

12.01.2021
SL No.2-27
Court No.12
(sg/gc)

M.A.T. 619 of 2020

With

CAN 1 of 2020

With

CAN 2 of 2021

With

CAN 3 of 2021

With

CAN 4 of 2021

Sayed Sultan Ali

Versus

State of West Bengal

And

M.A.T. 623 of 2020

With

CAN 1 of 2020

Milan Mondal

Versus

**West Bengal Central School Service
Commission**

And

M.A.T. 624 of 2020

With

CAN 1 of 2020

Anuva Mal

Versus

**West Bengal Central School Service
Commission**

And

M.A.T. 626 of 2020

With

CAN 1 of 2020

Sanjit Das

Versus

**West Bengal Central School Service
Commission**

And

**M.A.T. 627 of 2020
With
CAN 1 of 2020**

**Lili Bera
Versus
West Bengal Central School Service
Commission**

And

**M.A.T. 628 of 2020
With
CAN 1 of 2020**

**Supriya Biswas
Versus
West Bengal Central School Service
Commission**

And

**M.A.T. 629 of 2020
With
CAN 1 of 2020**

**Abdus Sattermiah
Versus
West Bengal Central School Service
Commission**

And

**M.A.T. 630 of 2020
With
CAN 1 of 2020**

**Chhabi Biswas
Versus
West Bengal Central School Service
Commission**

And

M.A.T. 631 of 2020

With

CAN 1 of 2020

Sirajul Sarkar

Versus

**West Bengal Central School Service
Commission**

And

M.A.T. 632 of 2020

With

CAN 1 of 2020

Susmita Das

Versus

**West Bengal Central School Service
Commission**

And

M.A.T. 633 of 2020

With

CAN 1 of 2020

Jaba Mahato

Versus

**West Bengal Central School Service
Commission**

And

M.A.T. 635 of 2020

With

CAN 1 of 2020

Atashi Mondal

Versus

**West Bengal Central School Service
Commission**

And

M.A.T. 651 of 2020

With

CAN 1 of 2020

Sujala Das & Ors.

Versus

**West Bengal Central School Service
Commission & Ors.**

And

**M.A.T. 653 of 2020
With
CAN 1 of 2020**

**Ashrulekha Jantyya & Ors.
Versus
West Bengal Central School Service
Commission & Ors.**

And

**M.A.T. 654 of 2020
Partamita Naskar & Ors.
Versus
West Bengal Central School Service
Commission & Ors.**

And

**M.A.T. 655 of 2020
With
CAN 1 of 2020
Chhanda Mondal
Versus
West Bengal Central School Service
Commission & Ors.**

And

**M.A.T. 721 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020
Rajib Halder & Ors.
Versus
State of West Bengal**

And

M.A.T. 722 of 2020

**With
CAN 1 of 2020
With
CAN 2 of 2020**

**Md. Motulbbar Rahaman
Versus
State of West Bengal**

And

**M.A.T. 723 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020**

**Achinta Kumar Biswas & Ors.
Versus
State of West Bengal & Ors.**

And

**M.A.T. 724 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020**

**Amjed Ali & Ors.
Versus
State of West Bengal & Ors.**

And

**M.A.T. 777 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020**

**Amaresh Mandal & Ors.
Versus
State of West Bengal & Ors.**

And

**M.A.T. 778 of 2020
With**

**CAN 1 of 2020
With
CAN 2 of 2020**

**Avishikta Mukherjee & Ors.
Versus
State of West Bengal & Ors.**

And

**M.A.T. 779 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020**

**Kamalesh Mandal & Ors.
Versus
State of West Bengal & Ors.**

And

**M.A.T. 780 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020**

**Prabir Kumar Kayal & Ors.
Versus
State of West Bengal & Ors.**

And

**M.A.T. 781 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020**

**Bhupal Mandal
Versus
State of West Bengal & Ors.**

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Samim Ahammed,
Mr. Soumya Dasgupta,
Mr. T. Garg,
Mr. Arka Maiti,

