

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 3780 of 2015

**Sri. Dibya Jyoti Paul
Vs.
The State of West Bengal & Ors.**

With

WPA No. 3781 of 2015

**Sri. Rajib Kumar Saha
Vs.
The State of West Bengal & Ors.**

For the writ petitioners	:-	Mr. Amales Ray, Adv. Ms. Mousumi Bhowal, Adv.
For the State	:-	Mr. Supriyo Chattopadhyay, Adv. Mr. Sanatan Panja, Adv.
For the respondent nos. 4-7	:-	Dr. Sutanu Kumar Patra, Adv. Ms. Supriya Dubey Chakraborty, Adv.
Hearing concluded on	:-	04.03.2021
Judgment on	:-	09.04.2021

Amrita Sinha, J.:-

The issues in both the writ petitions being identical, they are taken up for consideration analogously and disposed of by this common judgment.

The petitioners are aggrieved by the order passed by the Chairman, West Bengal Regional School Service Commission, Northern Region, Malda whereby it was ordered that the counselling in temporary in-service teacher category, and the option exercised by them during

such counselling, be treated as cancelled. Ignoring their experience under in-service category they are not entitled to be counselled and recommended for any post until their rank (CMP), without the above benefit, turns up in the respective category (OBC-B) in Work Education (Pass) subject, within the validity period of the panel.

Dibya Jyoti Paul was a contractual teacher in Debinagar K.C.R. Vidyapith (HS) from 26th June, 2007 to 30th July, 2014. Rajib Kumar Saha was a contractual teacher in the Vocational Training Centre of Raiganj Mohanbati High School (HS) from 7th August, 2009 to 30th July, 2014.

They appeared in the 12th Regional Level Selection Test for appointment to the post of Assistant Teacher in recognized non-government aided Junior High Schools/High Schools/Higher Secondary Schools in West Bengal. They belong to the OBC-B category. They were directed to appear in the personality test whereat they furnished their experience certificate before the Personality Test Board.

The petitioners were treated as in-service candidates and were empanelled in the combined merit list to appear for counselling. The petitioners duly appeared in the counselling and exercised their option. They were selected as Assistant Teacher in a High School but the recommendation letter was not issued in their favour. The petitioners were constrained to approach the High Court by filing writ petitions being WP 13815 (W) of 2014 and WP 16395 (W) of 2014 respectively. The said writ petitions were disposed of by the Court whereby direction was passed to recommend the name of the petitioners for appointment

in the school, according to the declaration submitted by them in course of counselling within a specified period.

In compliance of the order passed by the Court recommendation letter was issued in their favour for appointment in a High School. The Headmaster and the Secretary of the school issued formal letter of appointment in favour of the petitioners and on the basis of the same the petitioners joined the school. The respective Headmasters thereafter sought for approval of the appointment of the petitioners. It is submitted that, thereafter, the impugned communication was received by the petitioners intimating them about the cancellation of their option exercised during counselling, and further intimating them that they were not entitled to be recommended for any post by treating them as in-service candidates.

The petitioners are aggrieved by the same.

According to the petitioners the respondent authority applied the wrong test to determine whether they will be entitled to get the benefit of being treated as in-service candidates or not.

In the application form and the information brief for the candidates appearing in the 12th Regional Level Selection Test, 2011, the marks distribution pattern is mentioned. Note 1 therein mentions that for experience in teaching 0.5 marks would be awarded for each complete year of continuous teaching experience up to maximum ceiling limit of 5 marks i.e. maximum 10 years (to be calculated on the date of application) of continuous teaching experience for the Assistant Teacher in Non-Government Aided Schools/Para Teacher/Contractual Teacher/Part Time Teacher/ Samprasarak/ Samprasarika/ Mukhya

Samprasarak/ Mukhya Samprasarika in MSK or Sikhya Mitra in Rabindra Mukta Vidyalaya or Special Educator, if his/her service is continuous in nature.

