

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

IA No. CAN 1 of 2018 (Old No. CAN 748 of 2018)

CAN 2 of 2018 (Old No. CAN 4708 of 2018)

CAN 6 of 2020

CAN 7 of 2020

CAN 8 of 2021

in

WPA 28890 of 2017

Kuntal Samanta & Ors.

vs

State of West Bengal & Ors..

With

WPA 24309 of 2016

Indrajit Mistry & Anr.

vs

State of West Bengal & Ors.

With

WPA 25892 of 2016

Shri. Uttam Shee & Ors.

vs

State of West Bengal & Ors.

With

WPA 29181 of 2016

Swapan Kumar Sarkar & Ors.

vs

State of West Bengal & Ors.

With

WPA 6957 of 2019

Prasanta Das & Ors.

vs

State of West Bengal & Ors.

For the petitioners	:	Mr. Subir Sanyal, Adv. Mr. K.M. Hossain, Adv. Mr. Golam Mostafa, Adv. Mr. Samirul Sardar, Adv.
For the State	:	Mr. Tapan Kumar Mukherjee, Adv. Mr. B.P. Vaisya, Adv. Mr. Gourav Das, Adv. Mr. Somnath Naskar, Adv.
For the added respondent/Para-Teachers	:	Mr. Soumik Pramanik, Adv.
For the WBCSSC	:	Dr. Sutanu Kumar Patra, Adv. Mr. K.K. Bandyopadhyay, Adv. Ms. Supriya Dubey, Adv.
Last Heard on	:	18.10.2023
Delivered on	:	15.12.2023

Moushumi Bhattacharya, J.

1. Several categories of persons have filed the present writ petitions seeking Rule 8(4) of the West Bengal School Service Commission

(Selection for Appointment to the Posts of Teachers for Upper Primary Level of Schools) Rules, 2016 to be declared ultra vires the Constitution of India.

2. The petitioners' grievance is that the petitioners have been excluded from the 10% reservation of the total number of declared vacancies for the recruitment of "Para Teachers" under the "Sarba Siksha Mission" of the State. The petitioners pray for a mandamus on the respondents for grant of 10% reservation to the petitioners in the selection for Assistant Teachers to Upper Primary Schools in the State of West Bengal for the year 2016.

3. The petitioners are Special Educators and Samprasarakhs.

4. The respondents are the School Education Department of the Government of West Bengal, the Commissioner of School Education and the West Bengal Central School Service Commission.

5. The case which the petitioners seek to make out is identical to all the writ petitions, namely, that Rule 8(4) of the 2016 Rules is un-constitutional and that the petitioners are entitled to 10% reservation as given to the Para Teachers. The petitioners say that the very foundation of the impugned Rule violates Article 14 of the Constitution since the petitioners are similarly-situated to Para Teachers and hence the State could not have classified Para Teachers as a separate group for grant of the 10% reservation. The Court

proposes to pronounce judgment in all the writ petitions as they involve the same issue.

6. It may be noted that the court passed an interim order on 30.11.2017 permitting the petitioners to participate in the ongoing selection process and directing the authorities to treat the petitioners on a similar footing to that of Para Teachers for the 10% reservation. The interim order was extended on several occasions thereafter and subsists as on date.

7. Learned counsel appearing for the petitioners urges that the petitioners are working as Special Educators under the Paschim Banga Samagra Siksha Mission and have been recorded as trained candidates with a degree/diploma in B-Ed in Special Education and are eligible for appointment as Assistant Teachers in Upper Primary Schools in West Bengal. Counsel submits that additional posts were sanctioned by the State Government by a Notification dated 21.12.2011 keeping aside 10% seats to be filled up by Para Teachers under the Sarba Siksha Mission/ Samagra Shiksha Mission. The State Government issued another Notification on 21.12.2011 amending the West Bengal School Service Commission (Selection of Person for Appointment to the Posts of Teachers) Rules, 2007 by inserting Rule 4(3) enabling the State Government to declare 10% reservation of the total number of posts in order to provide for adequate representation of candidates from various categories without disturbing the 100-point roster. Counsel submits that age relaxation and a maximum of 5 marks for each completed year

of experience was given to Special Educators equal to that of Para Teachers for the State Level Selection Test (SLST) 2012. Counsel submits that a few of the Special Educators were also considered for recruitment against 10% vacancy in the 12th Regional Level Selection Test (RLST).