Ms. Saloni Bhattacharya,
...for the appellant in item no.2

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Soumya Majumder,
Mr. Vivekananda Bose,
Ms. Deblina Chattaraj,
Mr. Akashdeep Mukherjee,
...for the appellants in item nos.19-22

Mr. Jayanta Mitra, Bar-At-Law,
Mr. Kamalesh Bhattacharya,
Mr. Ashim Kr. Halder,
Mr. Aninda Bhattacharya,
...for the appellant in MAT 623 or 2020

Ms. Subjra Nag,
Mr. Debabrata Sardar,
...for the appellant in MAT 619 of 2020
Mr. Shamit Sanyal,
Ms. Basabi Raichaudhury,
Mr. Bondhu Brata Bhula,
...for the appellants in item nos. 23-27

Mr. Kishore Datta, Ld. A.G.
Dr. Sutanu Kr. Patra,
Mr. K.K. Bandyopadhyay,
Mr. Supriya Dubey Chakraborty
...for WBCSSC
Mr. Chapales Bandyopadhyay,
M. Anandamayee Dutta,
...for the Secretary, WBCSSC

Mr. Bhaskar Prasad Vaisya,
Mr. Suman Dey,
...for the State in items no. 2 to 9.

Mr. Joyotosh Majumder, Ld. AGP
Ms. Kakali Samajpaty,
Mr. Raja Saha,
...for the State

Mr. Bhaskar Prasad Vaisya,
Mr. Ranjan Saha, Adv.
...for the State in item nos. 2, 11,
17 & 19.

By consent of the parties, the appeals and the applications arising out of a common order dated 26th August, 2020 involving common questions of law and fact are taken up together and disposed of by this common order. The controversy relates to the recruitment process to the post of Assistant Teachers initiated pursuant to the advertisement No.01/AT/11 dated 29th December, 2011 issued by the West Bengal School Service Commission (in short SSC). Before we advert to the submissions made by the learned Senior Counsels for the parties, it is necessary for us to refer to the Rules relating to such recruitment process in some detail for appreciation of the arguments advanced by the learned Counsel for the respective parties.

The recruitment process in the instant case is governed by the West Bengal School Service Commission (Selection to the Post of Teachers) Rules of 2007 (hereinafter referred to as the “Recruitment Rules”). The manner of selection of candidates under the said Rule, the process starts with an advertisement. The Rules recognize Regional Commission as constituted under clause (b) of sub-section (1) of Section 3 of the West Bengal School Service Commission Act, 1997 followed by the final and supreme authority, namely, the Central Commission which is constituted under clause (a) of sub-section (1) of Section 3 of the aforesaid Act. The selection of candidate and preparation of panel for the post of Assistant Teacher is governed by Rule 12 of the Recruitment Rules. The

relevant Rule and statute contemplate constitution of Regional Commissions at the regional level with the Central Commission at the top. The Secretary of every Regional Commission is the proper custodian of all form of applications territory wise and thereafter the Regional Commission would prepare a list of eligible candidates and forward a copy of the application forms received by them within their territorial jurisdiction to the Central Commission for the purpose of preparation of a computer generated database of all the candidates of the State. The selection for the said post contemplates three stages of evaluation, namely, written test which can be called as Teacher Eligibility Test (in short TET), Academic Qualification and Personality Test which means interview. After the evaluation of the answer sheet of the written examination, each Regional Commission shall prepare a subjectwise, mediumwise, categorywise and genderwise list of the candidate, who shall be qualified for personality test on the basis of the marks obtained by him in the written examination and evaluation of academic qualification. However, the number of qualified candidate to be called for the personality test shall not exceed 1.5 times the number of actual vacancies published at the time of declaration of the result of written examination. After preparation of the list of the qualified candidate; each Regional Commission shall call the candidates for personality test through registered post or speed post mentioning the date, time and venue of personality test. Thereafter each Regional

Commission shall, on the basis of the marks obtained in the written examination, evaluation of the academic qualification and marks obtained in the personality test, all added together, and on the basis of the guidelines issued by the Central Commission prepare –

(a) a panel of candidates found fit for appointment to the post of Assistant Teacher, strictly in order of merit and each such panel shall include names equal to the number of vacancies.

