

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

W.P.A. No. 8506 of 2021

**Syed Mohammad Ali & ors.
Vs.
The State of West Bengal & Ors.**

**Present:
The Hon'ble Justice Lapita Banerji**

For the Petitioners	:	Adv. Shamik Chatterjee, Adv. Amit Bikram Mahata, Adv. Sahil Kabir.
For the added Respondents	:	Adv. Mritunjay Chatterjee, Adv. Debapriya Majumder.
For the State	:	Adv. Pantu Deb Roy, Adv. Pannalal Bandyopadhyay.
For the Respondent no.4.	:	Adv. Vivekananda Bose, Adv. Ratikanta Pal.
Last heard on	:	May 03, 2023.
Judgment on	:	May 3, 2023.

Lapita Banerji, J. :

WPA 2515 of 2023 is de-tagged from WPA 8506 of 2021.

1. Under challenge in the writ petition in WPA 8506 of 2021, is the selection process under notification dated July 22, 2020 for the post of “*Banasahayaks*”. The vacancies to the said post were to be filled up as purely contractual engagements. 2000 (two thousand) vacancies were notified in five administrative divisions – (a) Presidency Division, (b) Medinipur Division, (c) Burdwan Division, (d) Malda Division and (e) Jalpaiguri Division.

2. The candidates were to be aged between eighteen (18) years and forty (40) years as on January 1 of the year of application. Thus, for the applications made in 2020 the date of birth of the candidates was required to be within January 1, 1980 and December 31, 2001. Relaxation of five (5) years was allowed to be made in respect of upper age limit of Scheduled caste/Scheduled Tribe candidates. The selection process of the candidates is as follows:

“3. Selection Process

- a. All applications will be initially screened for location of residence for the respective Engagement Boards and the ones that are not summarily rejected shall be then screened for other qualifying criteria
- b. Post – screening, eligible applicants will be called for an evaluation – cum interview by the concerned Engagement Board with original documents. The Board will verify the original certificates of each candidate – Age Certificate, Residence Proof, Educational Qualification and photo ID.
- c. The eligible candidates shall be subject to an evaluation – cum- interview and personality test. The marking of the candidates will be done on the following criteria:

Subject/Aspect	Maximum Marks
Ability to read Bengali	30
Ability to write Bengali	30
Ability to read English or Hindi	10
General knowledge Oral Test	20
Personality fitness for forestry works	10
Total	100

- d. All the three members of the Engagement Board shall award marks to each candidate as per above criteria out of a total of 100 and the merit list shall be prepared by adding the marks given by each member and organizing the evaluated candidates in the descending order of marks obtained out of 300. In case of candidates getting same marks, the age of candidate will be taken in consideration, with same age and marks, the candidate scoring higher in the General Knowledge Oral Test will rank higher.

- e. 'A' CEB – wise select list will be prepared containing names of candidates who score marks up to a cut-off to be finalized by the respective CEB.
 - f. Engagement shall be made against the numbers of posts allotted to the Circle, on the basis of ranking in the select list.
 - g. Persons unfit for forestry works will be rejected outright, giving the reason.
 - h. All Members Secretaries of the CEB will prepared the final Marking List and keep it in confidential custody till they are instructed to publish the same under specify orders from the PCCP & HoFF, West Bengal. It will be the personal responsibility of the Member Secretary of the CEB to keep the results in confidence, so that the engagement process of other Boards is not vitiated due to lapse of any nature by anyone”.
3. Each Circle Engagement Board would comprise of three members. It would be headed by the Chief Conservator of Forests (CCF) and two Divisional Forest Officers (DFC)/Deputy Conservator of Forests (DCFfs). The jurisdiction of each CEB for the purpose of engagement is also described in the said advertisement dated July 22, 2020.
4. Mr. Chatterjee, learned counsel appearing on behalf of the petitioners submits that the petitioner nos. 1, 2 and 3 are from Burdwan district, petitioner no.4 is from North 24 Parganas and the petitioner no.5 is from Paschim Medinipur.
5. It is the grievance of the petitioners that the selection process was not conducted fairly and/or transparently. The merit list of the selected candidates were not published as per the advertisement and the purportedly selected candidates were informed only by way of personal messages over mobile phones. In case of any selection to a public post, a method of fairness and transparency is to be followed.
6. Copious pleadings have been filed in the present writ petition. He refers to the replies given by the authority concerned/SPIO in

response to the applications made by the candidates under the Right to Information Act, 2005. He draws the attention of the Court to various Reports on Affidavits filed on behalf of the State and the exceptions filed thereto by the petitioners to show that there are telltale signs of discrepancies in recording number of vacancies available in each districts for the post of “*Banasahayaks*” and the corresponding engagements relating thereto.