8. Counsel says that after submission of online application for the first SLST, the petitioners came to know about the 2016 Rules and the earmarking of 10% of the total vacancies only for Para Teachers. It is submitted that giving the benefit of reservation only to Para Teachers is unconstitutional since the work done by Special Educators is distinctive and indispensable to the education system. Counsel submits that Special Educators deal with children with special needs and are similarly-placed to Para Teachers in respect of qualifications, method of recruitment and job-profile. Counsel submits that the appointing authority for both Special Educators and Para Teachers is also the same, namely the District Project Officer.

9. Learned counsel appearing for the Special Educators seeks to make out the same case for the other petitioners namely Samprasarks. The primary contention is that the Samprasarakas should also be treated at an equal plane to that of the Para Teachers since the work profile cannot be demarcated and the petitioners perform distinctive functions in their respective areas which takes the object of the Sarba Siksha Mission of the State forward.

10. The learned Advocate General appearing for the State respondents submits that the State created additional posts for teachers in accordance with the mandate of The Right of Children to Free and Compulsory Education Act, 2009 in order to maintain the correct pupil-teachers ratio as prescribed under the said Act. Additional posts were created by the State by a Notification dated 21.12.2011 published on 28.12.2011 which provided for 10% reservation for Para Teachers and Samprasaraks and the recruitment for such vacancies was completed in 2012.

11. It is submitted that Rule 8(4) of the 2016 Rules does not violate Articles 14 or 16 of the Constitution since Special Educators and Samprasaraks cannot claim entitlement for the reservation earmarked for Para Teachers. Counsel submits that the petitioners cannot be equated to Para Teachers or claim to be within a single class since Para Teachers are experienced in classroom teaching. Counsel submits that the earmarking of 10% for Para Teachers under Rule 8(4) is a policy decision of the State which has a rational basis, namely, recruitment of Para Teachers as Assistant Teachers.

12. Learned counsel appearing for the West Bengal Central School Service Commission adopts the arguments made by the learned Advocate General.

13. Learned counsel appearing for the Para Teachers relies on an order passed by this Court on 6.2.2022 in CAN 6657 of 2019 in WP

28890(W) of 2017 whereby Para Teachers were impleaded as party respondents in WPA 28890 of 2017 and were given liberty to file a supplementary affidavit and also be heard on the merits of the writ petition.

14. Counsel submits that the work performed by the Special Educators and the Samprasarakas is different to that of the Para Teachers together with the procedure for their recruitment. Counsel submits that Para Teachers were engaged in schools from 2004 and were sanctioned work according to designated schools. The Para Teachers were also sanctioned work according to the specific subjects in accordance with the staff pattern in respect of distribution groups and subjects. Counsel submits that as opposed to the mode of recruitment of Para Teachers, Special Educators do not have any specific method of selection and are appointed cluster-wise and also work for different schools. Counsel submits that Para Teachers are required to undergo training programmes as directed by the Joint Secretary, School Education Department by the Government order dated 26.2.2009 with regard to subject-wise orientation training programmes.

15. Learned counsel appearing for the writ petitioners seeks to bring a subsequent development on record. During pendency of the present writ petitions, the State Government issued a Notification dated 18.12.2019 read with Memo No. 12/2019, for treating Sahayak, Sahayika, Mukhya Sahayak, Mukhya Sahayika of SSKs and

Samprasarak, Samprasarika, Mukhya Samprasarak, Mukhya Samprasarika of MSKs at par with Para Teachers under the School Education Department. Counsel submits that the Notification of 18.12.2019 substantiates the claim of the petitioners for 10% reservation to the posts of Teachers in Upper Primary Levels and the writ petitions should accordingly be allowed.