The marks on account of experience have not been awarded to the petitioners as, according to the respondents, the petitioners failed to furnish material in support of approval of their engagement as Contractual Teachers from the Competent Authority for claiming the benefit for in-service candidates.

For arriving at a conclusion that the petitioners were not entitled to claim the benefit as in-service candidates the respondents rely upon Schedule-II, Part-C, Note 3 of the West Bengal School Service Commission (Selection of persons for Appointment to the post of Teachers) Rules, 2007 [as amended].

Note 3 as referred to herein above reads as follows:

“Only those candidates serving as Part Time Teacher/Para Teacher/Contractual Teacher/Assistant Teacher duly approved by the Competent Authority (by whatever name known) in any Junior High/High School/Higher Secondary School recognized by the West Bengal Board of Secondary Education or equivalent or a Samprasarak/ Samprasarika in MSK or Sikhya Mitra in Rabindra Mukta Vidyalaya or a Special Educator under PBSSM will be eligible to get the facility as laid down in item no.(ii) of Section C of Part C of Schedule II of the said Rules, provided that the candidate has to continue his/her service till the date of application.

Marks, according to this clause, is to be calculated as per his/her experience in continuous service on the last date for his/her application

against the advertisement for the selection of Assistant Teacher by the School Service Commission of that respective year. Final recommendation will be issued by the concerned Regional School Service Commission subject to the verification from the District Inspector of Schools or DPO or DP or RDO or DNO or any other Competent Authority concerned. Any adverse report from the District Inspector of Schools (SE) concerned must be liable to the cancellation of his/her candidature at that point of time.”

According to the petitioners they are eligible for being treated as in-service candidates and entitled to be allotted marks on account of experience that they obtained during their service tenure as Contractual Teachers of the Vocational Training Centres attached to the affiliated schools.

The petitioners submit that the Commission acted in hot haste and passed the impugned order without waiting for the reply to the query made by them, with regard to the Competent Authority to approve the service of Contractual Teachers of Vocational Training Centres of different schools and as to whether the service of the petitioners as Contractual Teachers in the said Vocational Training Centre for the period mentioned therein have duly been approved by the Competent Authority.

The Assistant Secretary of the West Bengal Regional School Service Commission, Northern Region, Malda by a communication dated 30th October, 2014 sought information and clarification from the Principal and Nodal Officer, Nodal Centre, Uttar and Dakshin Dinajpur, Raiganj Polytechnic, Uttar Dinajpur with regard to the above issues. The

Principal and Nodal Officer, Nodal Centre of Uttar and Dakshin Dinajpur by a reply dated 23rd December, 2014 intimated the Commission that engagement of Contractual Teachers of vocational education is done by the Managing Committee/ Governing Body/ Principal/ Headmaster/ Headmistress/O-I-C or Administrator, as the case may be, as per GO No. 17-TET(Poly)/ET/O/5C-18/2006 dated 10th January, 2007.

The Commission was also informed that the Nodal Officer is not the approving authority for engagement/renewal of Contractual Teachers of Vocational Training Centre as per GO no. 78(2)-TET(Poly) dated 6th February, 2007.

The aforesaid Government Order dated 10th January, 2007 lays down the guidelines for selection of Contractual Teachers in connection with vocational education and training programme at the Institute affiliated with the West Bengal State Council of Vocational Education and Training, wherein it has been mentioned that appointment order should be issued by the Managing Committee/Governing Body/ Principal/Headmaster/Headmistress/I-O-C or Administrator, as the case may be.

The petitioners have annexed the copy of the appointment letters issued in their favour by the Headmasters of the respective schools in the post of Contractual Teachers for conducting vocational education and training course in 10+2 level.

The Headmaster and the Project Coordinator of the Raiganj Mohanbati High School (HS) by a communication dated 24th September, 2014 intimated the Principal and the Nodal Officer, Uttar and Dakshin Dinajpur, Raiganj Polytechnic that Rajib Kumar Saha served as a

Contractual Teacher, continuously and satisfactorily, at the Vocational Training Centre attached to the school from 7th August, 2009 to 30th July, 2014.

