

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 701 of 2021

With

IA No. CAN 1 of 2021

With

IA No. CAN 3 of 2022

With

IA No. CAN 4 of 2022

With

IA No. CAN 5 of 2022

Priyanka Kayal and ors.

Versus

State of West Bengal and Ors.

For the Appellants

: Mr. Anindya Bose

Mr. Diptendu Mandal

Mr. Nikhil Kumar Gupta

Mr. Mridul Biswas

For the Board : Mr. L. K. Gupta

Mr. Ratul Biswas

For the State : Mr. Supriyo Chattopadhyay

Ms. Iti Datta

Mr. Sabyasachi Mondal

For the applicant in : Mr. Soumik Ganguli

CAN 3 of 2022,

CAN 4 of 2022.

Heard On : 01.02.2023

Judgement Delivered On : 20.02.2023

Supratim Bhattacharya, J.: Under challenge in this appeal is the Judgment and Order dated 13.07.2021 passed in the writ petition being WPA 9895 of 2021 with CAN 1 of 2021.

The appellants in the instant appeal, who are 70 in number, were the writ petitioners, whereas the respondents in the instant appeal were also the respondents to the writ petition.

The appellants have preferred the instant appeal being aggrieved by and dissatisfied with the order of rejection of the prayer for a writ of and/or in the nature of mandamus by cancelling

and/ or quashing and setting aside the entire selection process initiated by the West Bengal Board of Primary Education (hereinafter referred to as the Board) for recruitment to the posts of Assistant Teachers in Primary Schools in accordance with the Notification dated 23.12.2020 issued by the Board.

The crux of this appeal is as to whether the Order passed by the Hon'ble Single Bench in the writ petition being No. WPA 9895 of 2021 is in accordance with law or not.

Learned Counsel appearing on behalf of the appellants has submitted that the appellants were successful in the Teachers Eligibility Test (TET), 2014 and are possessing the requisite training as well as qualification to be appointed as teachers in primary schools. He has further submitted that the appellants having the required qualification and being within the prescribed age as per the Notification dated 23.12.2020 issued by the Board, applied for the posts of primary school teachers in respect of the State-wide vacancies of 16,500. It has also been contended that the Board while conducting the selection process has not followed the provisions of the West Bengal Primary School Teachers Recruitment Rules, 2016 specifically Rule 8 Sub-rule 5 and Rule 10 thereof.

It has been alleged that one Susanta Dey and another namely, Chiranjeet Chatterjee, despite obtaining lower marks have been included in the merit list in preference to the candidates having higher marks. It has also been alleged that one Moqbul Biswas and another being Tutun Bhattacharya, not being para teachers, have been included in the merit list under the category of para teachers. It has further been alleged that one Amit Ghosh who is not an ex-serviceman has been given place in the merit list under the category of ex-servicemen.

It has been argued on behalf of the appellants/writ petitioners that the Board has not published the marks obtained by the candidates in respect of each and every *category*. Learned Counsel appearing on behalf of the appellants has thus prayed for setting aside the order of the Hon'ble Single Bench, relying upon the points as discussed hereinabove.

Learned Counsel appearing on behalf of the respondents has submitted that the writ petition was dismissed on the ground that the same had no factual basis to make up a case of discrimination. It has further been stated that as per the direction of the Hon'ble Division Bench, on equitable consideration, the respondents have

furnished the marks obtained by the persons named in the writ petition. It has further been stated that the allegation on behalf of the appellants is that some candidates have been appointed who have obtained lesser academic marks than some of the petitioners. In this regard it has been submitted on behalf of the Board that as per Rule 8 (3) of the Recruitment Rules not only the academic marks are taken into consideration but also the aggregate of marks obtained from all *categories* (see chart below). In this respect it has been stated that during preparation of the panel for appointment of candidates only 15 marks are allotted for the marks obtained by the candidates in the *categories* pertaining to academic qualification, while 35 marks are distributed in respect of other *categories* which is laid down under Rule 8 of the West Bengal Primary Teachers Recruitment Rules, 2016. Rule 8 (*supra*) reads as follows:

“8. *Procedures of selection:-* (1) *The Selection Committee shall make prima facie scrutiny of the duly filled application form submitted by the candidates having qualification as mentioned in rule 6.*

(2) The Selection Committee shall call all qualified candidates as mentioned in rule 11b-rule (1), for the viva-voce or interview and Aptitude Test. The performance of the candidates who will be called for viva-voce or interview and Aptitude Test shall be assessed separately by the Interview Board formed for the specific purpose.