(b) a waiting list.

However, there may be separate mediumwise, subjectwise, categorywise or genderwise sets of panel or waiting list, as may be necessary, for Pass or Honours/Post-Graduate category of vacancies, as may be decided by the Central Commission from time to time. The Rule also contemplates that if more than one candidate obtain the same aggregate (total marks) the merit position of the candidates shall be determined according to their date of birth. Thereafter, the Central Commission would publish such panel and waiting list of candidates in the website of the Commission.

We have summarized Rule 12 of the Recruitment Rules above as the controversy relates to the method applied by the Commission in the preparation of the panel. For the purpose of completion of the discussion on the relevant Rules, we feel it necessary also to refer Rule 7 of the Recruitment Rules which, inter alia, provides that the Central Commission may, in its discretion, fix qualifying

marks, to be scored by the candidates, in written examination or in aggregate or in both and relax the qualifying marks on reasonable grounds for reasons to be recorded in writing.

The facts which remain undisputed are that the recruitment process was initiated on 29th December, 2011 against 6891 vacancies. The TET was conducted on 29th July, 2012, results whereof were published on the 1st December, 2012. The subject test was thereafter conducted and results thereof were published on 6th August, 2013 and interviews were conducted on or about 28th August, 2013. The Combined Merit List was published by the Regional Commission on 25th September, 2013 and counselling started thereafter on 1st October, 2013. The said counselling process continued till June-July, 2014. Apart from the Combined Merit List, another list was published on 24th February, 2014 along with a waiting list which the Central Commission claimed being the panel. The controversy arose in view of the contention being raised by the appellants before us that the Combined Merit List published on 25th September, 2013 is the panel and not the list published by School Service Commission on 24th February, 2014 along with a waiting list.

Before the learned Single Judge, the Commission in an affidavit-in-opposition affirmed on 25th March, 2020 to the supplementary-affidavit filed by the appellants on 19th February, 2020 stated, inter alia, that:-

“Paragraph 23(iv). *That due to compliance of the aforesaid rules and/or conditions, in most of the cases it was found that lesser number of candidates became eligible for being called for the Personality Test (interview) than the limit of 1.5 times of the final number of vacancies of the respective subject, category and Region. As such in those cases number of candidates called for Personality Test though remained less than the limit of 1.5 times of the final vacancies but in many cases, the same was even less than the actual number of final vacancies. As a result, all the vacancies could not be filled up in the said selection process due to shortage or unavailability of sufficient numbers of qualified candidates. For demonstrating the said fact, the following facts and data are required to be placed on record.*

- a) *Total no. of final vacancies – 46,401 (Eastern Region 5,617, Northern Region 17,437, Southern Region 7,683, Western Region 8,703, South-Eastern Region 6,961);*
- b) *Total no. of appellation received – 7,14,825;*
- c) *Total no. of valid application – 7,02,475;*
- d) *Total no. of candidates appeared in the examination – 5,70,911;*
- e) *Total no. of candidates qualified in Part-II (TET) – 1,73,638;*
- f) *Total no. of answer scripts of the subject test (Part-I) evaluated – 173,638;*
- g) *Total no. of candidates who obtained the qualifying marks in subject test (Part-I) – 36,602;*
- h) *Total no. of candidates called for Personality Test – 36,602;*
- i) *Total no. of candidates who appeared in the Personality Test – 36,140;*

(Eastern Region 4,638, Northern Region 11,580, Southern Region 6,250, Western Region 7,871, South-Eastern Region 5,801);

j) Total no. of candidates empanelled – 29,575;

u) It is stated that where there were lesser number of candidates available than the number of final vacancies, all the qualified candidates were called for counselling but where the number of qualified candidates were much more than the number of final vacancies, all of them could not be called for counselling.

