

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

WPA 29606 of 2014

JhumJhum Halder & Ors.

-Vs.-

The State of West Bengal & Ors.

with

IA No. CAN 1 of 2014

(Old No. CAN 11636 of 2014)

with

IA No. CAN 2 of 2015

(Old No. CAN 2842 of 2015)

with

IA No. CAN 3 of 2015

(Old No. CAN 9016 of 2015)

with

IA No. CAN 4 of 2015

(Old No. CAN 9701 of 2015)

with

IA No. CAN 5 of 2015

(Old No. CAN 9953 of 2015)

with

IA No. CAN 6 of 2015

(Old No. CAN 9954 of 2015)

with

IA No. CAN 7 of 2016

(Old No. CAN 2249 of 2016)

with

IA No. CAN 8 of 2016

(Old No. CAN 5827 of 2016)

with

IA No. CAN 10 of 2017

(Old No. CAN 6271 of 2017)

WPA.29607 OF 2014

Jahar Mallick and Others

-Vs-

State of West Bengal & Ors.

With

I.A. No.CAN 1 of 2015

(Old No. CAN 9809 of 2015)

with

I.A. No.CAN 2 of 2015

(Old No.CAN 11724 of 2015)

with

I.A. No.CAN 3 of 2016

(Old No. CAN 3470 of 2016)

with

**I.A. No.CAN 4 of 2016
(Old No.CAN 10417 of 2016)**

with

**I.A. No. CAN 5 of 2016
(Old No.CAN 10911 of 2016)**

with

**I.A. No. CAN 6 of 2017
(Old No.CAN 1412 of 2017)**

with

**I.A. No. CAN 7 of 2017
(Old No.CAN 2112 of 2017)**

with

**I.A. No. CAN 8 of 2017
(Old No.CAN 6401 of 2017)**

with

**I.A. No. CAN 9 of 2020
(Old No.CAN 367 of 2020)**

with

**I.A. No. CAN 10 of 2020
(Old No.CAN 649 of 2020)**

with

I.A. No. CAN 11 of 2020

with

I.A. No. CAN 12 of 2021

with

I.A. No. CAN 13 of 2021

with

I.A. No. CAN 14 of 2021

with

I.A. No. CAN 15 of 2021

With

WPA NO. 18325 of 2012.

Mohitosh Jana and others

-Vs-

State of West Bengal & Ors.

with

IA No. CAN 5 of 2014

(Old No.CAN 722 of 2014)

IA No.CAN 9 of 2014

(Old No. CAN 7514 of 2014)

IA No. 10 of 2014

(Old No.CAN 7966 of 2014)

IA No.11 of 2014

(Old No.CAN 8761 of 2014)

IA No. 12 of 2014

(Old No.CAN 9323 of 2014)

With

WPA 1393 of 2019

Hayat Ali Mollick & Ors.

-Vs-

State of West Bengal & Ors.

With

WPA 19621 of 2019

Arindam Mandal and Others

-Vs-

State of West Bengal & Ors.

With

IA No. CAN 1 of 2020

(Old No. CAN 2907 of 2020)

with

IA No. CAN 2 of 2020

(Old No. CAN 2982 of 2020)

with

IA No. CAN 3 of 2020

(Old No. CAN 5337 of 2020)

with

IA No. CAN 4 of 2020

(Old No. CAN 5338 of 2020)

with

IA No. CAN 5 of 2020

(Old No. CAN 5342 of 2020)

with

IA No. CAN 6 of 2020

with

IA No. CAN 7 of 2020

with

IA No. CAN 8 of 2020

with

IA No. CAN 9 of 2020

with

**IA No. CAN 10 of 2020
with**

**IA No. CAN 11 of 2021
with**

**IA No. CAN 12 of 2021
with**

**IA No. CAN 13 of 2021
with**

**IA No. CAN 14 of 2021
with**

**IA No. CAN 15 of 2021
with**

**IA No. CAN 16 of 2021
with**

**IA No. CAN 17 of 2021
with**

**IA No. CAN 18 of 2021
with**

**IA No. CAN 19 of 2021
with**

**IA No. CAN 20 of 2021
with**

**IA No. CAN 21 of 2021
With**

WPA 20479 of 2019

Samir Purkait and Others.

-Vs-

The State of West Bengal & Ors.

with

WPA 20685 of 2019

Tarun Kumar Das & Ors.

-Vs-

State of West Bengal & Ors.

with

WPA 2159 of 2021

Shampa Mondal & others

-Vs-

State of West Bengal & Ors.

with

WPA 22532 of 2019

Aparna Purkait

-Vs-

State of West Bengal & Ors.

With

WPA 31563 of 2014

Himanshu Mondal & ors.

-Vs-

State of West Bengal & Ors.

with

IA No. CAN 1 of 2015

(Old No. CAN 186 of 2015)

with

IA No. CAN 2 of 2015

(Old No. CAN 11311 if 2015)

With

WPA 3985 of 2022

Jagannath Mistry & Ors.