The Principal and the Nodal Officer, Nodal Centre, Uttar and Dakshin Dinajpur, Raiganj Polytechnic by communication dated 24th September, 2014 intimated the learned advocate for the petitioner that the Vocational Training Centre attached to the Raiganj Mohanbati High School (HS) falls within their jurisdiction and also confirmed that the petitioner served as contractual teacher of the Vocational Training Centre attached to the aforesaid school for the period as mentioned herein above.

Similarly, the Principal, Raiganj Polytechnic intimated that Dibya Jyoti Paul was a contractual teacher in Computer Fundamental and Programming in the Debinagar K.C.R. Vidyapith (HS), VTC from 26th June, 2007 to 30th July, 2014.

According to the petitioners, they fully satisfy the requisite conditions to be treated as in-service candidates, and strenuously submit, that the Commission committed grave error in not awarding the marks on account of the experience gathered by them in course of their service tenure as Contractual Teachers. It has further been argued that the Commission relied upon a memo which is no way relevant in case of Contractual Teachers.

The petitioners pray for setting aside the impugned order and for approval of their service giving credence to the experience certificate submitted by them.

The petitioners rely upon the following decisions in support of their case:

Atlas Cycle, (Haryana) Limited –vs- Kitab Singh reported in **(2013) 12 SCC 573** paragraph 15 wherein the Court held that if a finding of fact is based on no evidence, that would be recorded as an error of law which can be corrected by a writ of Certiorari.

According to the petitioners, the finding of the Commission that the experience certificate relied upon by them were not issued by the Competent Authority is based on no evidence and accordingly the said erroneous finding is liable to be set aside.

Uttamrao Shivdas Jankar –vs- Ranjitsinh Vijaysinh Mohite Patil reported in **(2009) 13 SCC 131** paragraph 32 wherein the Court held that the High Court in judicial review can enter into and decide if there is an error of fact touching the merit of the decision vis-à-vis the decision making process.

In the instant case the submission of the petitioners is that the respondent authority ought to have taken into consideration the information with regard to appropriate authority to approve the service of the petitioners. The case of the petitioners has been rejected without looking into a very vital piece of evidence, that is, the information forwarded with regard to the Competent Authority to approve the service of the petitioners.

State of Uttar Pradesh & Anr. –vs- Johri Mal reported in **(2004) 4 SCC 714** paragraph 30 wherein the Court held that in judicial review it is always open to the Court to review the evolution of facts by the decision maker.

Per contra, the learned advocate representing the West Bengal School Service Commission submits that the petitioners are not entitled to be treated as in-service candidates as they were not teachers in a regular school. The petitioners were teachers in Vocational Training Institutes attached to the School. It has further been submitted that the service of the petitioners was not continuous as required in terms of the recruitment notice. The petitioners being Contractual Teachers, each and every time their service was extended, there has been a break of couple of days and, accordingly, the service of the petitioners cannot be treated as continuous service.

It is the further contention of the respondents that the service of the petitioners as vocational teachers was not approved by the Competent Authority.

It has been submitted that for the purpose of getting the benefit of in-service candidates, a candidate ought to have been in continuous service in a school recognized by the West Bengal Council of Higher Secondary Education/West Bengal Board of Secondary Education or equivalent and their service ought to have been approved by the Competent Authority. The petitioners, being teachers of Vocational Training Centre, their service was within the domain of Technical Education and Training Department, Government of West Bengal and their remuneration were paid by the said Technical Education and Training Department. The Vocational Training Centres where the petitioners were teaching though were attached to the High School, but was never a part of the said High School. The service of the petitioners was never guided by the School Education Department.

The service of the petitioners not being approved as per notification nos. 1584-SE(S)/1A-01/09(Part) dated 21st December, 2011 and 1585-AC(S)/ES/S/IS-26/2010(Part) dated 21st December, 2011 of School Education department, the petitioners will not be entitled to apply as candidates in the 'specified category'.

