

1, 2 & 4
04.03.2021
rrc

MAT 298 of 2021

with

CAN 1 of 2021

with

CAN 2 of 2021

(Deepa Nandi & Ors. Vs. Babusalam
Mondal & Ors.)

a n d

MAT 299 of 2021

with

CAN 1 of 2021

with

CAN 2 of 2021

(West Bengal Board of Primary
Education & Anr. Vs. Babusalam Mondal & Ors.)

a n d

MAT 305 of 2021

with

CAN 1 of 2021

with

CAN 2 of 2021

(Prativa Mondal Vs. Babusalam
Mondal & Ors.)

(Through Video Conference)

Mr. Prateep Chatterjee

Mr. Biswaroop Bhattacharya

Mr. Somesh Kumar Ghosh

.....For the appellants
(in MAT 305/2021)

Mr. L. K. Gupta

Mr Subir Sanyal

Mr. Ratul Biswas

.....For the appellants
(in MAT 299/2021)

Mr. Bikash Ranjan Bhattacharya

Mr. Partha Sarathi Bhattacharya

Mr. Dibyendu Chatterjee

Ms. Reshmi Ghosh

.....For the writ petitioners
(in all the appeals)

Mr. Kishore Datta, Ld. Adv. Gen.

Mr. Abhratosh Majumder, Ld. Addl. Adv. Gen.

Mr. Sayan Sinha

.....For the State

Mr. Sauvik Nandy

.....For N.C.T.E.

Mr. Bikash Ranjan Bhattacharya

Ms. Soma Chatterjee

Mr. Subhasish Banerjee

.....For the applicants
(applicants in CAN 2/2021
in MAT 299/2021)

Mr. Firdous Samim
Ms. Gopa Biswas

.....For the applicants/intervenors
 (in MAT 299/2021)

Mr. Soumya Majumdar
Mr. Arkadeb Biswas

.....For the applicants
 (in MAT 305/2021)

By consent of the parties the appeal and the applications including the application for leave to appeal by some of the successful candidates are taken up together and disposed of by this common order.

The appeal is arising out of an order dated 22nd February, 2021 by successful candidates whose names did appear in the merit list published by the West Bengal Board of Primary Education on 15th February, 2020.

The writ petitioners are aspirant candidates whose names alleged to have been omitted from the merit list published by the West Bengal Board of Primary Education.

The grievance of the writ petitioners before the learned single Judge was that the petitioners appeared in the interview conducted by the West Bengal Board of Primary Education after filling online applications but their names were not included in the merit list alleged to have been published by the appellant Board and those petitioners who have filed offline applications on the direction of this Court were not called for interview till publication of merit list.

Learned single Judge considered the definition of 'Panel' in Rule 2 sub-rule (1) of the West Bengal Primary

School Teachers Recruitment Rules, 2016 (hereinafter referred to as 2016 Rules) and after hearing the learned counsel for the parties was of the prima facie opinion that the Rule 2 of the 2016 Rules have not been followed in the notification published on 15th February, 2021. It was on such consideration that several notifications published on 15th February, 2021, 17th February, 2021 were stayed till the disposal of the writ petition. Moreover, the appointments and recruitment of 15284 candidates approximately in the posts of primary teachers as per post on the merit list published on 15th February, 2021 was also stayed.

Mr. L. K. Gupta, learned senior counsel appearing on behalf of the West Bengal Board of Primary Education has made the principle argument on behalf of all the appellants. Mr. Gupta has submitted that out of 26,000 candidates (approximately), 15284 candidates were selected on merits and it was on that process that a merit list was published by the Board on the website of the West Bengal Board of Primary Education. All 15284 candidates (approximately) were successfully appointed in respect of the schools barring few whose counseling is continuing. However, due to cyber hacking the merit list published by the Board was withdrawn and lodged complaints before the concerned police station. Thereafter, on a review the Board had kept 1216 posts vacant for offline candidates whose interview could not be completed out of those 1216 vacancies. Mr. Gupta has further submitted that 738

posts have been kept vacant in view of the dispute raised about awarding of 6 marks and the said issue is pending before a co-ordinate Bench in respect of TET-2014.

The selection process for TET-2014 was started recently. It appears that the Board prepared a panel based on merits and on the basis of the said merit list candidates have been selected. However, the dispute arose with regard to the preparation of the panel.

Mr. Bikash Ranjan Bhattacharya, learned senior counsel appearing on behalf of the writ petitioners have submitted that the Board is obliged to publish a merit list in terms of the modification dated 15th February, 2021 and to bring transparency in the matter and to make the ineligible candidates aware of the reason as to why they have been excluded from the merit list.

Mr. Advocate General, however, has countered this argument by submitting that there is no provision for publication of a panel based on the merit list and as such, the writ petitioners cannot claim publication of a merit list.

