

Item- 14-07-2021
23&24

WP.CT 8 of 2021

Navodaya Vidyalaya Samiti
Versus
Mrinmoy Konar & Ors.

And

sg Ct. 16

WP.CT 9 of 2021

Navodaya Vidyalaya Samiti
Versus
Satyasis Pradhan & Ors.

(Through Video Conference)

Mr. P. Bajpayee, Adv.

...for the petitioners

Mr. B.R. Das, Adv.

Mr. K.K. Ghosh, Adv.

...for the respondents

By consent of the parties, both the writ applications are taken up together for consideration as it involves common questions of law and fact.

The writ petitions are arising out of an order dated 10th February, 2020 passed by the learned Central Administrative Tribunal, Kolkata Bench in O.A. Nos. 350/1659/2016 and 350/890/2017. The original applicants before the Tribunal filed applications challenging the order of cancellation of the employment notification dated 24th March, 2012 as regards recruitment of 43 Regional Language Teachers in Bengali. The applicants were selected in written test held on 20-10-2013 and their names appeared in the list of 62 successful candidates in the written examination. They were called for interview dated 3rd April, 2014 and 4th April, 2014 which was subsequently postponed as per the code of conduct of General Election, 2014

and rescheduled on 22nd May, 2014 and 23rd May, 2014. The interview was further postponed by an order dated 13th May, 2014 but without assigning any reason. The aforesaid order stated that fresh dates and venue would be communicated very soon which, however, was not done, instead, a fresh notification dated 10th September, 2016 was issued to fill up the posts including those posts that were covered in the previous advertisement, pursuant to which, the applicants had undergone selection.

During the pendency of the original applications, the writ petitioners published a fresh notice dated 4th April, 2017 to the effect that the selection process, pursuant to the advertisement in the Employment News dated 24th – 30th March, 2012 and subsequent corrigendum advertised in the Employment News dated 28th April – 4th May, 2012, stood vitiated due to an administrative reason implying thereby the selection process as cancelled. This decision of the writ petitioners were put to challenge in the original applications.

The grievance of the original applicants before the learned Tribunal was that the decision to cancel was malafide, arbitrary and vitiated by lack of transparency and creditability. The original applicants have further contended that excepting one or two, they were working on contractual basis against the very same posts under the control of Regional Office and other States for years continuously after being selected each year through regular Selection Committees and serving the institution without any blemish.

Mr. Bajpayee, learned Counsel appearing on behalf of the writ petitioners submitted that due to Parliamentary election, the notification published in 2012 could not be given effect to and after the restriction was withdrawn while giving effect to the said notification the authorities concerned came across certain defects in the constitution of interview Board as a result whereof, the notification of 4th April, 2017 was issued by cancelling the earlier ones. It is further submitted that mere selection of the original applicants in the written test does not create any indefeasible right in favour of the original applicants to be considered for appointment.

Two facts emerged before us for consideration i.e. (i) whether the decision to cancel the earlier notification as late as 2017 was for the bonafide purpose; and (ii) whether the original applicants would be entitled for consideration in terms of the earlier notification.

43 vacancies were notified in 2012 from Patna region. The essential qualification for the post in question and the mode of selection was prescribed vide a Recruitment Notification of 2012. The selection is based on written examination which will consist of paper for both of miscellaneous categories of teachers and regional language teachers. Vide an order dated 10th February, 2014 62 candidates were shortlisted and the applicants figured therein. The result of the written examination for the post of Art Teacher, TGT (Bangla), Librarian, Music Teacher, PET (Male) and PET (Female) held on 20.10.2013 was made available for information to all concerned and interview for the above posts was likely to be held in the last week of March,

2014. On 20.02.2014 it was notified that “the result of the written examination for qualifying for interview to the post of Art Teacher, TGT (Bangla), Librarian, Music Teacher, PET (Female) and PET (Male) held on 20th October, 2013 has been published and made available on the website of Navodaya Vidyalaya Samiti, Regional Office, Patna vide letter No.6844 dated 10th February, 2014.

The interview for the above post was scheduled to be held on 3rd April, 2014 and 4th April, 2014. All the applicants received call letters. However, the interview was rescheduled on 22nd and 23rd May, 2014 in terms of the notice dated 13th March, 2014 allegedly on the ground that the code of conduct of general elections is coming into force with immediate effect. This was followed by further notice dated 13th May, 2014 stating that:-

“The interviews to the post of TGT (Bangla), PET (Male) and PET (Female) scheduled to be held on the date and venue mentioned below have been postponed. The fresh dates and venue will be communicated separately very soon.