-Vs.-

State of West Bengal & Ors.

with

WPA 3987 of 2022

Debasis Biswas & Ors.

-Vs.-

State of West Bengal & Ors.

with

WPA 5244 of 2019

Swadesh Mondal & Ors.

-Vs-

State of West Bengal & Ors.

with

WPA 9717 of 2020

Krishnendu Gharami and ors.

-Vs

State of West Bengal & Ors.

with

WPA 9869 of 2020

Amit Kumar Giri and others

-Vs-

State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv

Mr. Bikram Banerjee,

Mr. Sudipta Dasgupta,

Mr. Arka Nandi,

Mr. Arkadeb Biswas

Ms. Dipa Acharyya

Mr. Sutirtha Nayak

Mr. Salini Ghosh

Mr. Firdous Samim

Ms. Gopa Biswas

Ms. Mousumi Hazra

Mr. Mirnal Kanti Sardar.

.....For the Petitioners

in WPA 29606 of 2014 and WPA 29607 of 2014

Mr. L. K. Gupta, Sr. Advocate.

Mr. Subir Sanyal

Mr. Asit Baran Ghosh

Mr. Dwarika Nath Mukherjee,

Mr. Ratul Biswas,

Mr. Somesh Ghosh

Ms. S. Sarkar

..... For the Petitioners

in WPA 3985 of 2022, WPA 3987 of 2022

and WPA 5244 OF 2019.

Mr. Kamalesh Bhattacharyya,

Mr. Aninda Bhattacharyya

Mr. Swapan Kumar Pal

..... For the Petitioners

**in WPA 19621 of 2019, WPA 20479 of
2019, WPA 20685 of 2019 & WPA 22532 of
2019**

Mr. Pradip Kumar Ghosh

..... For the Petitioners in WPA 9717 of 2020.

Mr. Soumen Kumar Dutta,

Mr. Subhas Jana,

Ms. Arpita Kundu

..... For the Petitioners in

WPA 31563 of 2014.

Mr. Tapan Kumar Mukherjee, Sr. Advocate, AGP

Mr. Pinaki Dhole

Mr. Somnath Naskar

..... For the State Respondents.

Mr. Bhaskar Prasad Vaisya,

Mr. Gourav Das

..... For the Respondents

DPSC, South 24 Parganas.

Mr. Santanu Kumar Mitra,

Mr. Gangaprasad Mukherjee

..... For the State in WPA 9717 of 2020.

Heard on : 11.03.2022, 01.04.2022, 22.04.2022 & 29.04.2022

Judgment on : 10.11.2022

Krishna Rao, J.:

1. In WPA 19621 (W) of 2019 (Arindam Mandal and 639 Ors. –vs- State of West Bengal & Ors.), WPA No. 20479 (W) of 2019 (Samir Purkait & 150 Ors. –vs- State of West Bengal & Ors.), WPA 20685 (W) of 2019 (Tarun Kumar Das & 19 Ors. –vs- State of West Bengal & Ors.), WPA 22532 (W) of 2019 (Aparna Purkait –vs- State of West Bengal & Ors.), WPA 9717 of 2020 (Krishnendu Gharami & 4 Ors. –vs- State of West Bengal & Ors.), WPA 3985 of 2022 (Jagannath Mistry & 54 Ors. –vs- State of West Bengal & Ors.), WPA No. 5244 of 2019, WPA No. 9869 of 2020 and in WPA No. 2159 of 2021 the petitioners have prayed for an order for publication of the result of 2009 selection process wherein written test was completed followed by an interview and to disclose the panel of selected candidates against the notified vacancies and to issue an order of appointment in order of merit maintaining reservation quota after approval from the Competent Authority.

2. In WPA 29606 (W) of 2014 (Jhumjhum Halder & 2 Ors. –versus- State of West Bengal & Ors.), WPA 29607 (W) of 2014 (Jahar Mallick & 51 Ors. –vs- State of West Bengal & Ors.), and in WPA No. 31563 of 2014 (Himansu Mondal –vs- State of West Bengal & Others) the petitioners have prayed for declaration that the petitioners have the requisite qualification in terms of Right to Free and Compulsory Education Act, 2009 and NCTE for appointment as Primary

School Teacher, further declaration not to appoint any candidate who does not possess the minimum qualification as laid down by NCTE after March, 2014 and also prayed to consider the training qualification of the petitioners and to award marks in respect thereof in accordance with the West Bengal Primary School Teacher Recruitment Rule, 2001 as amended up to date.

3. In WPA No. 18325 of 2012 the petitioners have prayed for rescind and cancellation of the order dt. 21st June 2012 issued by the Government of West Bengal and prayed for completion of selection process as per the written test and interview completed in the year 2009.

