

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Abhijit Gangopadhyay

WPA 4008 of 2021

Payel Bag & Ors.

Versus

State of West Bengal & Ors.

For the petitioner(s)	:	Mr. Bikram Banerjee Mr. Sudipta Dasgupta Mr. Arka Nandi Mr. Saikat Sutradhar
For the respondent Board	:	Mr. L. K. Gupta, Sr. Advocate Mr. Subir Sanyal Mr. Ratul Biswas
For the NCTE	:	Mr. Sauvik Nandy
Heard on	:	28.07.2021, 12.08.2021, 31.08.2021, 01.09.2021 and 02.09.2021
Judgement on	:	03.09.2021

Abhijit Gangopadhyay, J.:

1. This writ application has been filed by 19 petitioners, inter alia, with a prayer for considering their offline application forms in respect of the selection process initiated by notification dated

December 23, 2020 by the West Bengal Board of Primary Education, being the respondent no. 2 herein, and to conduct interview of the petitioners and to take necessary consequential steps for appointing the petitioners, being trained candidates, after awarding appropriate marks for the wrong answers given in the answer key of Teachers' Eligibility Test 2014 in respect of six questions. Such appointments are to be given in the post of Assistant Teachers in primary school. On 28th July, 2021 it was observed by this court that the only question with which this court is concerned is whether the petitioners can be declared as persons who have been qualified in Teachers' Eligibility Test, 2014 (TET 2014, for short).

- 2.** The petitioners' case, as has been made out in the writ application is, they participated in TET 2014 but they were not successful. Subsequently they filed an application under Right to Information Act for OMR sheets, question papers and answer key which were supplied to them by the West Bengal Board of Primary Education ('the Board', for short).
- 3.** After scrutinising the question papers, answer keys and the OMR sheets, as was supplied to them, they found that the answers shown in the answer key in respect of some questions were wrong. Later it came to light that the Board committed error in respect of 6 (Six) questions and answers. The petitioners beside other questions in the question booklet attempted those

six questions. They did not get any marks in respect of those six questions and as a result, according to them, they were not qualified in TET 2014. Their submission before this court is that – had marks been awarded to them in respect of those wrong six questions and answers they would have been qualified in TET 2014.

- 4.** The petitioners thereafter filed writ applications for reassessment or re-evaluation of OMR sheets of TET 2014 and for awarding full marks against the wrong questions and answers. The writ petition numbers of the petitioners were, as has been supplied by the petitioners, including the date of order passed in those writ applications are as follows:

Sl. No.	Name of petitioners in	Previous case number	Order date
	WPA 4008 of 2021		
1.	Payel Bag	W.P. No. 12399(w) of 2018	November 26, 2018
2.	MD. Kamaruzzaman	W.P. No. 12398(w) of 2018	November 26, 2018
3.	Sachin Roy	W.P. No. 4123(w) of 2018	November 26, 2018
4.	Ezaz Ahamed	W.P. No. 4117(w) of 2018	November 26, 2018
5.	Sanatan Basak	W.P. No. 3701(w) of 2018	November 26, 2018
6.	Ajoy Pal	W.P. No. 23861(w) of 2017	November 26, 2018
7.	Prasanta Kumar Maity	W.P. No. 24628(w) of 2017	November 26, 2018
8.	Sayantani Bej	W.P. No. 24630(w) of 2017	November 26, 2018
9.	Serina Khatun	W.P. No. 417(w) of 2018	November 26, 2018
10.	Prasad Krishna Mahato	W.P. No. 28523(w) of 2017	October 3, 2018
11.	Amit Bauri	W.P. No. 2571(w) of 2018	March 7, 2019

12.	MD. Sahabuddin	W.P. No. 25774(w) of 2017	November 26, 2018
13.	MD. Jiaul Hoque	W.P. No. 4116(w) of 2018	November 26, 2018
14.	Manas Mandal	W.P. No. 4119(w) of 2018	November 26, 2018
15.	Ranjit Kumar Pramanik	W.P. No. 1496(w) of 2018	November 26, 2018
16.	Swadhin Kumar Pal	W.P. No. 23797(w) of 2017	November 26, 2018
17.	Sirina Khatun	W.P. No. 4487(w) of 2018	November 26, 2018
18.	Bapi Saha	W.P. No. 4120(w) of 2018	November 26, 2018
19.	Ganapati Mahata	W.P. No. 25773(w) of 2017	November 26, 2018

The petitioners have supplied the above chart also to the learned advocate for the respondents, Mr. Biswas today.