7. He further submits, that at least three ineligible candidates have been selected who were not within the permissible age limits given their dates of birth. Two candidates were over aged whereas the 3rd one was underaged.

8. He contends that even though the engagement was for the period of one year the same was extended for a period of another year. The candidates who were engaged as “*Banasahayaks*” would continue with their engagement till December, 2023. Therefore, the valuable rights of the petitioners were getting affected since they were unfairly ousted from being considered in the selection process. Instead of three members of CEB assessing the merit of the candidates only two numbers assessed the same. Therefore, the selection process has not been fair/in accordance to the procedure laid down in the advertisement. Had three candidates assessed the petitioners in the interview/personality test, the results could well have been different. The process of selection could not have been changed by the

respondent authorities without the candidates being intimated of the same.

9. Mr. Chatterjee has relied on number of judgments before this Court which will be discussed later.

10. Mr. Pantu Deb Roy, learned Additional Government Pleader appears on behalf of the State respondents. He submits that there is no malafide on the part of the State respondents in conducting the selection process for engagement of "*Banasahayaks*". He contradicts the submission made by Mr. Chatterjee by submitting that over aged candidates were not engaged by the State respondents. One candidate who was over aged was rejected at the initial stage on screening. The second candidate, Mr. Chatterjee alleges to be over aged, could show that his date of birth was within the prescribed period upon verification of the documents submitted by him. As far as the under aged candidate is concerned, he submits that a mistake was committed on the part of the State respondents. When an interview process of this magnitude is being carried on, where thousands of candidates were being interviewed, mistake in respect of one candidate does not, in any way, indicate large-scale scam/fraud on the part of the State respondents. He submits that the number of candidates who appeared in each of the district concerned has been stated clearly in the Report on Affidavit dated July 29, 2022 filed on behalf of the State respondents. He also submits, relying on a Report dated January 20, 2023, that the marks obtained by the petitioners have been disclosed

pursuant to the directions of this Hon'ble Court. All the five petitioners obtained marks which were well below the cut-off marks and, therefore, had no locus-standi to maintain the present writ petition.

11. Mr. Deb Roy, relies on a judgment reported in 2022 Live Law (SC) 1035 (**State of Uttar Pradesh vs. Karunesh Kumar & ors.**) for the proposition that even though a rule cannot be brought disqualifying a candidate/incumbent for participation in a selection process the method of selection process may be changed. A candidate who has participated in the selection process that has been adopted is estopped from questioning the same.

12. In that case an advertisement dated June 22, 2015 was published for the purpose of filling up of 3587 Group "C" posts of "*Gram Panchayat Adhikary*". The selection process was completed in accordance with the 2015 Rules, by duly conducting a written examination followed by an interview. By way of abundant caution, the 1978 Rules were amended on November 22, 2016. The final result was declared on December 24, 2016 and the appointment letters were issued in the months of April and May, 2017. During the pendency of the writ petition, the process of next selection was commenced by way of taking note of the carry forward vacancies. After the said selection process commenced the orders of the learned single Bench and the Hon'ble Division Bench of the High Court at Allahabad was pronounced. The entire selection process that was challenged before the High Court was done in tune with the 2015 Rules.

13. The arguments forwarded by the writ petitioners were that the 2015 Rules had to be read in consonance with the 1978 Rules since 2015 Rules were subsequent one. Since the 1978 Rules provided for a waiting list the same have to be complied with. The 1978 Rules governed the field till 2016 amendment.

14. Therefore, till such time the amendment was effected in 2016, the 2015 Rules had to be construed harmoniously and waiting list should have been prepared. The Hon'ble Apex Court held that the 2015 Rules were brought into force in exercise of the power conferred under the Uttar Pradesh Subordinate Services Selection Commission Act, 2014. Therefore, the 1978 Rules were put into "cold storage". A candidate who participated in the selection process adopted under the 2015 Rules was estopped from questioning it thereafter as the candidate submitted himself to the said selection process and acquiesced to the same. The Hon'ble Apex Court relied on the previous decision of **Anupal Singh vs. State of Uttar Pradesh** reported in (2020) 2 SCC 123. In such a case, it was held that the applicant should not be allowed to approbate and reprobate.