S. No.	Post	Date of Interview	Interview time	Interview to be held as per the serial number of the result of qualifying examination published on 10.02.2014	Venue of interview
01	TGT (Bangla)	22.05.2014 23.05.2014	10AM to 5PM 10AM to 5 PM	S.No. 1 to 31 S.No.31 to 62	Navodaya Vidyalaya Samiti Regional Office, Boring Road, Opposite A.N. College, Patna- 800 013 (Bihar)

Fresh dates and venue however was not declared.

Long after initiation of the recruitment process the DOPT vide its OM dated 29th December, 2015 notified discontinuation of interview at junior level posts in the advertisement for further

vacancies. This was challenged in OA 1659 of 2016 in which by an order dated 7th December, 2016 in Miscellaneous Application taken out in the said proceedings being MA 567 of 2016 the following directions were issued by this Tribunal:

“M.A. No.350/00567/2016:

xxx xxx xxx

O.A. No.350/01659/2016:

xxx xxx xxx

2.we are of the view that no process of selection will continue with reference to subsequent advertisement till the next date of listing.

3. The respondents are granted 4 weeks time to file reply. List this matter before Registrar’s Court for completion of pleadings who will after completion of the same place the matter on board.

4. The interim order passed earlier is, accordingly, modified.”

While this matter was subjudice, without seeking leave of this Court, vide notice dated 04.04.2017 the respondents notified cancellation order vide the following:

NOTICE

This is for information to all concerned candidates who had participated in the selection process for recruitment to the post of Misc. category of teachers (Art, Librarian, PET (Female), PET (Male), Music and III Language (Bangla) through centralized advertisement in the Employment News dated 24-30 March, 2012 and subsequent corrigendum advertised in the Employment News dated 28th April -04 May, 2012 that the selection process stood vitiated due to administrative reasons. The examination fees collected with application forms will be refunded to the concerned candidates in due course.

-Sd-

Deputy Commissioner”

Section 19(4) of Administrative Tribunals Act enjoins as under:

“Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.”

The Tribunal after taking into consideration the aforesaid facts held that the cancellation of the selection vide a notice dated 4th April, 2017 while OA 1659/2016 was pending is in violation of the aforesaid provision and accordingly held such exercise was bad in law.

The decision to call for a fresh selection was not on the ground that there are irregularities in the preparation of the panel but for the reasons that: “(i) criteria prescribed for calling the candidates for interview in the ratio of 1:5 was not adhered to by the Regional Office, Patna, (ii) Due diligence was not shown in dispatch and receipt of the result of the written examination by the Regional Office, Patna, (iii) Also, appropriate constitution of Interview Board was not made by Regional Office, Patna as Deputy Commissioner and Assistant Commissioner (Admn) of the Regional Office were proposed as members in more than one Board at the same time same day which shows complete lack of transparency and, therefore, procedure followed in the recruitment drive could not be considered creditable and accordingly, decision was taken to cancel the recruitment process of Regional Language Teacher (Bengali) of Regional Office, Patna, and that, the recruitment process of Regional Office, Patna for the post of TGT (Bengali) initiated vide advertisement dated 24-30 March, 2012 stood cancelled on the recommendation of the Committee constituted to review the

recruitment process and the recruitment process of 2012 initiated by Regional Office, Patna and 2016 initiated at HQ Office are distinct and moreover, the essential education qualification is also different as qualifying CTET is one of the essential qualifications in the recruitment process 2016, which was not an essential qualification in recruitment process 2012 (T.G.T. Bengali) of Regional Office, Patna.”

Admittedly no interview was conducted pursuant to the employment notification of 2012. The alleged defects pointed out by the writ petitioners all relate to stages after the publication of the result of the written test in which the original applicants became successful. Such alleged defects also could not be proved by the writ petitioners by production of documentary evidence. The alleged procedural irregularities cannot in any way vitiate the selection process up to the stage of shortlisting of candidates who were successful in the written examination. On the other hand even if the argument of the writ petitioner is accepted that there were some procedural defects, steps ought to have been taken by the writ petitioner for holding interview after rectifying such procedural defects, if at all, instead of cancelling the entire selection process. The right of the successful candidates to appear at the interview for being considered for appointment could not have been denied for no fault of them.

We are in agreement with the conclusion arrived at by the Tribunal which are reflected in the following paragraphs:

“11. The issue before us is two fold:

- (i) Whether the cancellation of selection on the ground as mentioned in the cancellation notice or*

the reply, was per se justified.