The judgment and order passed in one of such applications, being WP 12399(W) of 2018 is found from Annexure P-1 of the present writ application which starts at page 26. The petitioners have submitted that in respect of other writ applications, numbers and dates of order whereof have been given in the chart above, the judgments and orders were also similar.

5. Operative portion of the order of the court passed in WP 12399(W) of 2018 (vide Anneuxre P-1 at page 26 of the present writ application) is as follows:

“Accordingly I direct the Secretary, West Bengal Board of Primary Education to award marks to the petitioner/petitioners who attempted the wrong question/options in the key answers of JGB question booklet series. After awarding marks if it is

found that the petitioner/petitioners is/are otherwise eligible to give appointment to the post of Assistant Teacher/Teachers then the Secretary is further directed to take steps to give appointment to the petitioner/petitioners in accordance with law.”

This order passed in WP 12399(W) of 2018 has fully echoed another order passed by the said Hon’ble Judge in WP 23006 of 2017 on 27th July, 2018.

6. The petitioners have submitted that in the other writ applications filed by the writ petitioners herein (a chart whereof has been given above) the same order, including the operative part as has been quoted above, was passed.
7. The petitioners have submitted that as the six marks, as was directed by the Hon’ble Court in WP 12399(W) of 2018 and other writ applications given in the chart above, were not awarded to them despite court’s direction they remained unqualified in TET 2014.

As they were not given the said six marks, they were not allowed to fill up Form in the recruitment process for primary school teachers by the Board, they had to file another writ application, being WPA 45 of 2021 (vide Annexure P-4 of this writ application) so that they can fill up Form in the recruitment process. The court in WPA 45 of 2021 permitted the petitioners to file hardcopy of the applications in response to the

advertisement made by the Board dated 23.12.2020. The petitioners have alleged that such offline applications of the petitioners were not considered and they were not called in the interview as they were considered as unsuccessful candidates of TET 2014. The petitioners' case is that six marks against six wrong questions and answers in the answer key of TET 2014 were not awarded to them by the Board despite direction of the court (which has already been mentioned hereinabove) which if awarded to them, they would have been declared as qualified candidates of TET 2014.

8. Respondent nos. 2, 3 and 4 being the Board, its Secretary and its President have filed their affidavit in opposition. Paragraph no. 7(a) of the said affidavit is as under:

“With reference to paragraph 11 of the petition, I state that the contempt application filed by the writ petitioner Payel Bag is still pending before this Hon’ble Court for alleged violation and disobedience of the judgment and order dated November 26, 2018 passed by the Hon’ble Justice Samapti Chatterjee. I specifically state that the respondent Board has complied with the judgment and order dated 26th November, 2018 passed in W.P. No. 12399(W) of 2018 by awarding marks to the petitioner in respect of the options exercised by her when her options matched with the answer said to be corrected

by the Experts. Where the key answer provided by the Board was not found to be correct by the Expert, the marks awarded to the petitioners for the said questions were deducted as the petitioners themselves questioned the correctness of the key answers provided by the Board and having done so, they cannot ask for marks for the wrong key answer.”

(Emphasis mine)

When this statement is read side by side with the operative portion of the Court’s judgment and order dated 26.11.2018 in W.P. No. 12399 (W) of 2018 it became clear that the respondents have written the operative part of the judgment and order on its own and have completely ignored the Court’s order. By doing this a very serious illegality has been committed by the respondents, one of whom is the President of the Board.

- 9.** The respondents have submitted that the judgement delivered by this court – be it in WP 12399(W) of 2018 or in WP 23006(W) of 2017 or be it in similar judgments and orders in similar writ applications as have been given in the chart above (operative parts whereof are identical) - are to be read as a whole and the tenor of the judgement never says for awarding marks to the answers given by the candidates which are wrong.
- 10.** The respondents have further submitted that experts were engaged by the court for which both the parties to the litigation

agreed and the experts have stated that one question was wrong, one question was confusing and four options in respect of other four questions were wrong. Wrong in the sense that – out of four options against a question the Board in their answer key, for example, has shown option 'B' as correct answer but it was not so, option 'D' was the correct answer, according to the experts.

