posts for which they have participated in the selection process. The challenge is to the fairness and probity in the conduct of the selection process. Hence, ousting the petitioners from such challenge on the ground that they do not have a vested right of appointment is stretching the defence too far. The petitioners have a right guaranteed under the Constitution of India to subject an action taken by the executive or a body controlled by the State to judicial scrutiny which the petitioners have done in this case.

20. In *Sadananda Halo vs. Momtaz Ali Sheikh* (2008) 4 SCC 619, the challenge involved a recruitment process for Armed Constables in Assam which had been postponed twice owing to festivals and rallies. The unsuccessful candidates filed a large number of writ petitions challenging the recruitment process on various grounds including of postponement for political reasons. The Supreme Court took stock of the findings of the High

Court and concluded that the complaints were unjustified in the absence of proper pleadings with necessary details. Relying on an earlier decision in *Joginder Singh vs. Roshan Lal (2002) 9 SCC 765*, the Supreme Court held that in cases where a large number of candidates were involved, the High Court should not entertain questions relating to the conduct of the selection unless mala fides had been alleged against particular members of the Committee. A Division Bench of this Court took a similar view in *The State of West Bengal vs. Chandra Kanta Ganguli 2017 SCC OnLine Cal 3799* which dealt with a batch of writ petitions involving recruitment of Civic Police Volunteers. The Supreme Court was of the view that there had to be specific allegations of bias or favouritism before a process involving a large number of aspirants can be interfered with.

21. The present case is on a slightly different footing from the cases cited on behalf of the Commission. Although there are almost 26,000 candidates vying for 14,339 posts, the writ petitioners have pleaded the particulars of alleged violation of Rules in detail and disclosed such particulars which are relevant according to the petitioners.

Whether the prayer for cancellation of the selection process is justified.

22. The petitioners seek cancelling of the entire selection process conducted by the School Service Commission for recruitment of teachers for Upper Primary schools in West Bengal.

23. The prayers in W.P. 9597(W) of 2019 were initially for a Mandamus on the respondent authorities to allow the petitioners to participate in the verification process in the subject “Bengali” and for a direction on the Commission to publish a list containing the individual scores and other particulars of the petitioners. Pursuant to an order dated 14th June 2019 by which the petitioners were permitted to amend the prayer portion, a prayer in the nature of declaration was added in relation to permitting untrained candidates to apply to the concerned posts of assistant teachers and for a further declaration that such permissions to 120 candidates is illegal, arbitrary and against the provisions of the NCTE Regulations, 2014. The sequence of events as outlined above would indicate that much water has flowed under the proverbial bridge from April 2019 when the writ petition was filed to October 2019 when the Commission was permitted to publish the Merit List, This Court, therefore, is not inclined to take a hyper-technical approach and reject the present plea of the writ petitioners, namely cancellation of the selection process.

What are the factors which would warrant an order of cancellation?

The underlying criteria for any selection are transparency in the mode of choosing candidates and clarity in the yardsticks of selection. The criteria must be rational and reasonable so that the most deserving are selected. Candidates must also know the criteria on which they would have to compete against the others in the race and be confident that the objective is to preserve merit according to rank or under the stated parameters. To withstand a challenge on the ground of probity, the process must be shown

to be free of bias, nepotism or a pick and choose policy which would have the effect of undermining merit. The candidates must also be assured of the objectivity and certainty of the criteria and that the Rules of the game will not be changed in the absence of any Rule justifying the same.

24. Moreover, aspirants who have subjected themselves to a selection process conducted by a statutory authority have a legitimate expectation that the selection will be fair, transparent and free from arbitrariness where undeserving candidates are chosen for reasons not contemplated under the Rules. The expectation is all the more justified when the selection is governed by statutory Rules framed by the State. The question whether the irregularities were intentional or actuated by collateral motives may be a matter of evidence but the perception that the process will not throw up even a single instance of malpractice is non-negotiable. A candidate who crosses the white line to enter the race must know from the start that the track to the finishing line is straight and that there are no short-cuts or parallel tracks to the trophy on a different set of competition-rules.

25. The conduct of the Commission in failing to refute the allegations of the petitioners casts a shadow on the clarity of the procedures followed by the Commission in selecting the candidates. The truth or falsity of such allegations is secondary to the duty of the Commission, as the designated authority to conduct the selection, to ensure that not even a solitary speck of doubt exists in the minds of the unsuccessful candidates that they have

been excluded from the sphere of consideration for reasons other than merit. The petitioners have an indefeasible right to demand that all the candidates be treated equally and assessed on a level-playing field in terms of their capabilities. Such a right has been guaranteed under Articles 14 and 16 of the Constitution where equality before the law and equality of opportunity in matters of public employment – for citizens – is part of the constitutional vision for all alike.

26. Having dealt on the aberrations as stated above, the question is what can the Court do to rectify the departures from the prescribed Rules?