16. The controversy in the writ petition revolves around the legitimacy of the claim of the petitioners that Rule 8(4) of the West Bengal School Service Commission (Selection for Appointment to the Post of Teachers for the Upper-Primary Level of Schools) Rules, 2016 is discriminatory and offends Articles 14 and 16 of the Constitution of India. The basis of the contention is that the petitioners have been excluded from the benefit of the 10% reservation in favor of Para Teachers.

17. The question before the Court is whether the Para-Teachers were wrongfully put in a separate class excluding the special-educators / Samprasaraks coupled with un-intelligible differentia without any rational nexus to the object of the 2016 Rules.

18. Rule 8(4) was notified on 20.9.2016 by the School Education Department, Secondary Branch, Government of West Bengal in exercise of the powers conferred under section 17(1) read with section 8 and 17(2)(d) of the West Bengal School Service Commission Act, 1997. Rule 8(4) of the 2016 Rules is set out below:

“8. (4) The State Government may, by notification, earmark upto 10% of the total vacant posts with a view to provide adequate representation of the Para Teachers without disturbing 100 point roster as maybe notified from time to time. If there is no notification to earmark the posts or if the posts remain vacant due to non-availability of suitable candidates, the earmarked posts shall be filled up as per general procedures as mentioned in these rules from the qualified eligible candidates.”

19. Under the impugned Rule, 10% reservation on a horizontal basis was made for Para Teachers without disturbing the 100-point roster of vacancies. By a Notification dated 21.12.2011 published on 28.12.2011 10% of the posts for teachers were to be filled up by Para Teachers, Sikshabandhus, Sikshamitras, Samprasarakhs under the Sarba Sikhsha Abhiyan in Shishu Shiksha Karmasuchis (SSKs) and Madhyamik Shiksha Karmasuchis (MSKs) run by the Panchayats and Rural Development Department. Recruitment for the vacancies which was published in the Notification of 21.12.2011 was completed in 2012.

20. The sole point of adjudication is whether Rule 8(4) of the 2016 Rules is rendered unconstitutional by exclusion of special educators and Samprasarakhs from the reservation. Promulgation of the impugned Rules makes it evident that the 10% reservation for Para-Teachers is a policy decision of the State Government. The validity of the policy decision however should be tested on the anvil of Articles 14 and 16 of the Constitution; namely whether the petitioners' right to equality under the laws of the country and in matters of public employment has been violated by Rule 8(4) of the 2016 Rules. The

grounding of the arguments is that the petitioners are similarly-situated to the Para-Teachers and hence could not have been excluded from the benefit of the 10% reservation under the impugned Rule.

21. Article 14 of the Constitution guarantees equal treatment to all without discrimination. Article 16 contemplates equality to all citizens in matters of public employment. The underpinning of the constitutional guarantees is that no person should face discriminatory treatment by reason of a State action including in the form of creation of classes for preferential treatment. The complaint of the petitioners is that the Government of West Bengal classified Para-Teachers for preferential treatment excluding the petitioners, disregarding the fact that the petitioners are similarly-situated to the Para-Teachers.

22. In order to test the correctness of this contention, the factual position relating to special educators / Samprasarakhs as compared to Para Teachers should hence be seen.

23. The services of Para Teachers was invited by the District Project Director, SSK, Purba Medinipur by a Memo dated 27.7.2004. Para Teachers were engaged in designated schools against sanctioned posts from 2004. Posts were also sanctioned in schools according to specific subjects. Para Teachers were also appointed with due consideration of the staff pattern and distribution of subjects in these schools and were selected by Committees which were formed by the Managing

Committees of the respective schools. The list prepared by the Selection Committee was sent to the District Sub-Committee of the Sarba Siksha Abhiyan for final approval.

24. Para teachers were assigned only to one school per Para Teacher after an interview for that school only.

25. The Memo of the State Project Director, Paschimbanga Rajya Prarambhik Siksha Unnayan Sanstha, dated 2.1.2006 contains guidelines for Para Teachers both in the primary and the upper primary including taking into account the number of working days and allotment of weekly classes. In terms of a Memo issued by the District Project Officer being number 737/SSA/510/2006, the number of working days of Para-Teachers was increased from 4 to 6 days, out of which 4 were allotted for regular teaching classes and 2 for supervisory work.