Therefore, the Board awarded marks to the different writ petitioners who only gave the correct answers so far as the experts' opinion are concerned and no marks were awarded to the candidates who gave wrong answers including the answer shown as correct by the Board, as the answer shown by the Board was also wrong and on the basis of such submission the respondent further submitted that if marks are to be awarded, as was directed by the court in WP 12399(W) of 2018 (which direction was similar to WP 23006(W) of 2017) and also in other matters, (like the matters mentioned in the chart above) then the candidates who selected the wrong option which was not the option declared as correct by the experts, has to be awarded and, therefore, the wrong committed by the petitioners would be given a premium and it was never the intention of the operative portion of the judgment and order of the Hon'ble Judge in the above writ applications.

- 11.** The respondents further submitted that the court in the above writ applications never directed to award marks to the candidates who gave wrong answers and that is why the Board is not required to award any marks to the candidates who selected the wrong options. However, as one question was wrong and one question was confusing, as has been decided by the experts, two marks were added to all such petitioners who attempted those six questions.
- 12.** The respondents have also submitted that the operative part of the judgement referred above is required to be interpreted in the manner keeping in mind the intention of the court as appears when it is read as a whole.
- 13.** On the basis of the above submissions the respondents have stated that the Board has not committed any mistake by not awarding six marks to all the candidates who attempted the questions.
- 14.** I have considered the rival submissions of the parties and the pleadings and the documents annexed thereto and the respondents were granted enough opportunity to show me the relevant paragraphs from which, when the judgement is to be read as a whole, the operative part of the judgement as has been quoted above, would take some other meaning.
- 15.** The respondents for showing what is real meaning of the operative portion of the order, drew my attention to paragraphs

5, 7, 8 and 9 of the said judgement which were the submissions made on behalf of the writ petitioners therein and paragraphs 10, 11 and 12 of the said judgement which were the submissions made on behalf of the Board, in respect of the judgement delivered by the court in WP 23006(W) of 2017 and other similar matters which were heard together. After careful reading of the judgement and after considering the further submission made before me by the learned senior counsel, Mr. Gupta, for the respondents that as there was an agreement between the parties as to appointment of an expert and as it was decided by the court (Vide paragraph 14 of the judgement) that the expert opinion “shall be binding” upon all the parties as agreed by the parties, the petitioners herein cannot get any advantage which has not been given by the expert.

16. After considering the above mentioned paragraphs of the said judgement which recorded elaborately the submissions made on behalf of the petitioners and also on behalf of the respondents therein including the court’s direction that the expert opinion would be binding upon all the parties, I have to make the following three observations:

- i) Upon reading of the judgement as a whole including the paragraphs as mentioned above I have not found anything wherefrom the operative portion of the judgement delivered by the Hon’ble Judge in the abovementioned

writ application can be read as something different comparing to what has been written therein, (i.e. written in paragraph 20 of WP 23006(W) of 2017 and paragraph 4 of W.P. No. 12399 (W) of 2018). So there cannot be any different reading by this court of the operative portion of the judgement delivered by the court in the above writ applications. Question of reading the said operative part differently does not arise also.

- ii) That expert's opinion would be final and binding upon the parties does not mean that the court is also bound by the opinion of the expert. In fact expert has not given any such opinion that there was no mistake by the Board in respect of six questions. The expert has said one question was wrong; one question was confusing; and the options given in respect of other four questions as correct, were actually incorrect.
- iii) The court while delivering the judgement and while recording the operative part considered every aspect of the matter including the expert's opinion and the pleadings and submissions of the parties and passed the judgement with the operative portion wherein it was clearly directed by the said Hon'ble Court that marks were to be awarded to the petitioner/petitioners who attempted the wrong

question/options in the key answers of JGB question booklet series.

In this respect the parties have given a clarification that the wrong committed by the Board was not restricted to only the JGB question booklet series. In the said TET 2014 conducted by the Board several question booklets were there and booklet JGB was one of them. But the questions in all those booklets were identical, only their arrangement were different for prevention of copying by the candidates from one booklet of one candidate in the examination hall by the other candidate and this system is followed in such examinations because if such copying is done the candidate who is copying would surely make a mistake.