Krishan Yadav, Hemraj Singh Chauhan, Bhupendra Nath Hazarika, Vikas Pratap Singh and Alka Ojha have been cited by the petitioners in support of cancellation of the selection process. In the aforesaid decisions, the Supreme Court came to the conclusion that the foul-play committed by the authority concerned was such that the only proper course available to the Court was to set aside the entire process. In *Krishan Yadav*, the Court disregarded the possibility of innocent candidates being penalised for the misdeeds of others and was of the view that appointments founded on dishonesty could not be allowed to continue. A similar view was expressed in *Alka Ojha* where the Supreme Court opined that eligible and more meritorious candidates will be deprived of their constitutional right to be fairly considered for selection against advertised posts if illegal appointments are regularised. *Hemraj Singh Chauhan* reinforced that the guarantee of a fair consideration in matters of promotion flows from the guarantee of equality under Article 14

of the Constitution. The violation of the Assam Police Service Rules, 1966 came up for consideration in *Bhupendra Nath Hazarika* and the Supreme Court held that where there has been violation of Recruitment Rules, the recruitment is unsustainable. The Supreme Court however, took the long delay in challenging the selection into account and the fact that some of the recruits had already retired which would stand in the way of availing the appointments. The Supreme Court took a sympathetic view of candidates who had successfully undergone training and were serving the State of Chhattisgarh in the posts of Subedars, Platoon Commanders etc. in *Vikas Pratap Singh* and found that it would be highly unjust to terminate the services of innocent appointees of an erroneous evaluation. The Supreme Court accordingly directed the State to appoint such candidates in the revised Merit List by placing them at the bottom of the list with suitable age relaxation. A fresh examination was directed in *Gohil Vishvaraj Hanubhai* in view of the Supreme Court finding large scale malpractices in the examination process and held that hearing of the candidates who had resorted to mal-practice and those who had not, would amount to denial of the equal protection guaranteed under Article 14 of the Constitution of India.

27. The aforesaid cases establish that cancelling the entire selection process and directing a fresh evaluation is a possible course of action if a Court finds that the selection process has been vitiated by irregularities or have been conducted *de hors* the Rules.

28. It must be pointed out that in fit cases, it is easier to allow a selection process to remain undisturbed since the dominant considerations are logistics, the downside of upending a process and great inconvenience to many. A court would usually not be inclined to upset a process, be it of selection or otherwise, if the irregularities can either be overlooked or rectified within permissible limits. The more difficult option is to turn the clock back and direct a fresh selection. In any selection which is set aside, there are bound to be candidates who are sacrificed at the altar of justice. This Court is of the view that a selection process where the irregularities are stark and have not been accounted for, cannot be permitted to proceed or reach closure. This would mean that candidates whose academic and professional credentials have not been fairly evaluated or have not been evaluated at all, would be excluded from a fair process till the next State Level Selection Test, whenever that is announced. Admittedly, the selection has progressed till the stage of Rule 12(5) - Merit List and the Merit-listed candidates are yet to be empanelled under Rule 12(6) and (7). Hence, there are two stages which are yet to be completed; namely empanelment under Rule 12(6) and (7) and recommendation for appointment under Rule 17.

29. This Court is aware that the Notification for the first SLST (Upper Primary) 2016 was published on 23rd September 2016 and the last date of submission of the online application forms was 24th October 2016. The first phase of verification was conducted in February 2019 followed by the

second phase of verification in March 2019. The third phase of verification was done in June 2019. From the filing of WPA 9597 of 2019 on 25th April 2019, the personality test was conducted in July and August 2019 and the Merit List was published on 4th October 2019. The actual movement in the selection process was therefore from February 2019 onwards culminating in October 2019. The challenge to the selection process was taken up for consideration from June 2019 with an interruption in the interregnum due to the pandemic.

30. By reason of the above discussion, this Court deems it fit to cancel and set aside the selection process for appointment of candidates to the posts of Assistant Teachers for Upper Primary Level of schools in the State pursuant to the Notification published for the said posts on 23rd September, 2016. The West Bengal Central School Service Commission is accordingly directed to hold a fresh selection process of all the candidates who were found to be eligible under Rule 12(2) and proceed onwards from that stage. The Commission will proceed to verify the validity of TET certificate, academic and professional qualifications etc. as provided under Rule 12(3) regardless of whether candidates have approached the Court for suitable orders or not. The database and the selection of eligible candidates for verification must consist of all candidates who had applied online for the selection process. Since this Court is aware of the serious shortage of teachers in the relevant classes in schools across the State, the dates stated

above are being taken into account for fixing timelines so that the fresh selection can be completed at the earliest.

(1) The verification process under Rule 12(3) must commence on 4th January 2021 and be completed within 5th April 2021.

(2) The Commission will proceed to prepare the Interview List and publish the same under Rule 12(4) by 10th May 2021.

(3) The Merit List under Rule 12(5) and the subsequent stages of constituting a Panel should be completed within eight weeks from the date on which the Interview List is published on the website of the Commission.

(4) The selection process culminating in recommendation of the candidates for appointment should be completed within 31st July 2021.

(5) The Commission will take into account specific cases where candidates may become ineligible to participate in the fresh selection process on account of age or as stipulated in the Notification dated 23rd September, 2016. The criteria for considering such cases must be uniform and be brought to the notice of the concerned candidates well in advance.

(6) Needless to say, all the stages shall be conducted in accordance with the prescribed Rules for appointment to the posts of teachers in the Upper Primary level as notified on 23rd September, 2016.

The above directions shall apply to all the subjects e.g. Bengali, History, Geography, Pure Science, English, Sanskrit, etc. in which the selection was commenced and conducted by the Commission.

31. It is also made clear that the Commission will be at liberty to conduct the evaluation on the virtual mode wherever possible and adopt health and safety protocols which are warranted under the present circumstances or as long as the concerns relating to the pandemic remain. Candidates must be informed of the safety protocols adopted well in advance.

32. This Judgment is delivered in W.P.A.9597 of 2019, W.P.A.11944 of 2019, W.P.A. 20928 of 2019, W.P.A.20931 of 2019, W.P.A. 5525 of 2020, W.P.A.9180 of 2019 together with all writ petitions along with all connected applications filed thereafter for similar relief and which were subsequently assigned to this Court. Due to the large number of matters, the names of counsel appearing for the parties are deemed to be included in this decision, unless they have been specifically named.

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

(Moushumi Bhattacharya, J.)