

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE Subrata Talukdar.

AND

THE HON'BLE JUSTICE Kesang Doma Bhutia.

MAT No.711 of 2021

IA No. CAN 1 of 2021

The West Bengal College Service Commission & Ors.

VS.

Sri Binay Krishna Pal & Ors.

With

MAT 713 of 2021

IA No. CAN 1 of 2021

The West Bengal College Service Commission & Ors.

-vs-

Smt. Priyanka Kundu & Ors.

MAT 723 of 2021

IA No. CAN 1 of 2021

The West Bengal College Service Commission & Ors.

-vs

Dr. Md. Zahir Abbas & Ors.

With

MAT 724 of 2021

IA No. CAN 1 of 2021

The West Bengal College Service Commission & Ors.

-vs

Sumita Mandal & Ors.

With

MAT 906 of 2021**IA No. CAN 1 of 2021****The West Bengal College Service Commission & Ors.****vs****Jaya Biswas @ Jaya Biswas Roy & Ors.**

For the Appellants	: Mr. Kishore Dutta, Sr. Advocate Mr. Pulak Ranjan Mandal Ms. Bandana Mandal Mr. Subhrangsu Panda
For the Proforma-respondent in all the appeals	: Mr. Achinta Kumar Banerjee Ms. Indumouli Banerjee
For the Resp. no. 1 in MAT 711 of 2021:	: Mr. Arabinda Chatterjee, Sr. Adv. Mr. Kajal Roy Mr. Biswarup Biswas
For the Resp. no. 1 in MAT 713 of 2021, MAT 724 of 2021 & MAT 906 of 2021.	: Mr. Kajal Roy Mr. Biswarup Biswas
For the Resp. no.1 & 2 in MAT 723 of 2021	: Mr. Sarwar Jahan Md. Ashraful Huq Mr.Maidul Islam Nayal
For the State in all the five appeals	: Mr. Swapan Kumar Dutta Mr. Shamim-ul-Bari
For the University Grants Commission	: Mr. Anil Kumar Gupta
Hearing concluded on	: 04.10.2021
Judgment on	: 15.11.2021

Kesang Doma Bhutia, J.-

This common judgment will decide the following appeals:-

- 1 MAT 711 of 2021, IACAN No. 1 of 2021 filed by Binay Krishna Pal (UR candidate for Geography),
- 2 Mat 713 of 2021, IA No. CAN 1 of 2021, filed by Smt Priyanka Kundu (UR candidate for Geography),
- 3 MAT 723 of 2021 IA CAN No. 1 of 2021 filed by Dr. Md. Zahir Abbas (OBC candidate for Geography),
- 4 MAT 724 of 2021 IA CAN No. 1 of 2021 filed by Sumita Mandal (S.C. candidate for Bengali) and
- 5 Mat 906 of 2021 IA No. CAN 1 of 2021 filed by Jaya Biswas Roy (SC candidate for Bengali).

In all the above Appeals common questions of facts and law are involved.

The facts giving rise to the above Appeals in gist are that the West Bengal College Service Commission (in short WBCSC) vide Advertisement No 1/18 dated 16.07.2018, invited applications for recruitment for the post of Assistant Professors in different subjects in different aided colleges in West Bengal.

Eligible Candidates were called for interview for selection. Based on academic profile and performance in interview of all the candidates, WBCSC declared provisional Merit List for the recruitment of Assistant

Professors in different subjects on 06.03.2020, but failed to disclose the detailed score sheet of the individual candidate on its website.

All Appellants/Writ Petitioners being unsuccessful candidates in the interview and not getting recommendation have filed the Writ Petition on 24.03.2021, challenging the recruitment process and alleged nepotism and unfair means being adopted in the selection process, compromising with the quality of the Higher Education in Bengal.

Candidates with meritorious academic background have been bypassed by awarding less marks in the interview by the members of the interview board and thereby they have prayed for issuance of Writ of Mandamus or any other appropriate Writ/Writs for quashing the entire selection process, panel dated 06.03.2020, recommendation, appointment and for initiating de-novo selection process. They have also prayed for restraining the Respondents from proceeding with the advertisement dated 16.07.2018.

After hearing the first four Writ Petitions on 07.07.2021, and Writ Petition filed by Jaya Biswas alias Roy on 12.08.2021, the Hon'ble Single Bench, has been pleased to direct WBCSC to file a report annexing the score sheet with the breakup of the marks in respect of all the empanelled candidates for the subject Geography and Bengali, for recruitment of Assistant Professors in Government Aided Colleges on the basis of the Advertisement No. 1 of 2018 by July

30, 2021 in the first four Writ Petitions, but no specific date has been fixed for submission of report by Commission in Petitioner Jaya Biswas's Case.

Being aggrieved by such order passed by the Hon'ble Single Bench in those Writ Applications, WBCSC has preferred the present five appeals and alleged that the Writ Petitioners being unsuccessful candidates and who have been supplied with their individual score sheet with breakup, have no right to seek information of third parties in respect of marks obtained by the candidates in the panel awarded by experts during interview.

They have also alleged that no prayer has been made by the Writ Petitioners in their petitions for disclosure of total marks with breakup scored by other empanelled candidates. The Hon'ble Single Bench committed wrong in passing the impugned order and that too without giving an opportunity to the Appellants to controvert the allegation through affidavit. They have also alleged that the Writ Petitions are not maintainable. Therefore, they have prayed for setting aside the impugned order.