4. Initially before filing of the aforementioned writ petitions, one Shri Partha Nandy and several Ors. have preferred a writ application being WP No. 27619 (W) of 2014 challenging the Government Order dt. 21.06.2012. In the said writ petition, an interim order was passed. The said interim order was carried in appeal by the DPSC, Howrah, which was registered as AST No. 419 of 2014. By an Order dt. 02.12.2014, the Hon'ble Division Bench had set aside the interim order and granted liberty to the DPSC, Howrah to proceed with the recruitment of Assistant Teachers in the Primary Schools within its jurisdiction. The Hon'ble Division Bench had passed the following order on 02.12.2014 :-

“Since none of the present writ petitioners were party to the earlier writ proceedings and/or in the appeal arising therefrom, and further since the issues which are sought to be raised in this present writ petition were neither raised in the earlier writ petition and/or in the appeal arising therefrom nor those issues were finally decided in the appeal being FMA No. 3116 of 2013, the maintainability of the present writ petition, in our considered view, cannot be questioned on the ground of bar of res

judicata. As such, we cannot hold that the Learned Trial Judge acted illegally in entertaining the said writ petition, but at the same time we cannot be oblivious of the facts that such Government Order dated June 21, 2012 which is now under challenge in the present writ petition was approved by the Division Bench of this Hon'ble Court while disposing of the appeal being FMA No. 3116 of 2013."

".....may be that the Government order dated 21 June 2012 was challenged from a different angle but still then when the Division Bench approved the said Government Order, resulting in its merger with the order of the Division Bench, we feel that under such circumstances, instead of filing a separate writ petition before the Writ Court, the Division Bench of this Court should have been approached with an application for review along with a prayer for the addition of the writ petitioner in the main proceeding so that the order passed by the Division Bench of this Hon'ble Court could have considered again. In the context of the challenge which the writ petitioners are now seeking to raise in the present writ petition in view of the judgment of the Hon'ble Supreme Court reported in 2005 (12) SCC 149 – National Housing Cooperative Society Ltd. v. State of Rajasthan & ors. Even without filing any review application, the order passed by the Division Bench of this Hon'ble Court approving the Government Order dated June 21, 2012 could have also been challenged before the Hon'ble Supreme Court after obtaining leave to challenge the said order in appeal as a party adversely affected by the said order."

"Filing of a separate writ petition before the Writ Court should be discouraged as in a case a different conclusion is arrived at by the Writ Court, a question will arise as to which one of those two decisions will be implemented. Two conflicting orders cannot operate in the same filed. As such, it is desirable that in such circumstances the aggrieved party either should approach the same Division Bench for review of its earlier order or prefer an appeal before the higher Forum. When the Division Bench as approved the Government Order dated June 21, 2012 and further when the said order is in operation, we feel that a Learned Single Judge of this Court ought not to have been invited to consider the legality of the Government Order dated June 21, 2012 which were approved by the Division Bench of this Hon'ble Court resulting in merger of the Government Order with the order of the Division Bench."

5. A writ petition being WPA 9739 (W) of 2012 has been presented by one Shri Atanu Chakraborty & two Ors. claiming that although they were empanelled and entitled to appoint to the post of Primary School Teacher for which process

has been commenced in the year 2009 by DPSC, Howrah and the panel has been formally published. The said writ petition was taken up for consideration on 22.06.2012 by Ld. Single Judge and at the time of hearing, the Government Order dt. 21.06.2012 was placed before the Learned Single Judge. The Ld. Single Judge noticing that the Government had found irregularity in the selection process and by cancelling the written test directed to conduct a fresh written examination on the basis of the Government Order dt. 21.06.2012, the Learned Single Judge had disposed of the writ petition with the observation that the petitioners would be at liberty to take steps in respect of the Government Order dt. 21.06.2012 in accordance with the law.

6. Being aggrieved with the Order dt. 22.06.2012, the petitioners namely Atanu Chakraborty and Others have preferred an appeal. By an Order dt. 09.06.2014, the Division Bench had dismissed the appeal holding that the State Government did not commit any illegality in cancelling the recruitment examination for the reason mentioned in the Government Order dt. 21.06.2012. The DPSC, Howrah was directed to complete the selection process in terms of the Order dt. 21.06.2012 within the time stipulated in the order of the Court.

7. The writ petition filed by Shri Partha Nandy and Others was dismissed on 28.11.2014 as the writ petitioners have not proceeded with the said writ petition.

8. In the year 2009, the District Primary School Council had initiated process for recruitment of Assistant Teachers in Primary Schools within their respective jurisdictions. The recruitment was to be regulated by the West Bengal Primary School Teachers Recruitment Rules, 2001 which provided the qualifications an aspirants for the post of Primary School Teacher was required to possess. Rule 6 of the said Rule provided the academic qualification that an aspirant must have passed school final examination and anyone possessing training qualification would be entitled to weightage as stipulated therein.

9. In terms of the said advertisement, written examinations were conducted by the DPSCs but ultimately, the process of preparations of panels could not be finalized because of serious flaws that were detected in the process of selection. When the authorities have noticed the same, a Government Order dt. 21.06.2012 was issued cancelling the process of selection initiated by each of the DPSCs and they were permitted to re-start the selection process by holding written examination of those aspirants who had taken part the earlier written examination that was conducted in connection with the process, which was commenced in 2009. The writ petitioners in WPA 29606 (W) of 2014 and WPA 29607 (W) of 2014 have challenged the said Government Order dt. 21.06.2012.