vi) In this respect copies of Final Combined Merit List and list of candidates called for counselling for subject Computer Science (H/PG), medium-Bengali of Eastern Region of the Commission are annexed herewith and collectively marked to the letter “B”.

vii) That in the said selection process [12th RLST (AT), 2011], in strict compliance of the solemn order passed in W.P. No. 1019 (W) of 2013 (Tania Ghosh & Ors. – vs. – The State of West Bengal & Ors.), trained candidates were given preference, that is to say, first the trained candidates were called for counselling and recommended and only after the exhaustion of the list of selected trained candidates, non-trained candidates were called for counselling and recommended.

viii) In this respect copy of panel of subject Computer Science (H/PG), medium-Bengali of Eastern Region under General, Co-Ed category is annexed herewith and collectively marked to the letter “C”.

xi) I say that the said selection process was initiated by issuing and advertisement on 30.12.2011 and concluded with the expiry of the panels on 24.03.2015. The relevant dates are given below for proper adjudication of the case:

- a) *Date of advertisement with tentative vacancies - 30.12.2011*
- b) *Dates of holding examinations (TET and Subject Test) – 29.07.2012 and 02.09.2012;*
- c) *Date of publication of Part-II (TET) result- 01.02.2012;*
- d) *Date of publication of Part-I (Subject Test) result (i.e. interview list) - 06.08.2013;*
- e) *Date of publication of Combines Merit Lists - 25.09.2013;*
- f) *Date of publication of Final Merit Lists & Panels – 25.09.2013;*
- g) *Date of commencement of 1st phase or counselling – 01.10.2013;*
- h) *Date of expiry of panel – 24.03.2015”.*

Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel appearing with Mr. Soumya Majumdar, learned Counsel for some of the appellants make the prayer simply by referring to Rule 12(8) in arguing that once the Regional Commission prepared the merit list followed by counselling, the contention of the Commission that it had published a panel in exercise of its power of Rule 12 (10) is insignificant and the legitimate right of the petitioners to seek appointment on the basis of the merit list prepared under Rule 12(8) of the Recruitment Rules cannot be denied. The learned Senior Counsel has strenuously argued that it is elementary to the service jurisprudence that the Rules of the Commission cannot be changed or altered to the detriment of the candidate after initiation of the recruitment process. He has emphasized the fact that the

Commission before the Hon'ble Supreme Court in a proceeding where the Commission was asked to disclose the number of vacancies had clearly stated that 36,140 candidates are available for appointment. On the basis of such disclosure and averment made before the Hon'ble Supreme Court, the selection process cannot be abruptly terminated with the appointment of the 29,575 and it was incumbent upon the Commission to complete the entire process and consider the cases of the petitioners who would have been empanelled in the merit list as published on 25th September, 2013.

Mr. Jayanta Kumar Mitra, learned Senior Counsel appearing on behalf of some of the writ petitioners ably assisted by Mr. Kamallesh Bhattacharya, learned Counsel has submitted that there has been serious infraction of the Recruitment Rules and entire selection process was tainted or vitiated by favouritism and there is no justification for not treating Combined Merit List so prepared by the Regional Commission in terms of Rule 12(8) of the Recruitment Rules and fall back on Rule 12(10) in justification that the Combined Merit List is not the panel.

Mr. Mitra, learned Senior Counsel was extremely critical about the selection process by referring to the observations made by the Information Technology Audit Department of IOES of West Bengal School Service Commission, through Audit report (General & Social Sector), 2016-17, where certain aspersions have been made with regard to the process of selection. Mr. Mitra, learned

Senior Counsel relying upon the observation quoted in Paragraph 50 of the impugned order has submitted that once such authority had observed that on a number of instances, marks or examinations and academic scores had been manipulated. Ineligible candidates had been called for personality test and even got empanelled, there is every reason to suspect that justification put-forth by the Commission for not calling upon the rest of the empanelled candidates for interview and for not filling up the vacancies must be viewed with serious suspicion which may call for cancellation of the process.