The recommendation of the petitioners for engagement has been cancelled following the judgment dated 6th April, 2014 passed in the case of ***Rakesh Mondal –vs- State of West Bengal & Ors. (WP 10884 (W) of 2014)*** wherein the Court inter alia held that approval of engagement of Contractual Teachers by the Competent Authority was a pre-condition for claiming the benefit for the in-service candidates.

To arrive at a conclusion as to whether the experience certificate relied upon by the petitioners can be taken into consideration for treating the petitioners as in-service candidates or not, reference was made to the State Government in terms of Rule 21 of the West Bengal School Service Commission (Selection of persons for Appointment to the post of Teachers) Rules, 2007 and a clarification dated 1st December, 2014 has been given by the School Education Department (Secondary Branch). The Competent Authorities to issue the certificate of experience for recruitment under the Rule have been clearly mentioned in the clarificatory note of the School Education Department (Secondary Branch) dated 1st December, 2014. As the experience certificate of the petitioners was not issued by any of the Competent Authorities mentioned therein, accordingly the petitioners cannot be given the benefit of their experience.

The respondents submit that the petitioners do not have any legal right to be treated as candidates in the 'specified category' and accordingly the 0.5 marks for each complete year of continuous teaching experience, up to the maximum ceiling limit of 5 marks, have rightly not been awarded to them.

The respondents submit that the judgments relied upon by the petitioners will not come to their aid as the petitioners admittedly do not possess the requisite criteria to be treated as in-service candidates.

The respondents pray for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of both the parties.

What is to be decided in the instant writ petition is whether the reasons assigned for cancelling the recommendation of the petitioners is valid in the eye of law or not?

The recommendation made in favour of the petitioners were rejected on two grounds; (i) the experience certificate as temporary in-service teacher issued and submitted in favour of the petitioners have not been issued by any of the competent authority and (ii) the service of the petitioner have not been approved by the concerned competent authority.

Rajib Kumar Saha was serving as a contractual teacher for conducting vocational education and training course at 10+2 level in the affiliated Vocational Training Centre of Raiganj Mohanbati High School (HS).

Dibya Jyoti Paul was appointed as contractual teacher in Engineering and Technology discipline at 10+2 level of the Debinagar K.C.R Vidyapith (HS).

Service of both the teachers was subject to the conditions laid down by the Government Order applicable to affiliated Vocational Training Centres, in terms of the G.O. No. 179-TET(Poly) dated 22nd February, 2006, G.O. No. 17-TET(Poly) dated 10th January, 2007 and G.O. No. 78(2)-TET(Poly) dated 6th February, 2007.

The aforesaid Government Order dated 10th January, 2007 relates to constitution of Institute Level Selection Committee for selection of contractual teachers/ instructors/ trainers for Vocational Training Centres and the Government Order dated 6th February, 2007 relates to the admissibility of the number of post of contractual teachers/ contractual instructors to be appointed in the affiliated Vocational Training Centres.

Both the aforesaid Government Orders have been issued by the West Bengal Government, Department of Technical Education and Training.

By notification of the School Education Department, Secondary Branch dated 21st December, 2011 published in the Kolkata Gazette Extraordinary on 28th December, 2011 it was notified that the Governor was pleased to sanction additional posts of teachers for maintaining pupil-teacher ratio in schools as indicated therein. The posts are to be filled up as per qualification and procedure laid down in the relevant recruitment rules as amended from time to time.

It was further notified that during the recruitment of the newly created posts, maximum 10% of such posts shall be filled up by the Para-Teachers, Sikhya Bandhus, Sikhya Mitras, Sikhya Sebis, Sahayaks, Sahayikas, Samprasaraks, Samprasarikas under Sarba Sikhya Abhijan or in SSKs and MSKs run by Panchayat and Rural Development Department, PTTI trainees who have successfully completed one year bridge course conducted by the West Bengal Board of Primary Education with the approval of the National Council for Teachers' Education. The candidates under the specified category are required to fulfil the minimum qualification laid down under the relevant recruitment rules amended from time to time.

