

29.11.2023
SL No.94
Court No.8
(gc)

**MAT 1420 of 2023
CAN 2 of 2023**

**The State of West Bengal & Ors.
Vs.
Monika Ghosh & Ors.**

Mr. Tapan Kumar Mukherjee, Ld. A.G.P.
Mr. Suman Dey
...for the State Appellants.
Mr. Sujit Kumar Rath,
Mr. Sukumar Sarkar,
Mr. Anirban Saha
...for the Writ Petitioner/
Respondent No.1.

1. The appeal is at the instance of the State challenging the order dated 17th May, 2022 by which the impugned order dated 11th May, 2018 issued by the Chairman was set aside and the respondents were directed to consider the case of the petitioner as duly qualified for the post of Primary School Teacher within a period of four weeks from the date of communication of that order.
2. The writ petition was filed with regard to the recruitment process of Primary Teachers, 2009. She participated in the said examination. The results were published in 2010 and she was unsuccessful. She made an application to the Chairman on 27th November, 2013 in which she requested the Office to supply

the answer script of the written selection test on 11th April, 2010 for recruitment to the post of Primary Teachers under the District Primary School Council, Paschim Medinipur and to supply the document awarded to the said written test as well as viva voce test. This was not immediately replied for which she filed a writ petition being WP No.8184(W) of 2014 in which an order was passed on 26th March, 2014. The said representation was construed by Justice Biswanath Somaddar as his Lordship then was to be essentially an application under the relevant provisions of the Right to Information Act, 2005, and accordingly, it was disposed of by directing the writ petitioner to make an application under the RTI Act. The Counsel for the State had never alleged on 26th March, 2014 that the answer script was destroyed and it is no more available. Thereafter the petitioner made an application on 2nd April, 2015 for supply of the answer scripts. This was again not replied. The petitioner filed another writ petition being WP No.10042(W) of 2015. The said writ petition was disposed of on 15th May, 2015 by directing the authorities to answer the

queries made under the R.T.I. Act. In deference to the said direction, this time, the authorities replied on 31st August, 2015. The said reply is reproduced below:-

“With reference to above it is stated that Manika Ghosh, Candidate under UR Category having roll no.10301107 obtained total score 25.56 (M.P Score 7.23 + subjective score 6.00 + OMR score 10.00 + Viva 2.33). The answer script cannot be supplied to her as it is very old record as written test was held in the year of 2010 and she made application under RTI Act on 02.04.2015 that is a long gap of 5 years. No answer script cannot be kept beyond 2 years except Court case.”

3. It appears that on 17th April, 2017, Paschim Medinipur District Primary School Council in a communication to Chairman of the Council informed that efforts are being made to trace out the answer script of the candidate. This communication between the parties continued till about 2017 by which time the writ petitioner realised that she would be required to file a substantive application seeking remedies. Prior to the filing of the writ petition on 11th July, 2017, an order was passed in

the contempt jurisdiction by Justice Arijit Banerjee to the following effect:-

“Mr. Vaisya, learned counsel appearing on behalf of the alleged contemnors submits that the objective answer scripts of the petitioner cannot be traced. Efforts have been made to trace out the objective answer script but such effort has not been successful. He produces the subjective answer script of the petitioner that the authorities could find out.

There is no reason why the authorities would withhold the objective answer script after they have produced the subjective answer script before this Court.

Perhaps, they are indeed unable to trace out the objective answer script in spite of best effort. It is not that there is any enmity between the authorities and the petitioner. If indeed they are not in a position to produce the objective answer script as Mr. Vaisya submits I cannot hold the alleged contemnors guilty of contempt for not doing something which is not within their power.

Accordingly, I do not find any violation far less wilful violation of the order which is the subject matter of the contempt petition.”

4. Mr. Tapan Kumar Mukherjee, learned A.G.P. in assigning the order submits that there has been an inordinate and

inexplicable delay in filing the application and it is barred by the law of limitation. It is submitted that the writ petitioner should have filed the writ petition within the period of three years from date her name was not included in the panel and after a lapse of almost eight years, the Council cannot be expected to produce all documents. It is further submitted that the Council has produced the score sheet wherefrom it appears that she was not selected as she got total 25.56 marks and the last candidate who was selected in General Category had obtained 28.56 marks. The learned Single Judge disbelieved the petitioner relying upon the fact that answer script beyond two years in case of Shri Amal Kumar Bhattacharya was produced on 30th October, 2015 and he got the appointment. The learned Single Judge has relied upon the order passed by the Coordinate Bench in MAT No.1002 of 2012 dated 30th September, 2013 in which it was held:-

“Mr. Bhattacharyya, learned advocate, appearing for the State submitted that the answer script cannot be produced as indicated in our order dated 29th August, 2013.

We as such draw an adverse inference under Section 114 of the Evidence Act, that the answer script if produced would not have supported the contention of Mr. Bhattacharya. Accordingly, we hold that the appellant was duly qualified.

The Chairman of the Murshidabad District Primary School Council, being the respondent no.3 is, as such, directed to issue appointment letter to the appellant within six weeks from the date of communication of this order.

The appeal and the application are thus disposed of.”

5. The learned Single Judge did not accept a copy of page no.173 alleged to be the score sheet produced by the Chairman in which the name of the petitioner presumably appeared at Sl No.2417 and it was further mentioned that the petitioner had obtained 10 marks in OMR on the ground that the said document is undated and does not bear the signature of any selection committee member. The entire record was not produced.
6. It was on such factual background, the learned Single Judge has drawn an adverse inference under Section 114 of the Evidence Act and allowed the writ petition.

We could not find any explanation on behalf of the Council for not immediately attended to the queries raised by the writ petitioner with regard to the answer script and the marks obtained. The petitioner had to approach Court twice prior to the third writ petition and it was only on the basis of the orders passed in such proceeding that a cryptic communication was made in which it has been stated that the answer scripts are not kept beyond two years. However, no relevant rule is placed in support of such contention. Moreover, it appears that in case of Amal Kumar Bhattacharya, answer script was produced on 30th October, 2015. Once the writ petitioner was able to establish such fails it is the duty of the respondent authorities to offer a satisfactory explanation. No satisfactory explanation is forthcoming for not supplying the answer script or not responded to the communication made by the petitioner or on her behalf until 31st August, 2015. This is belied by the production of the answer script in case of Amal Kumar Bhattacharya. The Primary Council also could not offer any explanation in the affidavit filed with

regard to the basis of the appointment of other applicants on the basis of the notification dated 23rd August, 2010. The appellants being the custodian of all official record are bound to produce all relevant record and clarify the issue which they have miserably failed. They cannot be selected in production of documents.

7. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.
8. The appeal fails.
9. The Council has already issued a conditional letter of appointment. In view of affirmation of the order of Justice Krishna Rao the appointment is confirmed unconditionally. Accordingly, the appeal and the application are dismissed.
10. However, there shall be no order as to costs.
11. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)