- (ii) *Whether cancellation vide order dt. 4.4.2017, while 07.12.2016 order was in force, was proper.*

12. We note the following decision:

- (i) *E.Co.Rly. & Anr. Vs. Mahadev Appa Rao & Ors., reported in (2010) 7 SCC 678, in which, in a matter where “a departmental examination was conducted for filling up posts of Chief Typist, Twelve candidates appeared in the test and results were declared after about three weeks. Some of unsuccessful candidates represented that defective typewriting machines were made available to them and therefore they were placed at a disadvantaged position vis-à-vis successful candidates. Typewriting test was cancelled and in its place a fresh test was ordered to be conducted. However, before doing so the matter was not properly investigated as to whether there was any need to hold a fresh test”,*

The Hon’ble Apex Court framed the issue as to “whether it was permissible to the authorities to cancel the test without giving proper justification for it in the official records. The Administrative Tribunal held that cancellation of the test was justified. The High Court set aside the Tribunal’s order and held that selection should be made accordingly to the selection test previously held”.

The Hon’ble Apex Court held that “while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the

selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitle to is to ensure that the selection process was not allowed to be scuttled for malafide reasons or in an arbitrary manner".

13. We further note that the selection process was initiated in 2012 under erstwhile Recruitment Rules, CTET was not the prescribed criteria as per 2012 notification. Rules prescribing CTET as essential qualification was probably introduced subsequently. Hence, the respondents could not subsequently change the essential conditions prescribed in the notification of 2012 (or the rules of selection) to the prejudice of the applicants.

There was no complaint whatsoever from any corners, in regard to the conduct of the written test. As such, the written test result ought to have been proceeded with. The entire gamut of the problem lay with the interview process which was a curable one. A fresh interview in accordance with rules could have been ordered.

14. Having noticed that the defects, as pointed out supra, could be cured by holding a fresh interview in terms of the notification of 2012 if the situation so warranted, we are of the firm opinion that the decision to cancel the entire selection process was not a bona fide one. Further, cancellation of selection process ignoring the Interim Order that was still in force, was also illegal.

15. Accordingly, we quash the cancellation notice dated 04.04.2017 and dispose of the O.A. of with direction to proceed with the written test result/shortlist published on 10.02.2014 and hold interview in accordance with law, if

the same practice is still prevalent. The entire process be completed as expeditiously as possible, and preferably by 6 months. No costs.”

We affirm the aforesaid reasoning.

We have perused the order under challenge. The order has meticulously referred to all the earlier notifications and submission made on behalf of the parties including the contentions raised by the writ petitioners before the learned Tribunal in justification of the cancellation. The documents disclosed before the Tribunal and the materials placed before us do not show that the decision to recall the notification of 2012 in 2017 was bonafide. There has been no allegation against the original applicants for adopting any unfair means or to have manipulated their results. The fault lies with the writ petitioner.

The selection of the original applicants, on the basis of the written test, could not be shaken either before the learned Tribunal or before us. The original applicants have been serving the institution over a period of ten years with due diligence and it is unfortunate that they have been employed on a contractual basis although there was a requirement of permanent teachers in the institution. The country is suffering due to lack of urgency to appoint teachers. Moreover, teachers are engaged on contractual basis although there are need for permanent teachers. The education system is bound to collapse if we do not address this issue and show respect to the teachers. There is lack of purpose and willingness on the part of the appointing authorities to fill up all the vacancies on a permanent basis. Permanency in post creates confidence and enhances academic excellence of the

students as teachers, in such cases, are more devoted to their work as they do not suffer from uncertainty and insecurity. However, we are not deciding the issue whether the contractual appointment of the teachers should continue in the institution of the writ petitioners.

We find no justification for recalling the earlier notifications and the cancellation of the selection was not bona fide on the part of the writ petitioners. Having regard to the fact that the original applicants were selected on the basis of the written test and they are otherwise qualified, we are of the view that the decision to call for a fresh selection would deprive the original applicants for consideration to the posts advertised and such a decision cannot be sustained in law and in fact. The writ petitioner cannot act whimsically, arbitrarily and irrationally.

We, however, direct that all the original applicants excepting Sk. Mustak Ali who is no more interested for appointment shall be permitted to participate in the interview and the respondent authorities are directed to allow the original applicants excepting said Mustak Ali to participate in the interview along with other candidates who may have been called for interview in the meantime pursuant to the selection made in terms of the notification dated 10-9-2016. The entire process shall be completed as expeditiously as possible and preferably with four months from date.

With the above directions, the writ petitions are disposed of.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)