Note 1 of the aforesaid notification mentions that the claimant of the specified category shall furnish a certificate along with the application form for recruitment to be issued by the District Nodal Officer (SSK and MSK) in case of Sahayaks/Sahayikas and Samprasaraks/Samprasarikas and the District Project Officer, SSM in the case of Para-Teachers, Sikhya Bandhus, Sikhya Mitras, Sikhya Sebis, in case of ex-PTTI trainees the certificate issued by the West Bengal Board of Primary Education after successful completion of one year bridge course to be submitted.

The petitioners participated in the 12th Regional Level Selection Test (AT) and being successful in the said examination the name of the petitioners were empanelled and recommended for counselling. The petitioners claim benefit under the specified category. Though the petitioners were initially recommended being treated as in service candidates, but subsequently the recommendation stood cancelled

purportedly relying upon an order dated 6th April, 2014 passed by this Court in WP No. 10884 (W) of 2014 (Rakesh Mandal –vs- State of West Bengal & Ors.)

Schedule II, Part C of Rule 7 of the West Bengal School Service Commission (Selection of persons for Appointment to the post of Teachers) Rules, 2007 will be relevant for deciding the issue.

Rule 7 of the aforesaid Rules lays down the manner of selection of teacher.

Part C as mentioned herein above lays down the selection procedure for recruitment to the post of Assistant Teachers on the basis of written examination, evaluation of qualifications, experience of the candidates in teaching and personality tests to be conducted by the Commission on and from 12 RLST (AT) onwards in accordance with the provisions of the Right to Children to Free and Compulsory Education Act, 2009 read with the guidelines of the National Council for Teachers' Education.

Marks to be allotted and the manner in which the same is allotted is mentioned in Part C, Section C(ii). Part C mentions about experience in teaching- 0.5 marks for each complete year of continuous teaching experience up to the marks of ceiling limit of 5 marks i.e. maximum ten years of continuous teaching experience, will score 5 marks.

Note 3 appended to Part C mentions that only those candidates serving as Part Time Teacher /Para-Teacher /Contractual Teacher/ Assistant Teacher duly approved by the Competent Authority (by whatever name known) in any Junior High/ High School/ Higher Secondary School recognized by the West Bengal Council of Higher

Secondary Education/ West Bengal Board of Secondary Education or equivalent or a Samprasarak / Samprasarika / Mukhya Samprasarak / Mukhya Samprasarika in MSK or Sikhya Mitra in Rabindra Mukta Vidyalaya or a Special Educator under PBSSM will be eligible to get the facilities as laid down in item (ii) of Section C of Part C of Schedule II of the said Rules, provided that, the candidate has to continue his/her service till the date of application. The marks in this clause to be calculated as per his/her experience in continuous service on the date of his/her application against the advertisement for the selection of Assistant Teachers by the School Service Commission of that respective year. Final recommendation will be issued by the concerned Regional School Service Commission subject to the verification from the District Inspector of Schools or DPO or DP and RDO or DNO or any other Competent Authority concerned.

The School Service Commission initially treated the petitioners under the specified category and allotted the marks on account of their experience certificates submitted by them. Later on, relying upon the order passed by the Government on 6th May, 2016, as indicated herein above, the Commission was of the opinion that since the experience certificates as temporary in-service teacher issued and submitted in favour of the petitioner have not been issued by any of the Competent Authority and as the service of the petitioners has not been approved by the concerned Competent Authority, recommendation under 'specified category' was rejected.

It appears from records that the Headmaster of the Raiganj Mohanbati High School (HS) forwarded a report to the Assistant

Secretary, West Bengal Regional School Service Commission, Northern Region by a communicating letter dated 28th June, 2014 specifically mentioning that Rajib Saha was serving as a Contractual Teacher of Computer in the Vocational Training Centre attached to the institution since 7th August, 2009, continuously and satisfactorily. It was further mentioned that his monthly remuneration was credited to his account directly by the West Bengal State Council of Vocational Education and Training.