15. This Court fails to see how the said decision in **Karunesh Kumar** (supra) is applicable to the facts of the present case when the petitioners did not know about the change in the process of selection till the time they went for the interview. It has been submitted during the course of argument that the change in the selection process was notified by publication of a subsequent Notification dated September

15, 2020, but the way, the said Notification was publicized widely, however, could not be brought on record despite several opportunities been given by this Court and various Reports on Affidavit been filed before this Court. The Court is of the view that the change in the selection process was not informed to the petitioners.

16. Since several judgments have been cited by Mr. Chatterjee, the same merit detailed discussion.

17. In a judgment reported in (1997) 1 SCC 444 (**Shiv Sagar Tiwari vs. Union of India & Ors.**), it has been held that when misuse is within the tolerable limits, no uproar is heard, no media publication is seen. But when the magnitude of such misuse assumes a menacing proportion, outburst of various types becomes noticeable and then a scam surfaces.

18. The said judgment was passed where there was a large scale scam in allotment of residential quarters to Government employees. This Court finds the facts of the said case to be completely distinguishable from the present writ petition.

19. Next case, he relies on a judgment passed in (2003) 7 SCC 749 (**Shakila Abdul Gafar Khan (smt.) vs. Vasant Raghunath Dhoble and Anr.**). He himself admits that the said decision is not applicable to the facts of the case since it relates to custodial death of a person and the compensation awarded by the Hon'ble Apex Court to the heirs of the deceased.

20. Next, he relies on a judgment reported in (2000) 7 SCC 296 (**Delhi Administration vs. Gurdip Singh Uban & Ors.**). He also submits that the facts of this case has no relevance with the said decision since the same relates to a dispute arising out of the Land Acquisition Act, 1894. Therefore, the said decision is not considered by this Court.

21. Next, he relies on a judgment reported in (1980) 2 SCC 471 (**State of Punjab and Anr. Vs. Gurdial Singh & Ors.**) for the proposition that bad faith, motives, fashions and satisfactions led to colourable exercise or fraud on power and invalidates the exercise of power. The action of the authority is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous consideration. The said case is also not applicable to the present case in any manner since the litigation in **Gurdial Singh** (supra) arose out of acquisition of a piece of land by the State to build “New Mandi” in the wake of green revolution in Punjab when establishment of green markets became necessary. The Acquisition Proceedings were impeached by the High Court. Still the State sought to acquire the same. How the said case is applicable to the facts of the present case is not clear to the mind of this Court.

22. He then refers to a decision reported in (2020) 20 SCC 209 (**Ramjit Singh Kardam & Ors. vs. Sanjeev Kumar & Ors.**). In that case, the Commission in December 2006 published the criteria for calling the candidates for interview. The criteria were implemented.

Written examination was conducted in January 2007 which was cancelled due to malpractices. Thereafter, another notice was issued in June 2008 for fixing the date of written examination on July 20, 2008 taking into consideration the earlier criteria that were notified. Before the said written examination took place, a public notice was issued on June 30, 2008 notifying that the said examination was cancelled. By a public notice dated July 11, 2008, the names of 8 short listed candidates were advertised. The said short listing was also given up by notice dated July 31, 2009 when it was decided that all the eligible candidates would be called for interview. The Commission did not publish any criteria or marks on the basis of which the interview was to be held. The criteria on the basis of which the selection process of the candidates who participated were held, was published for the first time along with the final result on April 10, 2010.

23. Therefore, it was held that the candidates could not prevented/estopped from challenging such selection process. In the present case, even though the eligibility criteria of the candidates have not been changed or the weightage to be given to the candidates during the interview process was not changed but the number of people required to interview the candidates as per the advertisement were reduced without the knowledge of the candidates, without publication of the said change in the selection process. The said change in the number of members constituting the Circle Engagement

Boards (CEBs) could have affected the marks which were finally allotted to the candidates.