Academic qualifications, training, performance in the TET, Extra Curricular activities and performance in viva-voce or interview and Aptitude test, shall be computed in the manner as mentioned in Table A below:

Table A

<i>Sl. No.</i>	<i>Item for evaluation</i>	<i>Maximum marks</i>
<i>(i)</i>	<i>Madhyamik pass under the West Bengal Board of Secondary Education or its equivalent</i>	<i>05</i>
<i>(ii)</i>	<i>Higher Secondary pass under the West Bengal Council of Higher Secondary Education or its equivalent</i>	<i>10</i>
<i>(iii)</i>	<i>Training as specified by NCTE</i>	<i>15</i>
<i>(iv)</i>	<i>Teacher Eligibility Test (TET)</i>	<i>05</i>
<i>(v)</i>	<i>Extra Curricular Activities</i>	<i>05</i>
<i>(vi)</i>	<i>Viva-voce or interview</i>	<i>05</i>
<i>(vii)</i>	<i>Aptitude Test</i>	<i>05</i>
	<i>Total</i>	<i>50</i>

Note 1.- The percent age of marks obtained by the candidate in the Madhyamik Examination or its equivalent excluding additional marks, if any, shall be reduced proportionately to marks obtained out of 5.

Note 2.- The percentage of marks obtained by the candidate in the Higher Secondary Madhyamik Examination or its equivalent excluding additional marks, if any, shall be reduced proportionately to marks obtained out of 10.

Note 3.- The percentage of marks obtained by the candidate in the relevant Teacher Training shall be reduced proportionately to marks obtained out of 15.

Note 4.- The percentage of marks obtained by the candidate in the TET Examination shall be reduced proportionately to marks obtained out of 15.

Note 5.- Marks out of maximum five (5) Marks shall be awarded to the candidates in the Extra Curriculum Activities on the following Extra Curriculum Activities. In case of candidates applying for the earmarked posts as mentioned in Note 7 to Rule 6, marks out of maximum five (5) shall be awarded on teaching experience:-

For Non-earmarked Vacancies			For Earmarked Vacancies		
1	Games and Sports	1	Teaching Experience below 4 years		1
2	National Cadet Corps (NCC)	1	Teaching Experience from 4 years to below 6 years.		2
3	Arts and Literature	1	Teaching Experience from 6 years to below 8 years.		3
4	Performing Art (Drama)	1	Teaching Experience from 8 years to below 10 years.		4
5	Music	1	Teaching Experience above 10 years.		5
	Total	5			

(4) The marks for candidates applying for non-earmarked vacancies shall be allotted as follows:-

(a) a certificate of representation in the State/National/International level Games or Sports issued by the Competent State Govt. or Central Government Authorities or agencies, shall be awarded (01) mark;

(b) Minimum 'A' certificate of National Cadet Corps (NCC) shall be awarded (01) marks;

(c) a certificate that any essay, story, short story, drama, poetry written by the candidate selected for publication in State Level or National Newspaper or Magazine (Certificate along with a copy of publication shall be submitted), shall be awarded (01) mark;

(d) a certificate that the candidate has obtained proficiency in Performing an (Drama) issued by National School of Drama or by the State Government or Central Government shall be awarded (01) mark;

(e) a certificate that the candidate has obtained proficiency in Music or Instrumental Music issued by the State Government or Central Government shall be awarded (01) mark.

(5) ”

It is thus argued that even if one candidate obtains less academic marks but scores better overall marks taking into account the aggregate marks obtained from all categories, such candidate is entitled to be selected. Relying on the aforesaid submissions,

Learned Counsel appearing on behalf of the respondents has prayed for dismissal of the instant appeal.

The Hon'ble Single Bench while passing the impugned order has elaborately discussed the merits and demerits of the aggregate marking system (*supra*). It has been opined by the Hon'ble Single Bench that the writ petitioners have alleged that one Susanta Dey and one Chiranjit Chatterjee who have been named in the merit list have obtained lesser marks than some of the writ petitioners but, in this regard it has not been stated specifically as to in respect of whom or which candidate/candidates the said Susanta Dey and Chiranjit Chatterjee have obtained lesser marks. Additionally, neither the said Susanta Dey nor the said Chiranjit Chatterjee have been made parties to the writ application though there are allegations against the said persons.

