

19.06.2023
Item Nos. 2 to 7
Crt. No.11.
KB

MAT 913 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023
with
IA No. CAN 3 of 2023
Abdul Alim Molla & Ors.
-Versus-
Priyanka Naskar and others.
with
MAT 966 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023
Sujoy Sen and Ors.
-Versus-
Priyanka Naskar and others.
with
MAT 1014 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023
Md. Abu Sayeed & Ors.
-Versus-
Priyanka Naskar
with
MAT 1023 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023
Jagriti Kumari Sharma & Ors.
-Versus-
Priyanka Naskar and others.
with
MAT 1035 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023
Rinku Kejeriwal & Ors.
-Versus-
Priyanka Naskar and others.
with

**MAT 1060 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023
Idrish Ali Shaikh & Anr.
-Versus-
Union of India and others.**

Mr. Ekramul Bari
Sk. Imtiaj Uddin
... For the appellants in
MAT 913 of 2023.

Mr. Subir Sanyal
Mr. Somesh Ghosh
... For the appellants in
MAT 966 of 2023 &
MAT 1035 of 2023.

Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Saloni Bhattacharjee
Ms. Gulsanwara Pervin
... For the appellants in MAT
1060 of 2023.

Mr. Bhagbat Chaudhuri
Mr. Sariful Islam Mallick
... For the appellants in MAT
1023 of 2023.

Mr. Kamalesh Bhattacharya
Mr. Aninda Bhattacharya
... For the appellants in MAT
1014 of 2023.

Mr. Tarunjyoti Tewari
... For the respondents in
all appeals.

Mr. B. Bhattacharyya, Dy. S.G.
Ms. Mary Datta
Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Saloni Bhattacharjee
Ms. Gulsanwara Pervin
Mr. Sauvik Nandy

... For the NCTE in all appeals

except MAT 913 of 2023
and MAT 1060 of 2023

Mr. L. K. Gupta
Mr. Ratul Biswas
Mr. Kaushik Chowdhury
... For the respondent/Board in
all appeals.

Mr. Kamalesh Bhattacharya
Mr. Aninda Bhattacharya
... For the appellants in MAT
1014 of 2023 with CAN 1
of 2023 to CAN 3 of 2023.

Party/parties is/are represented in the order of
their name/names as printed above in the cause title.

All these appeals are taken up for analogous
consideration, since the parties submit that all
these appeals are directed against the common
order of the Hon'ble Single Bench in WPA 21187 of
2022 dated 12th May, 2023 *In Re.: Priyanka Naskar
& Ors. -Vs- Union of India & Ors.*

It is further submitted that these appeals
also have their roots in the order of the Hon'ble
Division Bench dated 19th May, 2023 which dealt
with a batch of appeals which earlier arose also
challenging the said impugned Judgement and
Order of the Hon'ble Single Bench dated 12th May,
2023.

Learned Counsel appearing for the appellants in MAT 966 of 2023, MAT 1014 of 2023, MAT 1023 of 2023 and MAT 1035 of 2023, submit that each of the appellants were not a party to the said writ petition (WPA 21187 of 2022) before the Hon'ble Single Bench. Therefore, in each of the above stated appeals, the appellants have preferred an application for Leave to Appeal.

Therefore, a prayer is additionally made, apart from the prayer to consider the appeals on merits, i.e. to allow the prayer of the applicants for grant of Leave to Appeal.

In MAT 913 of 2023, the appellants have preferred an application for modification of the Order of the Hon'ble Division Bench dated 19th May, 2023.

The appellants submit that their stand in the modification application is identical to the stand of the appellants in the applications filed praying for Leave to Appeal.

In short, before this Court both the appellants seeking Leave to Appeal and the appellants who have applied for modification of the Order of this Hon'ble Division Bench dated 19th May, 2023 (*supra*), submit that they are Para Teachers now

working as Assistant Teachers in primary schools. As Para Teachers the appellants are outside the purview of the Judgment and Order of the Hon'ble Single Bench dated 12th May, 2023 (*supra*).

Referring to the Recruitment Rules for recruitment of Para Teachers dated 2nd March, 2016 read with a subsequent Amendment dated 23rd September, 2016, the appellants submit that 10% of the total recruitment quota for recruitment of Assistant Teachers throughout the State of West Bengal was reserved for Para Teachers. Furthermore, the recruitment rules did not provide for any Aptitude Test to be taken in respect of the Para Teacher category.

It is submitted that the Judgement and Order of the Hon'ble Single Bench dated 12th May, 2023 bases itself on the proposition that there has been huge malpractice in the conduct of the Aptitude Test while recruiting Assistant Teachers under the Notification dated 2nd September, 2016. By a detailed order, the Hon'ble Single Bench had noticed that a total of 10 marks was allotted to all the candidates in the Interview and Aptitude Test, i.e. 5 marks for Interview and 5 marks for Aptitude Test.

The Hon'ble Single Bench found huge anomalies in the conduct of the Aptitude Test and further found that the candidates were marked in fractions out of the total of 10 marks in their Interview and Aptitude Test.