24. Next, he relies on a judgment reported in (2004) 10 SCC 665 (**Dattatreya and Ors. vs. Mahaveer & Ors.**) for the proposition that if there is a deliberate suppression of material facts causing prejudice to the respondents, the same may be challenged in an application under Article 226 of the Constitution of India. Fair play is the basic rule to seek relief under Article 226 of the Constitution. The said case also relates to the rights of the appellants in respect of a land belonging to a temple trust. The appellants in deliberate suppression of a writ petition that was dismissed on the grounds of delay and laches sought to file another writ petition in respect of the same piece of land, the possession of which was held in favour of the respondents, without giving any notice to the respondents. In such a case, the Hon'ble Apex Court held that the conduct of the appellants was far from being fair even if not fraudulent. This Court again fails to see how the facts of **Mahaveer** (supra) is applicable to the facts of the present case.

25. He also relies on a decision reported in (2013) 4 SCC 540 (**Tej Prakash Pathak & Ors. vs. Rajasthan High Court & Ors.**). In that case, the Hon'ble Supreme Court held that the matter regarding changing of "Rules of Game" stipulating the procedure for selection more particularly when the change sought is to impose more rigorous scrutiny for selection requires authoritative pronouncement by a larger Bench of the Apex Court. The Hon'ble Supreme Court did not

lay down any ratio in that case. The matter was directed to be placed before the Hon'ble Chief Justice of India for appropriate orders. Again, this Court cannot understand why the said decision has been relied upon where the Hon'ble Apex Court only held that the issue should be referred to a larger Bench.

26. He then relies on a decision reported in (1996) 5 SCC 365 (**Biswa Ranjan Sahoo & Ors. vs. Sushanta Kumar Dinda & Ors.**). It has been cited for the proposition that the principle of Natural Justice is not required to be followed by issuing notice to the selected persons since the fabrication would obviously either be not known or no one would come forward to bear the brunt of the fabrication. Therefore, the persons who were selected and appointed were not needed to be put on notice as the procedures adopted were in flagrant breach of the rules offending Articles 14 and 16 of the Constitution of India.

27. In the aforesaid case, when the answer scripts were produced before the Court, it was noticed that the marks in the written examination were tampered with and the selected candidates were evaluated by a different examiner than the one who evaluated all other candidates without any justifiable cause, whatsoever.

28. Even though in the present case, there was no question of evaluation of answer scripts as only the ability to write in Bengali was to be tested during the walk-in-interview, still this Court relies on the ratio that in case of large scale fraud/malpractice/scam in the selection procedure, there may be no need to give a notice to the

selected persons. In case, notices were not given to the selected persons, it would not result in breach of Natural Justice.

29. Next, he relies on a decision reported in (2018) SCC Online Calcutta 16646 (**Mriganka Mondal vs. Dr. Asitabha Das & Ors.**). In that case the issue related to the eligibility of a candidate to be appointed to the post of Librarian *inter alia* in terms of the criteria laid down in the notice inviting applications, UGC, 2010 Regulations etc. In that case, the Hon'ble Division Bench of this Court held that the appointment of the appellant in F.M.A. 823 of 2013 was not mere irregularity in the process of selection but there were palpable flaws which went deep into the root of the process of selection and strike at the very authority to select an eligible candidate.

30. In the present case, the petitioners have not argued that the candidates who have been appointed were either ineligible or the members of the CEB had no authority to conduct the interview. The candidates were appointed on the basis of an interview. The petitioners have challenged the change in the selection procedure and the lack of transparency. Therefore, the case of **Mriganka Mondal** (supra) is not applicable to the facts of the present case.

31. Next he relies on a decision reported in 1979 (2) SCC 491 (**Smt. S. R. Venkataraman vs. Union of India & Ors.**). In that case a candidate was prematurely retired relying upon fundamental Rules of 56 (J)(I) in "public interest" without consideration of the office memorandum dated June 23, 1969. It was admitted that without

consideration of the procedure laid down in office memorandum dated June 23, 1969 issued by the Ministry of Home Affairs, Government of India, the petitioner could not have been “prematurely retired”. The respondent/Union of India also submitted that such an order of premature retirement was not justifiable. In such circumstances, the Hon’ble Apex Court held that the malice in law may be different from the malice of fact. The malice, in its legal sense means doing a wrongful act intentionally without just cause or excuse or reasonable probable cause.

31a). This Court again fails to appreciate why the said case relating to “premature retirement” has been cited in the facts of the present case.