The experience certificate issued by the Headmaster of Debinagar K.C.R. Vidyapith (HS) dated 1st September, 2013 mentions that Dibya Jyoti Paul was serving in the institution as Contractual Teacher in the subject of Computer Fundamental and Programming from 26th June, 2007 and he served the school as Contractual Teacher for six years two months and five days. The experience certificates were counter signed by the District Inspector of Schools.

According to the respondents the aforesaid experience certificates relied upon by the petitioners, not being issued by the Competent Authority, cannot be taken into consideration. According to the respondents the competent authorities as stated in Section 3-Note 3 are the District Inspector of Schools, Additional District Inspector of Schools, Assistant Inspector of Schools, Sub-Inspector of Schools in respect of the contractual teachers.

The respondents rely upon the clarification issued by the School Education Department on 1st December, 2014 wherein it has been specifically mentioned that there will be no other authority competent to issue the certificate required for recruitment under the Rule. The

recommendation of the petitioners stood rejected as the experience certificates relied upon by them was not issued by the competent authority as mentioned in the clarificatory note dated 1st December, 2014.

The application form and the information brief for candidates appearing in the 12th Regional Level Selection Test, 2011 for appointment to the post of Assistant Teacher issued by the West Bengal School Service Commission mentions the salient points of the West Bengal School Service Commission Act, 1997 after amendment in 2008 and the West Bengal School Service Commission (Selection of persons for Appointment to the post of Teachers) Rules, 2007 after amendment in 2009.

The term '*School*' defined in the said Act means 'Junior High/ High School/ Higher Secondary School'.

'Teacher' as defined in the said Act means 'an Assistant Teacher or any other person holding a teaching post of school and recognized as such by the Board or the Council, as the case may be, and includes'.

Rajib Kumar Saha was serving as Contractual Teacher in the Vocational Training Centre which was attached to the Raiganj Mohanbati High School (HS) and Dibya Jyoti Paul was a Contractual Teacher in the Engineering and Technology discipline of the Debinagar K.C.R. Vidyapith (HS). Both the petitioners were teaching in the 10+2 level in vocational stream. They were paid remuneration directly by the West Bengal State Council of Vocational Education and Training.

The West Bengal Government enacted the West Bengal State Council of Vocational Education and Training Act, 2005 to establish a State Council of Vocational Education and Training in West Bengal in order to develop the standard of vocational education and training in West Bengal and to make it at par with the standard prevailing at all India level and to monitor the performance of the affiliated institutions.

‘Institution’ as defined in the aforesaid Act of 2005 means a polytechnic institute, industrial training institute, industrial training centre, school etc. in which instruction is provided for courses of study in vocational education and training leading to secondary and higher secondary courses of the Council.

The appointment letter of Rajib Saha mentions that he was appointed as a Contractual Teacher for conducting vocational education and training course at 10+2 level in the affiliated vocational training centre of Raiganj Mohanbati High School (HS) and the appointment letter of Dibya Jyoti Paul mentions that he was appointed as contractual teacher in engineering and technology discipline at 10+2 level of the school. Their service condition was however guided in accordance with the Government Orders issued by the Technical Education Department. As the service condition of both the teachers were governed by the Government Orders under the Technical Education and Training Department accordingly the Competent Authority to issue the experience certificate and the authority to approve the service of the petitioners will be the appropriate authority under the Technical Education and Training Department.

Schedule II, Part C, Note 3 of Rule 7 of the West Bengal School Service Commission (Selection of persons for appointment to the post of Teachers) Rules, 2007 specifies the candidates who would fall under the 'specified category' and who would be entitled to get the marks on account of their teaching experience.

Admittedly, the petitioners had the teaching experience but whether the said experience can be taken into consideration for the purpose of allotment of marks as in-service teachers is to be verified and decided.