The appellants submit that while passing its directions dated 12th May, 2023 (*supra*), the Hon'ble Single Bench failed to appreciate that by the Amendment to the Recruitment Rules dated 23rd September, 2016, the provision for holding Aptitude Test for Para Teachers who comprise 10% of the total vacancies, stood abolished. The 5 marks for Aptitude Test was replaced by 5 marks for 'Teaching Experience' of every Para Teacher and, based on the length of such teaching experience, either the full complement of 5 marks was to be allowed to a Para Teacher candidate or, the marks will be commensurately reduced for lesser years of teaching experience.

It is therefore argued that the decision of the Hon'ble Single Bench as reflected by its Order dated 12th May, 2023 (*supra*), is erroneous in as much as the Para Teachers were included within the scope of teachers who were found to hold disproportionate marks, even in fractions, in their Aptitude Test.

It is submitted that since there was no Aptitude Test earmarked for Para Teachers, the question of alleging any corruption in their recruitment process does not arise at all.

It is therefore submitted that the Para Teachers be left out of the purview of the directions dated 12th May, 2023 (*supra*) and, this Court which has by its Order dated 19th May, 2023 upheld the directions of the Hon'ble Single Bench to conduct the Interview and Aptitude Test afresh, be pleased to modify its Order dated 19th May, 2023 by holding that the terms of the said Order shall not apply in respect of the Para Teachers.

Respondents to these appeals as well as the respondents to the Application for Modification being CAN 3 of 2023 are also represented.

The Respondents/Writ Petitioners submit that out of the total number of 42,900 vacancies for primary teachers initially advertised, 4290 vacancies, being 10% of the total number, were reserved for Para Teachers.

Out of the total vacancies 3050 vacancies stood reserved for non-trained Para Teachers and out of which 2770 non-trained Para Teachers have been appointed.

It is submitted that in spite of the arguments advanced on behalf of the Para Teachers that they are not covered by the Aptitude Test, it is a fact that even in respect of calculation of 'Teaching Experience' substituted the Aptitude Test, the Para Teachers were granted marks in fractions. Taking this Court to the Amendment dated 23rd September, 2016, it is pointed out that the break-up of the marks allotted for 'Teaching Experience', no marks in fractions could be granted.

Furthermore, there can be no ground urged by the Para Teachers that they be allowed to stay out of a re-verification process, considering that the entire recruitment is alleged to be tainted with corruption.

Having heard the parties and considering the materials placed, this Court finds that the Judgement and Order of the Hon'ble Single Bench dated 12th May, 2023 as stated at Paragraphs 21 and 22 reads as follows:

"21. In such circumstances I allow the writ petition. The appointment of all 36,000 (thirty sixty thousand) (more or less) candidates who were untrained at the time of recruitment in 2016 recruitment process conducted by the Board in the post of primary teachers are

cancelled for various reasons as have been elaborated above.

22. The Board shall immediately arrange for a recruitment exercise for candidates who were untrained at the time of recruitment (including candidates who have obtained training qualification in the meantime) within a period of 3 (three) months from date only for the candidates who participated in 2016 recruitment process where both interview and aptitude test of all examinees shall be taken and the whole interview process has to be videographed carefully and preserved. It will be a recruitment process under the same Rules and legal procedures under which 2016 recruitment process was conducted. No new or any other candidate shall be allowed to take part in such recruitment test.”

Therefore, to the mind of this Court, the direction has been passed by the Hon’ble Single Bench after a threadbare discussion of the recruitment process and particularly the Aptitude Test that **both** (emphasis supplied) Interview and Aptitude Test of **all** (emphasis supplied) examinees shall be taken and the **whole Interview Process** (emphasis supplied) has to be video graphed and carefully preserved.

Therefore, again to this mind of this Court, although arguable points have been raised by the appellants, it cannot be presumed that at its operative part the Order of the Hon'ble Single Bench treated only the Aptitude Test and not the Interview Process – the Para Teachers claiming to be a part of the Interview alone on the basis of the recruitment rules - to be **video graphed and carefully preserved** (emphasis supplied).

Accordingly, at this stage, until the Hon'ble Single Bench is given an opportunity to clarify its stand, this Bench stands precluded from treating the operative part of the Judgement and Order dated 12th May, 2023 at Paragraph 22 (*supra*) to be of a nature that automatically excludes Para Teachers.

In the backdrop of the above discussion, the appellants/applicants are permitted to approach the Hon'ble Single Bench for appropriate clarification of its Judgement and Order dated 12th May, 2023.

No further orders are called for in this bunch of appeals.

MAT 966 of 2023 with IA No. CAN 1 of 2023 & IA No. CAN 2 of 2023, MAT 1014 of 2023 with

IA No. CAN 1 of 2023 & IA No. CAN 2 of 2023, MAT 1023 of 2023 with IA No. CAN 1 of 2023 & IA No. CAN 2 of 2023, MAT 1035 of 2023 with IA No. CAN 1 of 2023 & IA No. CAN 2 of 2023. and CAN 3 of 2023 in MAT 913 of 2023 stand accordingly **disposed of**.

CAN 3 of 2023 in MAT 913 of 2023 stands also **disposed of**.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)