32. He then relies on a judgment reported in 2012 (4) SCC 407 (**Ravi Yashwant Bhoir vs. District Collector, Raigad & ors.**). He admits that the said decision relating to the disciplinary proceeding is not applicable to the present case. Therefore, this Court does not go into the discussion of the same.

33. Then he places reliance in Civil Appeals No. 4578 – 4580 of 2022 for the proposition that the “rules of the game” cannot be changed after commencement of the selection process. The said case also is not relevant to the facts of the present case since there is no change of the eligibility criteria for being selected/engaged to the post of “**Banasahayaks**”.

34. Considering the submissions of the parties and the materials placed on record, this Court finds that the office order dated

September 15, 2020 was neither widely publicized nor individually intimated to the candidates. By the purported office order, the respondents chose to reduce the members of the Circle Engagement Boards (CEBs) from 3 to 2 which had the realistic possibility of affecting the chance of the petitioners' engagement. This Court also finds that by an order dated April 21, 2021, Coordinate Bench of this Court found "serious anomalies in the selection process" since many of the applicants who applied from the district of Malda were not even called for interviews. The present writ petitioners though have been called for interview, their marks were not intimated to them. The Hon'ble Coordinate Bench also found that even if the entire list of candidates who had applied for the post was not published by the State, the merit list of the candidates who were selected for the post should have been publicized. It was not done in the instant case. Therefore, the question as to the transparency of the selection process arose.

35. On a query by this Court, it was submitted on behalf of the State respondents that the merit lists were not published in the website of the Government. They were only was it published in the notice boards of the District Offices. The said merit lists were purportedly put up in the notice boards of the Circle Office. This Court has not been able to appreciate the purported reason for not publishing the merit lists on the website when the advertisement for engagement of "*Banasahayaks*" was published in the official website.

Such a conduct on the part of the State respondents leads this Court to form the opinion that the *selection process* was not ***transparent***.

36. Mr. Deb Roy, learned AGP argued that since it was Covid times the number of members of CEB was reduced from 3 to 2. Such an argument cannot hold much ground as taking note of the Covid Pandemic the advertisement for engagement was issued on July 22, 2020 right in the middle of the pandemic situation. It was not a case where after issuance of the advertisement, the Covid Pandemic out broke in the country. Therefore, the principles of 'Doctrine of Necessity' is inapplicable to the present facts of this case.

37. It is also due to the pandemic situation that this Court is constrained to hold that a publication on the *website* was mandatory and any purported intimation/publication by putting up the merit lists on the notice boards, if done at all, was a completely ineffective mode of publication.

38. This Court also finds it perplexing that despite the finding by a Coordinate Bench on April 21, 2021 in respect of the same selection process, of serious anomalies therein, the State still chose to extend the engagements of the "*Banasahayak*" for a period of another one year. Admittedly, the order dated April 21, 2021 finding lack of transparency in the selection process was not put to challenge/carried up in appeal.

39. In the light of the discussions above, this Court is of the view that the State respondents by altering the numbers of members of the CEBs who were to conduct the selection process without wide publication have acted arbitrarily, without any justifiable reason.

40. The appointment of one under-aged candidate may be an irregularity, not fatal to the entire selection process of this magnitude. However, this Court is of the view that the merit list of the *selected candidates* should have been widely published including the same being **published** in the official website where the advertisement for engagement of “*Banasahayaks*” was published. By not doing so and also by intimating the purportedly selected candidates by individual SMS on their personal phone numbers, the State has adopted a procedure that was not transparent.

41. It is also constrained to hold that the State should have considered the order of the coordinate Bench dated April 21, 2021 before extending the engagement of the candidates who were initially appointed for a period of one year. The extension of the engagements was improper in the light of the order passed by a coordinate Bench on April 21, 2021.

42. Therefore, this Court directs that the selection process for the post of “*Banasahayaks*” will be freshly conducted within a period of two months from the date on the basis of the eligibility criteria (without any alternation thereof) and in terms of the selection process advertised on July 22, 2020 within a period of two months from the

date. 3 members of CEBs will conduct the process. The selected candidates from the list of eligible candidates will be published in the official website of the State. The engagement of the under-aged candidate shall be terminated with immediate effect.

43. Upon completion of the process of selection for “*Banasahayaks*” within a period of two months from date, the previous extension granted to the candidates will be terminated.

44. With the directions aforesaid, **WPA 8506 of 2021 is disposed of.**

45. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon’ble Court.

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

(Lapita Banerji, J.)