- 17.** Therefore, I hold that the principle which has been declared by this court in the above writ applications for awarding marks to the petitioners is in respect of all who had different booklet series also (i.e. other than JGB Booklet series) as because the wrong committed was there in every booklet series. The operative part of the judgement delivered in those writ applications by the court which I should quote, taking the risk of repetition, is as follows:

“Accordingly I direct the the Secretary, West Bengal Board of Primary Education to award marks to the petitioner/petitioners who attempted the wrong question/options in the key answers of JGB question booklet series. After awarding marks if it is found that the petitioner/petitioners is/are otherwise eligible to give appointment to the post of Assistant Teacher/Teachers then the Secretary is further directed to take steps to give appointment to the petitioner/petitioners in accordance with law.”

(Emphasis mine)

- 18.** This direction of the Hon’ble Court in those writ applications is clear and unambiguous and there is absolutely no reason to interpret the words or the direction given in the said paragraph differently by any court or any person including the respondents.
- 19.** All courts which follow Anglo-Saxon Jurisprudence follow the principle that judges interpret statutes, they do not interpret judgements. They interpret words of statutes, their words are not to be interpreted as statutes. This is an age-old principle which is being followed by the courts and the submissions of the respondents for interpreting the direction of the court as directed to award marks to all candidates who attempted the wrong question/options in the key answers can never be

interpreted by any court or person. The respondents never made any effort for modification or clarification of the said operative part. The petitioners have submitted that the judgment and order of the court was challenged twice before the Supreme Court but the Supreme Court also did not interfere. Therefore, I am of the view that such submission of the respondents to see the operative part otherwise is not only highly irresponsible and illegal but also wholly meaningless.

- 20.** I find that the respondents are desperately trying to distort the clear and unambiguous operative portion of the said judgement and order passed by the said writ court for no reason at all, except harassing the candidates/petitioners who came before this court and pointed out the errors and wrongs committed by the respondents. I have found from the pleadings and submissions that the petitioners had to come to this court time and again from the year 2018 till date by filing writ applications one after another in this court just for getting the right thing done, by the respondents, which has not been done. I hold that the whole intention of the respondents is to harass the petitioners by not awarding them marks as was directed by the court and their intention is to show the door of the court to the candidates time and again who are dying for a service of a primary school teacher. In my view the respondents have committed a grave (I repeat grave) wrong to the petitioners by

not awarding them six marks. The respondents have shown the courage of fools to modify the clear and unambiguous order of the court and have instead followed their own which wholly shows total disrespect to the court which is a dangerous trend which can never be allowed. The respondents have done so and the President of the Board is a respondent here.

21. Therefore, I give the following directions to the respondents as I am allowing the writ application:

- a) By seven days from the date of communication of this order the respondents shall take steps for awarding six marks to the petitioners.
- b) If after awarding six marks to the petitioners the petitioners qualify in TET 2014, the respondent concerned shall issue them TET certificates by seven days thereafter;
- c) Offline applications filed by the petitioners (who will qualify in TET 2014 as indicated above) pursuant to the order passed by this court have to be considered and the TET 2014 qualified petitioners are to be called in the interview by two weeks thereafter. If the petitioners qualify in the interview, no further impediment shall be created for giving them appointment in the post of teachers in primary schools;

- d) As it is clear that the respondents have caused enough harassment to the petitioners and have made deliberate attempt to distort the order of the court passed in the above writ applications in respect of which even this court was invited to interpret the order which is not required at all I impose a cost of Rs. 20,000/- to be paid to each of the candidates individually as costs and thus, the total cost of this matter shall be Rs. 3,80,000/-. This cost is to be paid not from the Board's fund but by the person who is actually controlling the Board, i.e., the President of the Board. This cost is to be paid by the President of the Board from his own pocket and is to be sent to the petitioners by issuing cheques from his own bank account to the petitioners by two weeks from date of communication of the order.
- e) If the timeframe fixed above is not followed by the respondents which include the president of the Board, the Board shall be debarred from taking any step after expiry of the said period from giving appointment in any post of primary teachers from the date of expiry of the time period given till the directions as above are fully complied with.

22. Respondents should keep in mind that court's orders are not things with which they can play by taking different stance and

taking shelters under different legal principles existing or not existing. I say that the respondents have clearly failed to act fairly and, I say - with ill intention which is writ large in the actions of the respondents.

23. With the costs as aforesaid above directions, this writ application is allowed.

(Abjijit Gangopadhyay, J.)

Later:

After delivery of this judgement the learned advocate for the respondents has prayed for stay of the operation of the judgment and order and has also prayed for waiving the cost, which I have considered and have rejected.

(Abjijit Gangopadhyay, J.)