26. Learned counsel appearing for the Para-Teachers has also relied on Memos to show that the period of engagement of Para-Teachers was extended till 60 years; Memo No. 1315 dated 20.12.2010. It also appears that the engagement of Para-Teachers was clearly intended for classroom teaching for upper primary level i.e. up to Class VIII and the Para Teachers were also engaged subject wise against sufficient posts, as stated above for specific work including conduct of examinations, setting question papers and evaluating the performance of students.

27. The training programme for Para Teachers for taking formal classes is also under the direction of Joint Secretary, School Education Department as per a Government Order dated 26.2.2009 which includes subject-wise orientation in training programmes. The Para Teachers have to undergo B. Ed and D. Ed training programmes like regular teachers.

28. Counsel appearing for the petitioners have not shown any specific procedure for selection / engagement of special educators / Samprasarakas. The Court was however informed that the petitioners, particularly the special educators, are appointed cluster-wise and work for different schools in respect of the particular circle / block level of the Resource Center and identify and assess every CWSN (Child with Special Needs).

29. The material placed before the Court makes it clear that the work-profile of Para Teachers and special teachers / Samprasarakas cannot be equated or brought under the same category. The affidavit in opposition as well as the notice filed on behalf of the State respondents show that while Para Teachers are involved in teaching in recognised, aided schools (formal Schools under the School Education Department of the Government of West Bengal) and are directly associated with classroom teaching including remedial teaching of students who need special efforts. Siksha Mitras / Siksha Bandhus/ Siksha Sebis do not teach in recognised, aided schools under the School Education Department. Siksha Bandhus are engaged by Circle Level Resource

Centers and essentially collect data for organising informal education and innovative teaching methods.

30. The fact of the petitioners discharging duties which are essentially different in nature, content and structure from those of Para Teachers would also be evident from the submissions made by counsel appearing for the petitioners. Counsel has vehemently urged that the special educators / Samprasaraks are discharging functions which are indispensable to differently-abled children / children with special needs. While there is little doubt of the significance and worth of the role played by special educators / Samprasaraks, it is also evident that the work is specialized and in niche-areas and is different from that performed by the Para-Teachers.

31. The petitioners' entire challenge to Rule 8(4) of the 2016 Rules is based on the petitioners being deprived of the 10% reservation which has been granted to Para Teachers. The complaint is based on the petitioners performing the same work as that of the Para Teachers and the consequence to the 10% reservation. The Court would have accepted this argument if the petitioners were found to be similarly-situated / circumstanced to the Para Teachers in respect of the work performed. The argument that the petitioners perform work which is more rigorous in nature or require longer hours is not the same as the work-content being the same to that of the Para-Teachers.

32. Admittedly, while the Para Teachers are primarily engaged for classroom teaching with subject orientation akin to regular teachers, the petitioners (special educators / Samprasarakas) are engaged in a non-classroom structure and a multiple school module. The petitioner's work is concentrated to a cluster, namely, area wise allocation depending on the number of children with special needs in the cluster. There is also a stated difference in the mechanism for recruitment / engagement of Para-Teachers and the petitioners which has been mentioned in the earlier part of this judgment. These vital differences cannot be discounted in the argument of distinction or intelligible differentia for the classification of Para Teachers.

33. Any argument on intelligible differentia presumes an overall homogeneity in the classification. In other words, the persons classified are presumed to have certain distinctive and shared characteristics which distinguish those within the class from those outside. Classifications are made for according special benefits to the class for the purpose of protecting the persons in the class from discriminatory application of the laws. The ground rule is that unequals cannot be treated as equals and vice versa. Hence, the logic is that people who are similarly-circumstanced cannot be discriminated against and those who are different should not be treated on an equal plane.