10. WPA 29606 (W) of 2014 and WPA 29607 (W) of 2014 were taken up for hearing along with other several writ applications being WPA 30744 (W) of 2014, WPA 30811 (W) of 2014, WPA 30510 (W) of 2014 and WPA 3184 (W) of

2014 by the Ld. Single Judge and on 24.12.2004, the Ld. Single Judge has passed the following order :

“28. Before parting, this Bench cannot help referring to one incident. It is indeed unfortunate that despite Mr. Gupta submitting before this Bench (in course of his incomplete argument) that the writ petitioners ought to be referred to an Hon’ble Division Bench in tune with judicial propriety, decorum and decency, and this Bench while in seisin of such issue AST 419 of 2014 was preferred against the order of this Bench dated November 28, 2014, the DPSC, Howrah did not bring such fact to the notice and knowledge of the Hon’ble Division Bench in course of its hearing the appeal. Be that as it may.

29. In course of hearing it has been brought to my notice that in W.P. 18325(W) of 2012 (Mohitosh Jana v. State of West Bengal & ors.), which was presented before a coordinate Bench on August 16, 2012 pertaining to the District Primary School Council, Malda (hereafter the DPSC, Malda), the Government order dated June 21, 2012 is under challenge and that in an appeal against an interim order dated August 24, 2012, an Hon’ble Division Bench has restrained the DPSC, Malda from offering appointments to the selected candidates in pursuance of the recruitment examination conducted in compliance with the said Government order until disposal of such writ petition by the learned single Judge.

30. Although in view of such order this Bench could have proceeded with hearing of these writ petitions but considering the observations made in the judgment and order dated December 2, 2014, these writ petitions are directed to be placed for further consideration before an Hon’ble Division Bench, upon obtaining orders from the Hon’ble the Chief Justice. It is further directed that the undertaking given on behalf of the DPSC, 24 Pgns. (S) shall continue until contra order is passed by the Hon’ble Division Bench. This Bench also directs the parties to file second set of pleadings.”

11. The Counsels appearing on behalf of the petitioners in WPA 29606 (W) of 2014, WPA 29607 (W) of 2014 and in WPA No. 31563 of 2014 submits that on 29.07.2011 as per the power conferred by Section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 and in pursuance to the Notification No. AS-750 (E) dt. 31.03.2010, the National Council of Teacher

Education, Government of India amended the Rules i.e. NCTE (Department of minimum qualifications for recruitment of teachers in schools, Regulation, 2001 [as amended from time to time]). The said amended rules which came into force with effect from 29.07.2011, the qualification of a primary school teacher has been clearly mentioned that the candidates will be eligible to make an application for the post of Primary School Teacher must have the qualification of senior secondary or its equivalent with at least 50 % marks in two years diploma in elementary education.

12. The Ld. Counsels for the petitioners further contended that in the said Regulation, it is also provided that where an appropriate Government of local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of notification, that appointment may be made in accordance with the NCTE (Department of minimum qualifications for recruitment of teachers in schools, Regulation, 2001 [as amended from time to time]).

13. It is further contended that in 2001 Regulation, the qualification of the eligible candidate for applying to the post of Primary School Teacher is mentioned as follows:-

“First schedule to the National Council for Teacher Education (Determination of Minimum Qualifications for recruitment of Teachers in Schools, Regulations 2001.

<i>LEVEL</i>	<i>MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS</i>
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1. Elementary	i. Senior Secondary School Certificate or Intermediate or its equivalent; and
2. Primary	ii. Diploma or certificate in basic teachers training of duration of not less than two years

14. Learned Counsels appearing for the petitioners in WPA 29606 of 2014, WPA 29607 of 2014 and in WPA No. 31563 of 2014 submits that the West Bengal Board of Primary Education in 10th Annual General Meeting held on 30.08.2011 adopted a decision that so far as the appointment of Primary Teachers are concerned, eligible candidates must possess Higher Secondary Education at least 50 % marks and two years Primary Teachers Training Certificate. It is further contended that the State Government has accepted the said amended Regulation of NCTE 2001 and issued a letter to all the authorities containing that the teachers who are already recruited are required to gather PTTI Training from an institution recognized by NCTE and those eligible candidates can make their application and the eligibility of the candidates for the post of Primary School Teacher must have been possessed the Higher Secondary Examination with at least 50 % marks and also the PTTI Training Certificate.

15. It is further contended that a notification was published by the State Government on 28.03.2012, that the teachers who have already been appointed after 3rd September, 2001 are required to obtain PTTI Training from an institution recognized by NCTE in terms of Regulation of 2001 up to 2015.

