

21 14.12.2022
Sc Ct. no.22

WPA 20429 OF 2022

Mijanur Islam

Vs.

The State of West Bengal & Ors.

Mr. Ali Ahsan Alamgir

Ms. Rabia Khatoon

Ms. Soma Mal.

....For the Petitioner

Mr. Bhaskar Prasad Vaisya

Mr. Ranjan Saha.

....For the State

Mr. Nadeem Sulaiman

....For the Madrasah
Service Commission

The petitioner was an aspirant and appeared in the **7th State Level Selection Test (SLST) for the post of Headmaster in Madrasah.** The **cut off marks** for the category for which the petitioner appeared in the examination was “**61**” as would be evident from page 33 to the writ petition.

Referring to **question no.9** at page 39 to the writ petition the petitioner submitted that all the four options under the answer-choise to question no.9, as provided in the answer script, were wrong. In this regard, the petitioner had relied upon the relevant extract from two reference books at pages 57 and 59 to the writ petition.

The question no. 9 along with its answer options from page 39 to the writ petition is quoted below :

“9. ‘Zero hour’ in State Legislative Assembly is

- (A) 1 P.M.**
- (B) time of sleep**
- (C) end of the day’s session**
- (D) expected time of verbal attack”**

In view of the above, by an order dated September 9, 2022 this Court directed the respondent no.5 to file a report in the form of an affidavit. After obtaining extension of time, finally, such report was filed in the form of an affidavit affirmed on September 26, 2022.

Subsequently on September 28, 2022, considering the nature of dispute involved relating to the answer options against the question no. 9, this Court thought it fit to obtain another report from a person who is conversant with and an expert on the procedure, viz. the **Secretary, West Bengal Legislative Assembly**. On November 28, 2022 a report was filed by the Secretary, Legislative Assembly, West Bengal dated **November 23, 2022**.

The entire content of the said report dated November 23, 2022 submitted by the Secretary, West Bengal Legislative Assembly, is quoted below:

“Report on the Query of the Hon’ble High Court at Calcutta in connection with the WPA 20429 of 2022 (Mijanur Islam Vs the State of West Bengal and Ors.)

In the West Bengal Legislative Assembly like in the Lok Sabha or the Rajya Sabha, Zero Hour is not regulated by any rule of the Rules of Procedure and Conduct of Business in that House.

In the West Bengal Legislative Assembly, 'Zero Hour' is the interregnum between the conclusion of the reference of Mention Cases under rule 351 of the Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly and taking up of the listed items of Government Business as per programme of Business of the House. The Assembly meets at 11.00 hours and after the Mention Case, the Zero Hours begins. There is no fixed time allotted for 'Zero Hour'.

A Hand Book for Members (Ninth Edition, 2021) brought out by West Bengal Legislative Assembly Secretariat states as follows :

"The members may, with the permission of the Speaker, also get an opportunity to raise a matter through another parliamentary device called Zero Hour Mention which is not covered under any rule of the Rules of the House. As per prevailing practice Zero Hour Mention generally starts before taking up the Government business fixed for the day"(Page-38)

Relevant extracts from the 'Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly'(Eleventh Edition, 2021) and that from the 'A Hand Book for Members' (Ninth Edition, 2021) are enclosed.

***OSD & EO Special Secretary,
West Bengal Legislative Assembly
(In charge of the Office of the Secretary,
West Bengal Legislative Assembly)"***

The said report dated November 23, 2022 submitted by the Secretary, West Bengal Legislative Assembly should receive the prime attention of this Court and had received the same, as the same was prepared by the concerned person who is an authority on the procedure of the West Bengal Legislative Assembly.