34. The petitioners cannot complain of violation of Articles 14 and 16 of the Constitution since the petitioners do not share the same characteristics in terms of work-profile coupled with the dissimilarity in

the purpose of recruitment. Rule 8(4) of the 2016 Rules could have been considered as discriminatory had the petitioners been on the same plane as that of the Para Teachers in terms of the work performed and the basis of their respective appointments.

35. It is well-settled that apart from the classification being supported by intelligible differentia between those inside the group compared to those who are excluded from the group, the classification must also have a rational nexus to the object of the statute / notification. In the present case, the rationale of earmarking 10% of the seats for Para Teachers in Rule 8(4) is for the stated purpose of increasing the workforce for classroom teaching and enhancing efficiency in matters of assessment and evaluation. The object of the 2016 Rules is also to provide an incentive to Para Teachers and ensure their participation in the recruitment as Assistant Teachers in the Primary / Upper Primary levels for schools in West Bengal.

36. The principle of reasonable classification was laid down in *National Council for Teacher Education vs. Shri Shyam Shiksha Prashikshan Sanstha*; (2011) 3 SCC 238 wherein it was held that the principle underlying the charter of equality in Article 14 of the Constitution means that all persons similarly-circumstanced should be treated alike as opposed to the same rules being made applicable to all persons. The Court justified the necessity of classification to achieve the Constitutional vision of equality. The Supreme Court in *Transport and Dock Workers Union vs. Mumbai Port Trust*; (2011) 2 SCC 575 held that

classification is permissible when founded on intelligible differentia with a reasonable relation to the object sought to be achieved. The Court cautioned against a dogmatic interpretation of Article 14 and frowned upon absolute and inflexible concepts as anathema to progress and change. The decision in *Rajneesh Kumar Pandey vs. Union of India*; WP(c) No. 132 of 2016, relied on by the petitioner, only takes the cause of the petitioner forward to the extent that special educators should be given recognition and regularisation in their duties. The issue in the present facts is entirely different as the petitioners do not seek recognition from the Government but equal treatment to that of Para Teachers, specifically in the matter of the reservation granted under Rule 8(4) of the 2016 Rules.

37. The Notification dated 18.12.2019 brought on record by the petitioners in their supplementary affidavit filed on 11.9.2023, also discloses a communication dated 20.12.2019 from the Mission Director & Joint Secretary, Govt. of West Bengal to the Additional Executive Officer, Zilla Parishad and District Nodal Officer, SSK & MSK Cell. By this communication, Paschimbanga Rajya Shishu Siksha Mission has been transferred to the School Education Department of the Government of West Bengal. The petitioners say that the Notifications were brought into effect during the pendency of the writ petitions and Sahayaks /Sahayikas and Mukhya Sahayaks/ Mukhya Sahayikas of SSKs, Samprasaraks/ Samprasarikas and Mukhya Samprasaraks / Mukhya Samprasarikas of MSKs are now to be treated at par with

Para-Teachers of Paschimbanga Samagra Shiksha Mission under the School Education Department. The petitioners rely on these Notifications for appropriate orders in the writ petitions.

38. Both these Notifications however have prospective effect. This would be evident from the Notifications themselves. The relevant parts of the Notification dated 18.12.2019 are set out.

“2. The Sahayaks/Sahayikas and Mukhya Sahayaks/Mukhya Sahayikas of SSKs, Samprasaraks/Saprasarikas and Mukhya Samprasaraks/Mukhya Samprasarikas of MSKs who are within the age of 60 years on the date 01.04.2020 shall be required to give their option in the format annexed herein, by 5 pm of 01/02/2020 to Mission Director of PBRSSM through the District Nodal Officer, SSK/MSK of the concerned district, for treating them at par with the Para Teachers of Paschim Banga Samagra Shiksha Mission under School Education Department, Govt. of West Bengal and engage them with similar terms and conditions as that of Para Teachers, to get similar benefits extended to the Para Teachers.