16. It is further contended that as per the report of the Committee it is found that there is a manipulation in the answer script, thereby due to that selection, many deserving candidates and meritorious candidates are being deprived to get the appointment. Accordingly, the Committee recommended for cancellation of the selection. On the basis of the report, a Government Order was issued on 21.06.2012 by the Government of West Bengal in exercise of power provided under Section 107 of the West Bengal Primary Education Act, 1993 which was conveyed by the Principal Secretary, Government of West Bengal. If the earlier process of selection of recruitment of primary school teachers is completed, large number of deserving candidates will be prejudiced as in that selection process it was directed the respective Councils to conduct the recruitment examination de novo providing that only eligible candidates who have applied for recruitment against the advertisement issued by the concerned DPSCs and had appeared in the written examination are allowed to appear in the de novo examination. It is further clarified that no other candidates except those who are allowed to earlier recruitment examination will be allowed in the de novo examination.

17. On 01.03.2014, an advertisement was published in pursuant to the order passed by this Court informing that the examination will be held on 23.03.2014 and it was also clarified that only those candidates who had participated on the basis of 2009 advertisement will be allowed to participate in the said examination. On completion of the written examination, the

respondents have published the result by virtue of the order passed by the Division Bench of this Court on the basis of the advertisement of 2009.

18. It is further contended that none of the parties in the appeal have drawn the attention of the Hon'ble Division Bench that the essential qualification for appointment on the basis of primary school teachers was substantially altered.

19. Counsel for the petitioners submits that the authority ought to have considered the NCTE Regulation in as much as the State respondents cannot bypass the Central Act, Rules and Regulations and submits that no appointment to any candidate may be given who have not possess the minimum qualification as laid down by NCTE as on 01.03.2014.

20. Learned Counsel for the all other writ petitioners except in WPA No 18325 of 2012 submits that as per 2001 Rule only Employment Exchange sponsored candidates were eligible for recruitment. The qualification in both the unamended Rules 2001 and amended Rules 2009 was Madhyamik pass. The State Government decided to hold the selection under 2009 amended Rules by making advertisement calling upon the candidates who fulfill the requisite qualification as per 2009 Rules. The 2006 sponsored candidates under 2001 Rules were also be directed to participate in the selection process along with non sponsored candidates as per 2009 Rules. All the petitioners participated in the selection process i.e. in the written test and interview in terms of 2009 Rules. After selection was over, no panel was published or declared by the School Authorities. All of a sudden of 21.06.2012, the Government had issued

an order by cancelling the selection process initialed by each of the DPSCs and they were permitted to re-start the selection process by holding written examination against those aspirants who have appeared in the earlier written examination that was conducted in connection with the process, which was commenced in the year 2009.

21. It is further contended that on 01.03.2014, a notice was published in the 'Bartaman' News Paper, South 24 Parganas the Chairman of the DPSC directed that a selection test will be held on 23.03.2014 in respect of those who participated in the selection process of 2009 and appeared in the written test. Accordingly, the writ petitioners have participated in the selection test. In spite of conducting the written test followed by interview no result of such selection test declared in spite of several requests made by the petitioners to the authorities.

22. The petitioners submit that some of the candidates being aggrieved with the Government Order dt. 21.06.2012 had preferred a writ application and in the said writ application, the said petitioners have obtained an interim order. Being aggrieved with the said interim order, an appeal was preferred being MAT 1697 of 2012 along with other appeals and the Division Bench of this Court has taken up for hearing of the said appeals on 18.09.2013 and after hearing of the parties, the Hon'ble Division Bench has disposed of the said appeals by passing the following order :-

“The learned Trial Court had in fact issued direction for filing affidavit. But the affidavits do not appear to have been exchanged because the present appeal was filed. Due to the aforesaid interim order passed by the learned Trial Court re-examination could not be held and the process of selection has been stalled, which is likely to affect the candidates adversely because they may in the meantime get age barred. Loss arising out of delay in appointment is another prejudice, which is likely to affect all the eligible candidates. The facts and circumstances in which the order dated 21st June, 2012 appears to have been passed by the State of West Bengal is alarming to say the least. The only point which found favour with the learned Trial Court was the authority of the State of West Bengal to pass the order dated 21st June, 2012 and the decision to hold re-examination of the candidates. Prima-facie it appears that in the facts of the case re-examination is the only way out. Whether the State had the competence or not to pass the order dated 21st June, 2012 may be debatable.

Considering the balance of convenience we are of the opinion that the re-examination should not have been stopped. Consequently the order under challenge is set aside. The authorities shall be at liberty to conduct the re-examination or fresh examination as the case may be as early as possible. They shall also be entitled to prepare the panel but the panel shall not be given effect to during the pendency of the writ petition without leave of Court. The parties shall be at liberty to file their affidavit-in-opposition to the pending writ petition within a week after the Puja vacation. Reply, if any, be filed within two weeks thereafter. It will be open to the parties to mention the writ petition for hearing before the appropriate Bench.

The learned Trial Court is requested to use expedition as far as possible and to dispose of the matter at an early date.”