Ld. Senior Counsel Mr. Kishore Dutta, appearing for the appellants submitted that the Hon'ble Single Bench has been pleased to pass the impugned order without taking into consideration the provisions of The Right to Information Act, 2005 and binding decisions of Hon'ble Supreme Court. He further contended that the

commission is not bound to disclose in public the information called for by the Hon'ble Single Bench in view of the Judgement passed by the Hon'ble Supreme Court in Union Public Service Commission etc. VS. Angesh Kumar and others as reported in (2018) 4 SCC 530. However, Ld. Counsel for the Appellants as per the direction of this Court has placed the report as directed by the Hon'ble Single Bench in a sealed cover on 04.10.2021.

On the other hand the Ld. Counsel for the Respondents submitted that the information/report called for the Hon'ble Single Bench has already been supplied to the Writ Petitioners by WBCSC, as per the direction of the Appellate Authority of WBCSC under the Right to Information Act, 2005 and copy of detailed score sheets of all Empaneled Candidates in WBCSC Recruitment in Geography (Advt. 1/2018) is annexed with the supplementary affidavit filed by Binay Krishna Paul/ Respondent No.1 of MAT 711 of 2021. Therefore, in the present situation Appeals are not maintainable and liable to be dismissed.

However, this court is required to examine whether the information called for by Hon'ble Single Bench is barred by The Right to Information Act, 2005 as alleged by Ld. Counsel for the Appellants?

The Apex Court in *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61, held that no obligation is cast upon a public authority to furnish information, disclosure of which

would endanger life and physical safety of any person. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship in mind. Personal information disclosure of which has no relation to any public activity or interest, or which would cause unwarranted invasion of privacy of individual can be withheld unless authority concerned is satisfied that larger public interest justifies disclosure of this information. Further held, expression "public interest" must be strictly construed so as to justify denial of statutory exemption. Moreover, public interest has to be construed while balancing right to privacy and right to information with purpose sought to be achieved and purpose that would be served in larger public interest. Furthermore, satisfaction has to be arrived at by authority objectively and consequences of such disclosure have to be weighed with regard to circumstances of the case

In *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497, it was held the information as to the names or particulars of the examiners/co-coordinators/scrutinizers/head examiners are exempted from disclosure under Section 8(1) (g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Those portions of the answer books which contain information

regarding the examiners/co-coordinators/scrutinizers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, under Section 10 of the RTI Act.

In *Kerala PSC v. State Information Commission*, (2016) 3 SCC 417, it was held if there exists a fiduciary relationship between examiner and PSC. disclosure of identity of examiners is in the least interest of the general public. It would rather give rise to dire consequences and would lead to public unrest and confusion.

In *UPSC Vs Angesh Kumar and others* (2018)4 SCC 530 as cited by Ld. Counsel for WBCSC, it was held that weighing the need for transparency and accountability on the one hand and requirement of confidentiality of sensitive information on the other hand, the information sought with regard to marks in Civil Service Exams, by unsuccessful candidates cannot be furnished mechanically. If public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation.

From the above decisions, it is seen that information seeking details of examiner or members of interview board, with whom examination conducting bodies /commission holds fiduciary relationship should not be disclosed for safety of their life and physical safety and they would be called to explain their assessment and later

they may decline to take the assignment or may play safe. Consequently mediocrity would prevail and integrity of the system would be compromised.

In the present case, the writ petitioners were needed not to appear in any written examination except interview. They were evaluated on the basis of their performance in interview, academic qualification, Research Papers, Teaching Experience and the result of them passing NET/JRF/SET. The Hon'ble Single Bench, by passing the impugned order, has called for a Report disclosing the total marks with breakup of all the empanelled candidates for appointment as Assistant Professors (Geography and Bengali) in Government-Aided Colleges in Bengal vide Advertisement dated 16.07.2018 and, not the details of the members of the interview board or personal information invading the privacy of individual empanelled candidates.

On the contrary decisions of the Appellate Authority under RTI Act to supply the Score Sheet of all empanelled candidates to the writ petitioners prior to the disposal of the present Appeal where the impugned order calling for the score sheet of all empanelled candidates with break-up is under challenge, itself proves that the Report called by the Hon'ble Single Judge is not an exempted information as provided under Section 8 of the RTI Act, 2005.

That apart, the preamble of the RTI Act is its soul clearly spelling out the aims and objectives of the Act to provide a practical regime of

the right to citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. The Constitution of India has established a Democratic Republic. Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed;

Therefore, this Court holds the impugned order passed by the Hon'ble Single Bench to be in Public interest to promote transparency and accountability in the functioning of the College Service Commission, which is a body responsible for conducting public examination.

Furthermore, the Appellant/ Commission having already disclosed the information called for by the Hon'ble Single Bench to the writ petitioners/unsuccessful candidates in pursuance of the direction of the Appellate Authority under the RTI Act and that too before the same was submitted in sealed cover by Ld. Counsel for the Commission/Appellants to this Court, renders the Appeals otiose.

Consequently all five appeals along with their connected applications stand dismissed, however without any order as to costs.

Since these analogous Appeals are heard on the points of law on

the basis of materials which are already on record, as such no affidavits are invited. Allegations made are deemed to be denied.

Let the matter return to the Hon'ble Single Bench.

Let the Report submitted by Learned Counsel for Appellants in sealed cover be now placed before the Hon'ble Single Bench.

MAT 711 of 2021 with IA No. CAN 1 of 2021, MAT 713 of 2021 with IA No. CAN 1 of 2021, MAT 723 of 2021 with IA No. CAN 1 of 2021, MAT 724 of 2021 with IA No. CAN 1 of 2021 and MAT 906 of 2021 with IA No. CAN 1 of 2021 stand thus **dismissed** on contest.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Subrata Talukdar, J.)

(Kesang Doma Bhutia, J.)

Later

Ld. Senior Counsel for the Appellants prays for Stay of the order.

Stay of the order prayed for is considered and refused.

(Subrata Talukdar, J.)

(Kesang Doma Bhutia, J.)