Dibya Jyoti Paul was appointed by the school and he served in the school itself but his service condition was guided in accordance with the government orders laid down by the Department of Technical Education and Training. Rajib Kumar Saha was also appointed by the Headmaster of the high school but he was conducting vocational education and training course in the Vocational Training Centre affiliated to the school. Both the teachers taught the students of the vocational stream who were ultimately sent up to appear in the higher secondary examination conducted by the West Bengal Council of Higher Secondary Education. The West Bengal School Service Commission Act, 1997 amended in 2008 and the West Bengal School Service Commission (Selection of persons for Appointment to the post of Teachers) Rule, 2007 amended in 2009 define 'School' as Junior High/ High School/ Higher Secondary School. Both the petitioners were teachers in the Higher Secondary Schools and taught in the 10+2 level.

At first flush it may appear that Rajib Kumar Saha was appointed as contractual teacher in the Vocational Training Centre but not in the

school itself. The same is however not correct. The Vocational Training Centre attached to the school where Rajib taught is duly affiliated to the West Bengal State Council of Vocational Education and Training established under the West Bengal State Council of Vocational Education and Training Act, 2005. The term 'Teacher' as defined in the aforesaid Act means a person holding a teaching post of school.

Dibya Jyoti Paul held a teaching post in the school and Rajib Kumar Saha held a teaching post in the Vocational Training Centre attached to the school. The Centre is a part and parcel of the school. The Centre does not have any independent existence. The students of the Centre are the students of the school, who are sent up to appear in the Higher Secondary examination from the school. Accordingly, the petitioners are very much entitled to be treated as Contractual Teachers of the respective schools.

The Commission, in their affidavit in opposition, has raised an issue with regard to the break of service in the contractual period of the petitioners. It has been mentioned that for the break in service for 2/3 days after each six months, the service of the petitioners cannot be treated as continuous service. The aforesaid ground has not been relied upon or mentioned in the impugned letter of cancellation of recommendation and accordingly the respondents ought not to make out a new case or develop additional grounds in their affidavit in opposition as held by the Hon'ble Supreme Court in the matter of **Chief Election Commissioner –vs- M.S. Gill** reported in **AIR 1978 SC 851**.

In the impugned order of cancellation it has been categorically mentioned that the Commission was waiting for the reply of the letter

enquiring about the Competent Authority to approve the services of Contractual Teachers of vocational centres affiliated to different schools and whether the service of the teachers have been duly approved by the said Competent Authority, but instead of taking action on receipt of the reply, the Commission hastily applied the wrong test and relied upon the clarificatory memo issued by the Government of West Bengal.

The judgment of this Court in WP No.10884 (w) of 2014; Rakesh Mandal -vs- State of West Bengal & Ors. lays down that furnishing of material in support of approval of engagement from the Competent Authority is a pre-condition for claiming the benefit for in-service candidates. The petitioners herein duly submitted necessary documents in support of their engagement. The Commission ought to verify the said documents from the Competent Authority and thereafter take a call as to whether the petitioners will be entitled to be treated as in-service candidates or not. The memo relied upon by the Commission to cancel the recommendation of the petitioners is not at all applicable in their case and accordingly the impugned decision is erroneous and liable to be set aside.

In my opinion, the memo which has been relied upon has been misinterpreted and wrongly applied in case of the petitioners. The clarificatory memo is silent about the Competent Authority to approve the services of contractual teachers of vocational streams. The West Bengal School Service Commission Act, 1997 and the West Bengal School Service Commission (Selection of persons for Appointment to the post of Teachers) Rules, 2007 does not bar the contractual teachers of vocational streams to participate in the selection test for being

appointed as Assistant Teachers and accordingly by way of the clarificatory memo the contractual teachers of vocational streams cannot be debarred from getting the benefit for being treated as in-service candidates. The Commission ought not to take a myopic view and should extend similar benefit to all Contractual Teachers instead of segregating them as teachers of regular stream and teachers of vocational stream, more so, because the same set of students they teach are sent up for appearing in the Higher Secondary examination.