23. The Counsel for the petitioners submits that as the Coordinate Bench of this Court has held that the authorities shall be at liberty to conduct the re-examination or fresh examination as the case may be as early as possible and they are also entitled to prepare the panel but the panel shall not be given effect during the pendency of the writ application without the leave of the Court and thus the order passed by Government dt. 21.06.2012 has been upheld and now the same cannot be challenged before this Court.

24. Counsel for the petitioners submits that in terms of the Government Order dt. 21.06.2012, written examination and interviews have been conducted and as such a direction is required to be passed upon the authorities for declaration of result and issuance of offer of appointment to the post of Primary School Teacher with respect of South 24 parganas District.

25. Learned Counsel for the petitioner further contended that the writ petitioner in WPA No. 29606 (w) of 2014 & WPA 29607 (w) of 2014 have participated in the same selection process in terms of recruitment notice of 2009 without any objection and after the Selection Process is over they cannot challenge the recruitment notice and selection process.

26. It is further contended that as regard other District i.e. North 24 Parganas, Howrah and Malda selection process is completed and as per the order passed by Hon'ble Single Judge in WPA No. 15128 of 2017 and connected writ petitioner order of appointments were also given.

27. Per contra, the Ld. Counsel for the respondent authorities submits that initially in the year 2009, a recruitment notice was published for appointment of Primary School Teacher and accordingly written examination was conducted. Subsequently, it was found that there was serious irregularities in the said examination and accordingly Government has taken a decision to cancel the said examination by exercising the power providing under Section 107 of the West Bengal Primary Education Act, 1973 and a decision has been taken to conduct fresh examination with the condition that only the eligible candidates

who had applied for recruitment against the advertisement issued by the authorities in the year 2009 had appeared in the examination will be allowed to appear in the said examination and no separate fee will be collected from the said candidates for appearing in the said examination. It was further clarified that no other candidates except those who were allowed to appear in the earlier written examination will be allowed to appear in the re-examination.

28. The decision of the Government dt. 21.06.2012 was challenged in the several writ petitions and the matter went up to the Division Bench of this Court and vide Order dt. 18.09.2013, the Division Bench of this Court allowed the authorities to conduct the re-examination or fresh examination as the case may be and also entitled to prepare panel but the panel shall not be given effect to with the leave of the Court.

29. It is further contended that the Government vide Notification dt. 08.09.2014 in exercise of power conferred under Section 106 (1) and 2 (a) read with Section 60 (1) (k) as amended the West Bengal Primary School Teachers Recruitment Rules, 2001 by invoking proviso to Rule 10 thereof to the effect that the panels in respect of the vacancies occurred prior to 31.03.2010 shall be made in accordance with Notification dt. 15.01.2002 as subsequently amended vide Notification dt. 24.07.2009.

30. It is further contended that in terms of the amended Rule 10 of the Recruitment Rule of 2001, the vacancy involved in the instant case occurred on

or before 2009 are to be fulfilled up by the Provisions of Recruitment Rule, 2001 as amended up to 2009.

31. As per order passed by the Division Bench of this Court, publications were made on 01.03.2014 calling upon the eligible candidates to appear in the written test schedule to be held on 23.03.2014 and oral test schedule be held on 18.09.2014 to 20.09.2014 and 22.09.2014 to 24.09.2014.

32. It is further contended that pursuant to the said written test as well as the interview panel was prepared and the same was duly approved by the Commissioner of the School Education, West Bengal. The Counsel for the respondents submits that as all the process have been completed and if, this Court will allow the respondents, the respondents will issue an order of offer of appointment to the selected candidates. The Counsel for the respondents submits that the writ petition filed by the petitioners in WPA 29606 (W) of 2014 and WPA 29607 of 2014 are required to be dismissed as the issue raised by the petitioners have been settled by Coordinate Bench of this Court.

33. Learned Counsel appearing for the respondents further submits that the petitioners in WPA No. 29606 of 2014 and WPA 29607 of 2014 have participated in the recruitment process without any objection and now they cannot challenge the recruitment process.

34. Heard, the Counsel for the respective parties perused the documents available on record. Admittedly, in the year 2009, a notification was issued to fill up the post of Primary School Teachers in the different Primary School

Councils in West Bengal. The said notification was never challenged by any of the parties and accordingly the respondents have conducted written examination. During the process of preparation of panel serious irregularities were detected in the said process of selection and accordingly vide Order dt. 21.06.2012, the said selection process was cancelled and each of the DPSCs have been permitted to re-start the selection process by holding written examination from those aspirants who had appeared in the earlier written examination in connection with the process, which commenced in 2009. Order dt. 21.06.2012 was initially challenged by one Shri Partha Nandy in WPA 27619 (W) of 2014. During the pendency of the writ application filed by Partha Nandy and Ors., another writ petition being WPA 31563 (W) of 2014 was filed and accordingly the Hon'ble Single Bench had passed an interim order restraining the DPSC for issuing offer of appointment to the empanelled candidates. The said order was carried in appeal and on 21.12.2014, the Division Bench of this Court had set aside the interim order and allowed DPSCs to proceed with the recruitment process.