3. Those Sahayaks/Sahayikas and Mukhya Sahayaks/Mukhya Sahayikas of SSKs, Samprasaraks/Samprasarikas and Mukhya Samprasaraks/Mukhya Samprasarikas of MSKs who do not submit such option as mentioned above in para 2, shall not be considered for treating them at par with the Para Teachers and not be considered for any additional benefits and enjoyed by the Para Teachers now or in future”

39. The Notification dated 18.12.2019 transferred the administrative control of SSKs and MSKs and the entire Administrative set up of Paschimbanga Rajya Shishu Shiksha Mission from the Panchayat and Rural Development Department to the School

Education Department. Sahayaks/Sahayikas and Mukhya Sahayaks/ Mukhya Sahayikas of SSKs, Samprasarakas/ Samprasarikas and Mukhya Samprasarakas/ Mukhya Samprasarikas of MSKs who were within the age of 60 years on 1.4.2020 were required to give their options in the format provided within a designated date and time.

40. The Notification makes it clear that options given by candidates would make them eligible for engagement on terms and conditions similar to those of Para Teachers and also entitle them to benefits which are extended to the Para-Teachers. Paragraph 3 of the said Notification makes it clear that those who do not submit the option as mentioned in the preceding paragraph will not be considered for being treated at par with Para-Teachers or for the additional benefits enjoyed by the Para-Teachers “... *now or in future*”.

41. The communication dated 20.12.2019 pursuant to the Notification of 18.12.2019 reiterates the contents of the latter in terms of the willing Sahayaks/Sahayikas/ Mukhya Sahayaks/ Mukhya Sahayikas of SSKs and Samprasarakas/ Samprasarikas and Mukhya Samprasarakas/ Mukhya Samprasarikas of MSKs who are within the age of 60 years to submit the requisite particulars (also mentioned in the communication) within 1.2.2020 to the Mission Director through the District Nodal Officer, SSK and MSK Cell.

42. The communication further reiterates that those who have given their option will be treated at par with the Para-Teachers of PBSSM

under the School Education Department and get similar benefits as that of Para-Teachers.

43. The petitioners' contention that these Notifications should be given retrospective effect and made applicable to the 2016 selection process is without substance. The Notifications do not suggest that they would date back to 2016 and consequently re-open the recruitment process which was completed in 2016. The effect of the Notification dated 18.12.2019 cannot be used to reverse any event which has already taken place before the said Notification or regularize any inaction on the part of those candidates who did not follow the procedure outlined in the Notifications.

44. The Court accordingly finds the classification of Para Teachers and the petitioners to be based on intelligible differentia with a rational nexus to the object of the 2016 Rules. The petitioners have not placed any material, in fact or in law, to show that the reasonable link / rational nexus between the classification and the object of the 2016 Rules is broken or is incomplete. The petitioners' entire case hinges on special educators / Samprasarakas performing work which is similar to that of Para Teachers. The other emphasis is on the special educators imparting education to children with special needs and hence performing work of value. The petitioners also say that the 10% reservation for Para Teachers was not essential as the State has an adequate number of teachers in the primary and Upper Primary levels.

45. None of these arguments however form a credible challenge to the constitutionality of Rule 8(4) of the 2016 Rules. The Court does not find the impugned Rule either to be arbitrary or unreasonable or discriminatory. As stated above, the promulgation of the 2016 Rules including the impugned Rule 8(4) was in the policy-making domain of the State and a judicial review of such a decision can only succeed if the policy is found to be violative of the fundamental rights guaranteed under Part III of the Constitution of India.

46. The challenge to Rule 8(4) of the West Bengal School Service Commission (Selection for Appointment to the Post of Teachers for the Upper-Primary Level of Schools) Rules, 2016 is accordingly found to be without basis. The impugned Rule does not transgress Articles 14 or 16 of the Constitution of India as being illegal, arbitrary or discriminatory.

47. WPA 28890 of 2017, WPA 29181 of 2016, WPA 25892 of 2016, WPA 24309 of 2016 and WPA 6957 of 2019 are accordingly dismissed. The interim order dated 30.11.2017 in WPA 28890 of 2017 is vacated. All connected applications are disposed of. There shall be no order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)