

ORDER SHEET

WPO 201 of 2017

IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

ANITA AGARWAL & ORS  
VS  
THE STATE OF WEST BENGAL & ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : December 4, 2020.

*Appearance:*  
*Mr. Anjan Bhattacharya, Adv.*  
*Ms. Anita Shaw, Adv.*  
*... for petitioner*

The Court : The writ petition is directed against the decision taken by the District Inspector of Schools (S.E) Kolkata, to the effect that the petitioners are over-aged and, as such, did not qualify for approval. Learned Counsel for the petitioners argues that the dates of appointment given in the impugned order dated February 9, 2017 are inaccurate. It is further argued that, by virtue of a memorandum issued by the Government of West Bengal, School Education Department dated September 20, 2001, a condition was imposed that, before placement is to be confirmed, the teachers, among other things, have to be within a prescribed age limit at the time of initial appointment. Learned Counsel for the petitioner, by placing reliance upon several

judgments of Coordinate Benches and a Division Bench of this Court, argues that it has been consistently held by this Court that a humane approach should be taken in all deserving cases to relax the age limit, particularly when no prejudice has been caused either to the institution or to the students of the States by reason of the petitioner being over-aged and, furthermore, when there is no Rule governing the field. The Relevant Recruitment Rules were considered and it was held that there is no indication therein that those would also be applicable to the teaching and non-teaching staff of DA-getting schools.

Despite service, none appears on behalf of the respondents at the time of hearing. Mr. Arka Kumar Nag, Advocate appeared on behalf of the respondents Authorities and sought for an adjournment on the ground of absence of his senior, which was refused since the petitioner's counsel had already argued at length when such prayer was made. However, when learned Counsel for the petitioner concludes, despite repeated calls, none appears for the respondents, either online or physically.

It is apparent from the cited judgment that the relaxation of the Rules regarding age limit for approval is a well-settled position of law. The grounds indicated in the impugned order of the District Inspector strictly adhered to the guidelines and qualifications and flouted the principle laid down repeatedly by this Court, whereby a humane approach ought to have been taken in the matter.

It is relevant to record the said judgments, which are cited by the petitioner, in this context:

- (i) Judgment dated April 2, 2003 passed by Girish Chandra Gupta (J.) (since retired), in WP No. 7498(w) of 2002;
- (ii) Judgment dated July 3, 2013 passed by Ashoke Kumar Dasadhikari (since retired) in WP No. 1101 of 2019 and by the Division Bench Hon'ble Justice Rakesh Tiwari (since retired) and the Hon'ble Justice Shivakant Prasad in APOT 28 of 2014 (GA 119 of 2014; WP 1101 of 2019)

In the present case, the humane approach is missing and the Rules have been enforced in a strict fashion, contrary to settle legal principle. In such view of the matter, WP No. 201 of 2017 is allowed, thereby setting aside the order dated February 9, 2017 passed vide memo no. "778/Law" by the District Inspector of Schools (S.E) Kolkata and directing the respondent no. 3 to reconsider the approval of the petitioners, in the light of the judgments cited by the petitioner, by adopting a humane approach and by considering whether the approval of the petitioner is, in any way, detrimental to public interest.

(SABYASACHI BHATTACHARYYA, J.)