35. The writ petitioners in WPA 29606 (W) of 2014 and WPA 29607 (W) of 2014 have challenged the Government Order dt. 21.06.2012 and also prayed for setting aside, rescind the advertisement dt. 30.08.2009 and 01.03.2014 and prayed for a direction upon the authorities to publish fresh advertisement in terms of Provision of the Right of Children to Free and Compulsory Education Act, 2009 for filling up the post of Primary School Teacher.

35. Admittedly, the recruitment process of 2009 was not cancelled. Only the written examination, initially held under the said recruitment process was cancelled and subsequently re-examination was directed to be held and the final panel list was also directed to be published vide GO dt. 21.06.2012.

37. The petitioners succeeded in the re-examination were called for interview. Panels were prepared and submitted by the Council in terms of GO No. 21.06.2012. It is true that mere selection does not give any vested right to the selected candidate to be appointed. But the employer must satisfy the Court as to why it did not resort to appoint the empanelled candidate. Just because discretion is vested in the authority, it does not mean that such discretion can be exercised arbitrarily.

38. The Appellate Court passed an interim direction on 18.09.2013 intercepting the recruitment process of 2009. The connected writ petitions were dismissed on 17.05.2017 and 23.06.2017. In the mean time, the recruitment rules were amended in the year 2012. The amendment of the rules was brought into effect on 13.08.2012 i.e. prior to conclusion of the re-written examination conducted in terms of GO dt. 21.06.2012.

39. In the case reported in (2008) 3 SCC 432 (Basic Education Board, U.P. vs. Upendra Rai & Ors.), the Hon'ble Supreme Court held that :

“19. A perusal of the NCTE Act shows that this Act was made to regulate the teachers’ training system and the teachers’ training institutes in the country. It may be mentioned that there are two types of educational institutions - (1) ordinary educational institutions like primary schools, high

schools, intermediate colleges and universities, and (2) teachers' training institutes. The NCTE Act only deals with the second category of institutions viz. teachers' training institutes. It has nothing to do with the ordinary educational institutions referred to above. Hence, the qualification for appointment as teacher in the ordinary educational institutions like the primary school, cannot be prescribed under the NCTE Act, and the essential qualifications are prescribed by the local Acts and Rules in each State. In U.P. the essential qualification for appointment as a primary school teacher in a junior basic school is prescribed by Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 which have been framed under the U.P. Basic Education Act, 1972. A person who does not have the qualification mentioned in Rule 8 of the aforesaid Rules cannot validly be appointed as an Assistant Master or Assistant Mistress in a junior basic school.

22. *It may be mentioned that the word "institution" is defined in Section 2(e) of the NCTE Act to mean an institution which offers courses or training in teachers' education. Thus, the NCTE Act does not deal with the ordinary educational institutions like primary schools, high schools, intermediate college or university. The word "institution" as defined in [Section 2\(2\)](#) [sic 2 (e)] only means teachers' training institutes and not the ordinary educational institutions. Hence, it is only the teachers' training institutions which have to seek grant of recognition or continuation of recognition from the Regional Committee. The ordinary educational institutions do not have to seek any such recognition or continuation under the NCTE Act. In fact, the NCTE Act does not relate to the ordinary educational institutions at all. We, therefore, fail to understand how it can be said that the NCTE Act overrides the U.P. Basic Education Act and Rules made thereunder. In fact, the two Acts operate in altogether two different fields. The NCTE Act deals with the teachers' training institutions while the U.P. Basic Education Act deals with the ordinary primary schools in U.P. and not any teachers' training institute. The argument of learned counsel for the respondent is thus wholly misconceived.*

23. *The impugned judgment also proceeds with the same fallacy. The Division Bench, in our opinion, wrongly relied upon [Article 254](#) of the Constitution. [Article 254](#), as stated above, has no application in this case at all because the two Acts operate in two different fields. In our opinion, the Division Bench, therefore, wrongly held that the respondent (the appellant before the Division Bench) had the requisite qualification for being appointed as an Assistant Master in a Junior Basic School.*

24. *In our opinion the Division Bench also erred in holding that there was violation of [Article 14](#) of the Constitution. We see no violation of [Article 14](#) by the impugned circular or the advertisement dated 28-4-1999. This aspect of the matter has been discussed in detail in the judgment of the learned Single Judge of the High Court dated 19-12-1997 in Writ Petition no.33856 of 1997, [Hira Mani v. District Basic Shiksha Adhikari](#) connected with Writ Petition No.32184 of 1997, [Kiran Kumari v. State of U.P.](#) and we*

see no reason to take a contrary view. Hence, the view taken by the Division Bench, in our opinion, is not correct.”

40. In the case reported in (2007) 11 SCC 605 (Arjun Singh Rathore & Ors. vs. B. N. Chaturvedi & Ors.) held that :

“5. Mr. Calla, the learned Senior Counsel for the appellants has argued that the matter was fully covered by the judgment of this Court in [State of Rajasthan vs. R.Dayal](#) wherein it had been held that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in [Y.V. Rangaiah v. J.Sreenivasa Rao](#) it was opined as under:

“8.... This Court has specifically laid (sic) that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose.”