It has further been opined by the Hon'ble Single Bench that the petitioners have preferred the instant writ application in a very casual manner and the material facts have not been stated and necessary particulars are wholly absent. Relying on the aforementioned discussion, the Hon'ble Single Bench has been pleased to dismiss the aforesaid writ application and has imposed

costs of Rs. 2000/- (Rs Two Thousand only) to be paid by the petitioners in favour of the High Court Legal Services Committee.

Through the impugned judgment it has also been stated by the Hon'ble Single Bench that the allegation that one Mokbul Biswas whose name features in the merit list as a para-teacher is not at all a para-teacher and, it has also not been pleaded as to how many of the 70 petitioners are para-teachers and who are they and how they claim appointment in place of one Mokbul Biswas. It has also been opined that the said Mokbul Biswas has also not been impleaded as a party respondent to the writ application.

Thus, from the aforementioned discussion it reveals that the petitioners, who are 70 in number, have preferred the writ application seeking redressal from the Hon'ble Court on the ground alleging that some of the candidates whose names feature in the merit list have obtained lesser academic marks than the petitioners and also alleging that candidates who are not para-teachers have been included in the merit list showing them as para-teachers and it has been further alleged that candidates who are not ex-servicemen have been included in the merit list showing them as ex-servicemen.

It is evident that none of the candidates against whom there are allegations ranging from getting lesser marks than the petitioners or, featuring in the merit list as para teachers or ex-servicemen, have been impleaded as parties to the writ petition. It is the law of the land that a person against whom an action is sought to be taken ought to be given the opportunity of hearing and in the instant proceeding the said persons/ candidates against whom the petitioners have brought their allegations ought to have been impleaded as parties which has not been done. The writ petition is therefore correctly liable to be dismissed for non-joinder of parties. In this regard this Court intends to cite the judgment passed by the Hon'ble Apex Court and published in (2014) 1 SCC 144, *State of Rajasthan vs Ucchab Lal Chhanwal*;

“9. There can be no scintilla of doubt that the finding recorded by the High Court pertaining to the circular is absolutely correct and unassailable. The said circular could not have been placed reliance upon by the State to contend that the respondents could have been deprived of promotion. However, the said circular is totally inconsequential for the present case, for what we are going to hold.

10. Though some argument was canvassed with regard to the relevance of the punishment of censure, yet the said aspect need not be adverted to. On a perusal of the writ petition, the order of the writ court and that of the Division Bench we notice that there were specific averments that juniors placed at serial numbers 9, 10 and 11 in gradation list had been promoted

vide order dated 20.8.1997. They have not been arrayed as parties. Needless to emphasize, in the event the order passed by the High Court is affirmed, the persons who are seniors to the respondents in the promotional cadre are bound to become junior regard being had to their seniority position in the feeder cadre. It is well settled in law that no order can be passed behind the back of the person that shall adversely affect him.

11. In this context, we may refer with profit to the decision in *Vijay Kumar Kaul v. Union of India* wherein it has been held thus (SCC p.619 para 36): -

“36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.”

12. After so stating this Court referred to the decision in *Indu Shekhar Singh v. State of U.P.* wherein it has been held thus: (*Vijay Kumar Kaul case*, SCC p.620, paras 37-38) - “

37...56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.(Indu Shekhar Singh case, SCC p.151, para 56)”

38... In Public Service Commission v. Mamta Bisht this Court while dealing with the concept of necessary parties and the effect of non- impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10) “

9. ... in Udit Narain Singh Malpaharia v. Board of Revenue wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a

right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and Sarguja Transport Service v. STAT.)

10. In Prabodh Verma v. State of U.P. and Tridip Kumar Dingal v. State of W.B., it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.

13. In J.S. Yadav v. State of Uttar Pradesh it has been held as follows: (SCC p.583, para 31)

“31. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice.””

The petitioners have also not produced before the Hon'ble Single Bench the specific particulars in respect of which they claim to be prejudicially affected.

In the backdrop of the aforesaid discussion, this Court finds no infirmity in the Judgement and Order of the Hon'ble Single Bench. The Order impugned dated 13.07.2021 deserves no interference.

MAT 701 of 2021 with IA No. CAN 1 of 2021 with IA No. CAN 3 of 2022 with IA No. CAN 4 of 2022 with IA No. CAN 5 of 2022 stand accordingly dismissed.

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.)

(Supratim Bhattacharya, J.)