Considering the fact that almost after 8 years the Board has felt the need and necessity to fill up the vacancies and that steps have been taken by the Board for filling up those vacancies, we have to judge whether this process of selection which has attained finality in respect of almost 15284 candidates should be stayed. Whether the process of selection made by the Board was proper and in accordance with the Rules of 2016 are matter to be

decided on the basis of the affidavits and materials to be disclosed before the learned single Judge by the State authorities. The State authorities would be obliged to justify the preparation of the panel concerning of 15284 candidates selected on the basis of the merits upon due compliance of the extant rules of 2016. It seems that the Board is alive to the problems that are likely to be faced for filling up 1216 vacancies which are kept vacant. The writ petitioners are 139 in numbers. There is a need for appointment of teachers in the State. It has been delayed for long. Now, that a process has been initiated and is about to be completed. It would be unfair at this stage to stall the entire proceeding. Consideration for the grant of the interim order at the ad-interim stage are prima facie case, balance of convenience and irreparable prejudice. Even assuming that the writ petitioners might have made a prima facie case to go to try the Court needs to assess whether it is a just case to get an interim order of the nature passed in the instant proceeding namely stalling the entire selection process and the effect of such interim order on the respondent authorities and the persons who have participated in the selection process and might have been selected. This consideration in legal parlance is coined as comparative hardship or comparative mischief that are likely to result by granting and/or refusing an interim order. In other words, the balance of convenience in favour or refusing to pass interim order has to be assessed after considering the entire gamut of the

controversy. It has to be remembered that the Court is granting an interim relief. Unless the Court is cautious and careful in balancing the two conflicting and competing claims and equities are not properly adjusted and balance the hardship and/or mischief that are likely to cause by such ad interim order may cause an irreparable loss to the successful candidates who have participated in the recruitment process. At the same time the interest of the petitioners are also required to be protected then if they are ultimately successful in discharging their rights, they are entitled to be considered for selection and all attempts are rendered such proceeding infructuous or nugatory to be adequately protected. In other words, the Court must preserve their rights until it is finally determined. It seems the Board was alive to this issue and has kept 1216 posts vacant out of which 738 vacancies have been earmarked for candidates whose fate is to be determined by a co-ordinate Bench with regard to the dispute raised on awarding of 6 marks. If the awarding of 6 marks issue is decided in favour of 738 candidates, then they are entitled to be considered for selection. Similarly, 139 candidates who have prima facie established some rights in their favour before the learned single Judge with regard to consideration of those candidates under the Recruitment Rules, 2016 also required to be preserved.

It was on such consideration and taking a holistic view of the situation, we modify the interim order passed by the learned Single Judge. We allow the Board of West

Bengal Primary Education to fill up the vacancies for 15284 posts subject to the conditions mentioned hereafter.

Mr. Gupta has fairly submitted that all candidates out of 15284 may not have been appointed and the counselling process may be on for very few of such candidates. The appointments of 15284 candidates by the Board should contain a specific clause that this appointment shall not create any equity in their favour nor confer any vested right and their appointments should be governed by the result of the writ petition.

In the event the appointment letters have already been issued to some of the candidates, a corrigendum shall be issued within four weeks from date by the respective District Primary School Councils to such successful candidates by inserting the aforesaid direction of the Court so that all the writ petitioners are aware of their nature of appointment. This has to be strictly followed.

We are of the view that the publication of the merit list is well to bring transparency in the matter and as allegations of irregularities have been levelled against the Board, it is all of more necessary that the merit list should be published. In fact, the Board in the notification dated 15th February, 2021 has also uploaded the merit list in the website.

With regard to the publication of the merit list, we feel that the Board is bound by the notification dated 15th

February, 2021 where it has been stated that the merit list is published in the website mentioned in the said notification to publish such merit list. However, due to hacking of the website and on an allegation that records have been manipulated, we direct the Board to publish the merit list and display it at conspicuous place of the offices of the West Bengal Board of Primary Education, District Primary School Council and offices of the District Inspector of Schools (Primary Education) within two weeks from date.

The aforesaid direction is peremptory.

With the aforesaid directions, the appeal and all other connected applications are disposed of.

Re: CAN 1 of 2021 in MAT 305 of 2021

This is an application for leave to file appeal against the order dated 22nd February, 2021 passed by learned single Judge and the same is disposed of on the basis of the order passed in MAT 305 of 2021.

Re: CAN 2 of 2021 in MAT 299 of 2021

This is an application for addition of party.

The applicants have filed separate writ petitions and in view thereof, we do not find any reason to allow the application for addition of party. Moreover, the appeal has been disposed of by passing certain directions which we feel has also protected their interests.

Re: CAN 2 of 2021 in MAT 298 of 2021

The applicants have filed this application for leave to prefer an appeal as they are aggrieved by an impugned order. The applicants have stated that they have been selected and appointed and have joined their service but they have not been impleaded in the writ petitions. We allow this application for leave to prefer an appeal as the order impugned has affected their rights. Steps may be taken to implead them in the pending writ petition.

CAN 2 of 2021 in MAT 298 of 2021 is allowed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)