6. The above legal position has not been seriously disputed by the learned counsel for Respondents 6 and 7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly.”

41. In the case reported in 2001 (2) CLJ 558 (Snehansu Jas vs. State of West Bengal & Ors.) held that :

“22. In view of the law laid down by the Apex Court and Division Bench of this Court, we are of the opinion that the selection process will commence only when the candidates are invited to appear on the basis of names sent by the Employment Exchange on requisition by the managing committee for recruitment of the teachers and if that stage has not reached then it will not amount to commencement of the selection process. The selection process is deemed to have commenced if the posts have been

advertised and candidates have been called for interview and meanwhile if the Rules are amended then that selection process should be allowed to continue without being affected by the amendment of the Rules unless the Acts or Rules have been amended with a retrospective effect. Thus, in this view of the matter, the view taken by the learned Single Judge in the case of Kanaidighi Deshapran Vidyapith v. State of West Bengal (supra); and Salauddin Miah v. State of West Bengal (supra), are no more good law."

42. Rule 10 and 13 of 2001 Rules do not speak any provisional approval and the said phrase has not been defined under the said Rules. The rigorous of the said rules are applicable in normal circumstances and not in the present cases, where due to detection of serious irregularities, the authority taken a conscious decision vide GO dt. 21.06.2012 to cancel the first written examination and to conduct de novo written examinations. 2001 Rules as it existed in 2009, training qualification was not an essential qualification. The petitioners came to know that panels were submitted by the Councils, however, no panel, as defined under the amended rules was published. Litigation pertaining to the recruitment process of 2009 has commenced in the year 2012 and is yet to attain finality. In the midst a period of about 9 years has elapsed. In such circumstances, Court is required to step in and to issue necessary direction towards disclosure of the names of the candidates who have been empanelled otherwise the said names could continue to remain in the secret file of the authority to which the petitioners have no access.

43. In the GO dt. 21.06.2012, there was a categorical direction towards publication of the panel after conducting the re-examination, within 90 days

from the date of issuance of the Government Order. The validity of the Government Order is upheld by Coordinate Bench of this Court and thus the respondents cannot evade their obligation to publish the panels.

44. As regard the contention made by the petitioners in WPA No. 29606 (w) of 2014 (Jhumjhum Halder & 2 Ors. Vs. State of West Bengal & Ors.) ,in WPA No. 29607 (w) of 2014 (Jahar Mallick & 51 Ors. Vs. State of West Bengal & Ors.), and in WPA No. 31563 of 2014 this Court is of the view that the recruitment process was started in the year 2009 in terms of the Recruitment Rule 2001 which was existed in the year 2009 and when the process for recruitment was commenced initially in terms of the said recruitment rule, training was not the essential qualification. It is also admitted fact that the petitioners in WPA 29606 of 2014 and WPA 29607 of 2014 and WPA No.31563 of 2014 have participated in the Section process in terms of the advertisement of 2009 without any objection and thus the prayer made by the petitioners in WPA No. 29606 of 2014 and WPA No. 29607 of 2014 and in WPA No. 31563 of 2014 cannot be granted.

45. In the case reported in (2016) 1 SCC 454 (Madras Institute of Development Studies and Anr. Vs. K. Sivasubramaniyan & Ors.), the Hon'ble Supreme Court held that :

“13. Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of Experts. It was only after he was not selected for appointment that he turned around and challenged the very

selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post.

14. *The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra.*

18. *In the case of [Ramesh Chandra Shah v. Anil Joshi](#) , recently a Bench of this Court following the earlier decisions held as under:-*

“24. In view of the propositions laid down in the abovenoted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

46. The petitioners of WPA No. 29606 of 2014, WPA No. 29607 of 2014 and in WPA No. 31563 of 2014 have participated in the recruitment process in terms of the advertisement of 2009 and thus at this later stage, the petitioners cannot challenged the recruitment notice published in the year 2009.

47. As regard the contentions made by the counsel for the petitioners in WPA No. 18325 of 2012 and the connected applications, the said issues have already decided by the Coordinate Division Bench of this Court vide order dt. 18th September, 2013 as referred in paragraph 22 supra.

48. The Learned Counsel for the respective parties have further informed this Court that in terms of the orders passed by the Learned Single Judge in some other matters, some of the DPSCs have declared the panel and appointments

have been made according to merit in terms of advertisement of 2009 and G.O.dt.21.06.2012.

49. In view of the above, this Court directs the respondent authorities to take appropriate steps for declaration of penal and appointments as has been done in other DPSCs mentioned in paragraph 48 (supra) within a period of two weeks from the date of communication of this order.

49. In view of the above, **WPA No. 29606 of 2014, WPA No. 29607 of 2014, WPA No. 31563 of 2014 and WPA 81325 of 2012 and connected applications are dismissed and the remaining Writ Petitions-and connected applications are allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the 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.)

(Krishna Rao, J.)