This Court is of the firm view that, such report dated November 23, 2022 prepared and submitted by the Secretary, West Bengal Legislative Assembly must prevail over any other contention with regard to the definition of ***“Zero Hour” for the West Bengal Legislative Assembly.***

On a careful scrutiny of the answer options against the ***question number 9 appearing at page 39 to the writ petition*** and from a meaningful reading of the said report submitted by the Secretary, West Bengal Legislative Assembly, this Court is of the considered opinion that, ***all the answer options mentioned against question no. 9 were wrong.***

Mr. Ali Ahsan Alamgir, learned counsel for the ***petitioner has specifically now submitted before this Court, on instruction, that the writ petitioner is not insisting for adjudication of any other claim in the writ petition. Accordingly, the adjudication on this writ petition is restricted only in respect of the question no. 9 as mentioned at page 39 to the writ petition and all other claims in the writ petition are not adjudicated upon since the writ petitioner had specifically relinquished those.***

Mr. Nadeem Sulaiman, learned counsel appearing for respondent nos. 3, 4 and 5 contended that, awarding of the total marks earmarked for the question no. 9 should be restricted for the writ petitioner only who had

applied before this Court and should not be *in rem* i.e. those whoever had attempted the said question no. 9. In support, Mr. Sulaiman had relied upon a decision of a coordinate Bench delivered in a series of writ petitions on identical issue, the first of which is in the matter of **WP 23006 (W) of 2017 : Prativa Mondal -vs.- The State of West Bengal & Ors.**

Mr. Sulaiman specifically relied upon paragraph 22 from the said judgment, i.e., **Prativa Mondal (supra)** which stated that “**Needless to mention this order is strictly restricted in respect of writ petitions mentioned as above**”.

This Court thereafter had been informed by Mr. Alamgir, learned counsel appearing for the writ petitioner and also by Mr. Sulaiman that a third individual, who was not a party to any of the said writ petitions in the series in which the said judgment was delivered, preferred an appeal before the Division Bench on the ground that whether the said judgment would apply *in rem* or *in personam*. The Division Bench dismissed the appeal principally on the ground that the said appellant was not a party in any of the writ petitions in that series and the said appellant was granted liberty to file a separate writ petition before the Single Bench. Being aggrieved thereby, a Special Leave Petition was preferred by the said appellant.

This Court had further been informed by learned counsel appearing for the parties that the issue was remanded back by the Hon'ble Supreme Court before the Division Bench. This Court was then informed that adjudication on the same issue is still pending before the Division Bench of this Court. The said appellant before the Division Bench was named as **Basir Ahmed** who subsequently filed a writ petition being **WPA 7809 of 2019**.

After considering the view in the matter of **Prativa Mondal (supra)**, this Court is of the view that, once the answer options are found to be totally wrong against one particular question then, the benefit should be granted to the candidates whoever had attempted the same question. When a particular writ petition is filed by an individual writ petitioner challenging the said wrong answer options against a particular question viz. the said question no.9 as in the instant case, the said challenge should be considered as a challenge thrown against the entire examination process, of course, limited to the said question no.9 only. If the benefit is only granted and restricted to such particular writ petitioner individually, as in the instant case, then the same will take away the right of all other candidates whoever had attempted the said particular question no.9, as each of such candidates who had attempted the said question no.9 float on the same water level and are similarly circumstanced in the

same field. It is also trite that in such a situation, the benefit must be granted to all the similarly placed candidates otherwise there shall be an elementary violation of principle of equality.

In view of the foregoing discussions and reasons, this Court is of the firm view that, ***all the aspirants/candidates who appeared in the 7th SLST attempted the said question no. 9 appearing at page 39 to the writ petition which is also quoted herein above shall be awarded the total number which was earmarked against the said question no.9.*** The merit list should accordingly be judged and all subsequent and consequential steps shall be taken by the relevant authorities as expeditiously as possible but positively within a reasonable period of time strictly in accordance with law.

Mr. Sulaiman, learned counsel for the respondent nos. respondent nos. 3, 4 and 5 prayed for stay of operation of this order. Such prayer for stay is considered and operation of this order shall remain stayed till ***December 21, 2022.***

The writ petition, ***WPA 20429 of 2022*** stands allowed on the above terms.

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

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)