The learned Advocate General appearing with Dr. Sutanu Patra has submitted that in the affidavit-in-opposition to the supplementary-affidavit, the stand of the SSC has been clearly indicated and in absence of any mala fide, alleged and/or proved in the manner as required in law, and in absence of a single instance of unfairness, vis-à-vis the writ petitioners/appellants being brought to the notice of the Court in spite of opportunities being given to the writ petitioners/appellants to point out at least one instance where there has been any infraction or that a candidate inferior in qualification or less qualified has been given preference, vis-à-vis the writ petitioners, the Court shall not make a roving enquiry or a fact finding enquiry to pinprick the selection process and which has been followed strictly in terms of Rule 12 of the Recruitment Rules in justification of selecting only 29,575 candidates out of 36,140 candidates.

The learned Advocate General has drawn our attention to Rule 7(2) of the Recruitment Rules to which we have made reference earlier giving the Central Commission discretion for fixing qualifying marks to be scored by the candidates in written examination or in aggregate or in both as the case may be.

The learned Single Judge while summarizing the disputes between the parties quite fairly and accurately, has recorded that on the basis of the discrepancies alleged in the writ petitions and in the supplementary affidavits, the Court directed the SSC to produce all the panels prepared by it under Rule 12 of 2007 Rules and the same were duly produced. However, none of the writ petitioners before the learned Single Judge were able to indicate any specific case of any individual who ought not to have been selected or empanelled or in the waiting list concerned. What we could gather from the submissions made by the aggrieved candidates is that, on the basis of the disclosure made before the Hon'ble Supreme Court that 36,140 candidates are available for appointment as teachers after filling up the vacancies of 29,575 candidates, their cases ought to have been considered.

The contention of the appellants before us as well as before the learned Single Judge was that the remaining vacancies could not be filled up beyond 29575 candidates was irrational, illegal and they have a right for appointment in view of the existences of the vacancies. The contention of the SSC, on the other hand, appears to be that the Central

Commission has fixed qualified marks and it is in the academic interest that the Commission did not fill up the remaining vacancies. The learned Advocate General appearing before us has also stated that it is a decision of an expert body not to fill up vacancies beyond 29575 and in the event of academic interest, the Court may not extend the said benefit to the remaining candidates. While it is true that a candidate empanelled, has no indefeasible right to get appointment to the post for which he has been selected, at the same time, there has to be some justification for the appointing authority not to fill up the vacancies when such vacancies have not been fully exhausted. In the instant case, we find that the SSC has given some justification for not filling up remaining vacancies as to the basis to fill up the vacancies is governed by Rule 7(2) of the Recruitment Rules and it is not for the Court to decide whether the views of the expert body not to fill up vacancies were proper or justified since the Court is not the selecting authority or the authority who shall fix the qualifying marks or the bench mark for that purpose. It has to be left to the discretion of the authorities concerned. However, such actions are not totally immuned for judicial review if it is actuated by malice or malafide or suffers from any illegality. As mentioned earlier the writ petitioners/appellants could not substantiate their claim on malafide or discrimination or illegality with regard to the candidates who were so far selected. The entire record was before them for inspection. All the candidates have the opportunity to scrutinize the list

and to find out if there have been any irregularity. The reliance upon the audit report does not advance the case of the petitioner as they have participated in the selection process and just because they are unsuccessful now at this stage they cannot rely upon such report to substantiate their claim. They are not contending before us that the selection of candidates who have been empanelled namely 29,575 has been illegally included or the list prepared is contrary to the Recruitment Rules.

In view of the aforesaid discussion, we are unable to accept the submissions made on behalf of the appellants. We do not find any reason to interfere with the order under appeal.

The appeals and the connected applications are, accordingly, stand dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)