For example, the aforesaid Raiganj Mohanbati High School (HS) or Debinagar K.C.R. Vidyapith (HS) may have Contractual Teachers teaching the regular subjects in the plus two level, wherein Rajib Kumar Saha or Dibya Jyoti Paul teaches the vocational subjects. In view of the stand adopted by the Commission, the Contractual teachers teaching the regular subjects will be entitled to be treated as in-service candidates but the Contractual Teachers teaching vocational subjects will not be given the benefit for being treated as such, even though the same students which the two sets of teachers teach are sent up for the Higher Secondary examination. The fact that the teachers of the regular subjects were guided by the School Education department whereas those appointed to teach vocational subjects were guided by the Technical Education department ought not to be the determining factor as to whether the teachers will be treated as in-service candidates or not. The same is highly discriminatory and contrary to the principle of equality as enshrined under the Constitution of India.

Any Contractual Teacher, irrespective of the fact, whether teaching in the vocational stream or the regular course will be eligible

for being treated as in-service candidates provided they qualify the conditions as laid down in Schedule-II, Part-C, Note 3 of the West Bengal School Service Commission (Selection of persons for Appointment to the post of Teachers) Rules, 2007 [as amended]. The petitioners are very much eligible for competing in the selection test but whether or not they will be treated as candidates in the 'specified category', will depend upon the reply given by the Competent Authority to approve service of Contractual Teachers of vocational Streams, as to whether the service of the petitioners has been approved or not.

Schedule II, Part C, Note 3 of the West Bengal School Service Commission (Selection of persons for Appointment to the post of Teachers) Rules, 2007 clearly mentions that Contractual Teacher duly approved by the Competent Authority 'by whatever name known' in any Junior High/ high School/ Higher Secondary School recognised by the West Bengal Board of Secondary Education or equivalent will be eligible to get the facility as laid down in item No. (ii), Section C of Part C of Schedule II provided the candidate has to continue service till the date of application. The expression 'by whatever name known' as used in the Act, is an all-encompassing term, which will certainly include the Competent Authority in respect of the Contractual Teachers of the vocational streams attached to Higher Secondary Schools. If the service of the petitioners is approved by their Competent Authority, then the benefit earmarked for the in-service candidates has to be given to the petitioners. If the benefit can be extended to Samprasaraks/ samprasarikas etc. under the Panchayat and Rural Development Department and also to the Special Educators and Siksha Mitra in

Rabindra Mukta Vidyalaya, there can be no plausible reason for not extending the said benefit to the Contractual Teachers of vocational streams. In fact, the Competent Authority to approve the service of Siksha Mitras in Rabindra Mukta Vidyalaya has also not been specified in the clarificatory memo. The act of the Commission does not meet the test of reasonableness.

Accordingly, the instant writ applications are allowed. The impugned orders cancelling the recommendation of the petitioners are set aside. The West Bengal Regional School Service Commission, Northern Region is directed to verify the documents relied upon by the petitioners from the Competent Authority to approve service of Contractual Teachers of vocational Streams, and thereafter take a decision, within a period of eight weeks, as to whether the petitioners will be entitled to be treated as candidates under the 'specified category'. In the event the School Service Commission is of the opinion that the petitioners are to be treated as 'in-service' candidates, then necessary steps shall be taken by the Commission to act in furtherance of the recommendation letter already issued in their favour, at the earliest. The petitioners will however not be entitled to claim any salary/monetary benefit for the period they did not render any service to the school.

If the School Service Commission holds against the petitioners, then the reasons for not treating them as candidates in the 'specified category' shall be clearly mentioned and communicated to them. The respondent authorities are restrained from filling up the posts in question till four weeks after the decision, if any, is taken not to treat

the petitioners as candidates under the specified category is communicated to them in terms of the directions passed herein above.

WPA 3780 of 2015 and WPA 3781 of 2015 are disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)