

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

Present:

The Hon'ble Justice Aniruddha Roy

WPA 23735 of 2019

With

I.A. No. CAN 2 of 2022

Chittaranjan Bhunia & Ors.

Vs.

The State of West Bengal & Ors.

With

WPA 18250 of 2021

With

I.A. No. CAN 1 of 2022

Bhagyadhar Dalai & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners in the writ petitions: **Mr. Arunava Banerjee, Adv.,
Sk. Qareeb, Adv.,
Ms. Ritika Mondal, Adv.**

For the State in WPA 18250 of 2021: **Mr. Bhaskar Prasad Vaisya, Adv.,
Mr. Mrinal Kanti Ghosh, Adv.**

For the Respondent No.7 in WPA 23735: **Mr. Kamal Mishra, Adv.**
of 2019 & For the Respondent No.4 in
WPA 18250 OF 2021

**For the Respondent Nos. 8 in WPA 23735: Mr. Aurobinda Chatterjee, Sr. Adv.,
of 2019 And For the Respondent No.5 in Mr. Ranjan Saha, Adv.
WPA 18250 of 2021**

Reserved on: 09.08.2023

Notes filed on: 20.09.2023

Judgment on: 06.12.2023

ANIRUDDHA ROY, J.:

Facts:

1. The two writ petitions, namely, **WPA 23735 of 2019** (for short, the **first writ petition**) and **WPA 18250 of 2021** (for short, the **second writ petition**) had raised the identical issues for consideration before this Court with the same and/or identical point of law. Hence, both these two writ petitions were taken out together in an analogous hearing and are disposed of by this composite single judgment.
2. Learned counsel appeared for the parties have agreed to proceed with the hearing principally on the basis of the records and cause papers relating to the said **second writ petition**. Accordingly, by consent of the parties the second writ petitioner was taken up first for consideration and references were drawn from the records of the **first writ petition**, whenever it was necessary.
3. Checkered history of litigations were there. The issue also travelled up to the Hon'ble Division Bench and thereafter the Hon'ble Supreme Court. Diverse orders and directions were passed from time to time by various Courts.

4. The subject matter in the writ petitions were the **selection process held by the Midnapore District Primary School Council both for Purba and Paschim in 1996 for the appointment of primary teachers reserved for schedule caste candidates.**
5. The petitioners are all schedule caste candidates.
6. While preparing and finalizing the panel, the District Primary School Council filled up the panel with the general category candidates instead of schedule caste candidates. Challenging such panel alleging illegalities these writ petitions were moved. Initially the panel was first questioned in 1991. By a judgment and order dated May 10, 1991 a Division Bench directed to take immediate steps for preparation of a fresh panel in accordance with law and in terms of the rules. There was also direction so far as the normal vacancies existing in the schools were concerned, at least 50 percent must be filled up by trained candidates only. In respect of remaining 50 percent of such vacancies, untrained candidates should be considered along with trained candidates on some rational and reasonable principle. The issue travelled up to the Hon'ble Supreme Court. By an order dated December 5, 1995 the Hon'ble Supreme Court considering the illegalities in preparing the panel had quashed the panel which were prepared in 1993 to recruit Primary School Teachers in the District of Malda and Midnapore (before division). A further direction was there to prepare a fresh panel in accordance with law within a period of six months from date.

7. In 1996, in compliance of the direction of the Hon'ble Supreme Court the concerned authority prepared a fresh panel which according to the petitioner was nothing but a replica of earlier panel which was set aside by the Hon'ble Supreme Court. In the said newly prepared panel unqualified candidates were empanelled by giving preference over the petitioners.
8. Being aggrieved with the said fresh panel, which according to the petitioners were grossly illegal, two writ petitions were filed being **C.O. No. 5137(W) of 1996** and **C.O. No. 15165 (W) of 1996**. The successful candidates were impleaded.
9. By an order dated March 01, 2007 passed in the said **C.O. 15165 (W) of 1996** a coordinate bench directed to frame a committee to enquire whether any illegality was there or not and in the event the Director of School Education finds any illegality, then there would be recast of the panel and 250 nos. of candidates were directed to be placed in there respective merit position and afterwards any fault or illegality is detected, the Director of School Education should reject the prayer of those petitioners in the said writ petition.
10. On March 1, 2012 an interim order was passed in **C.O. 5137 (W) of 1996** by a coordinate bench directing to hold an enquiry regarding the illegalities of the preparation of the panel and the appointment of the candidates thereunder belonged to reserved category to the reserved post for the schedule caste.
11. On May 30, 2012 pursuant to the direction of the coordinate bench dated March 01, 2003 the Director of School Education published an enquiry report, in which it was clearly mentioned that 56 nos. of candidates belonged to

unreserved category were given appointment for the post of reserved category for schedule castes and directed the District Primary School Councils both Purba and Paschim Midnapore to take steps thereunder.

12. On December 14, 2012 the writ petition being **C.O. No. 5137 (W) of 1996** was disposed of finally by a coordinate bench.
13. An appeal was carried out before the Hon'ble Division Bench. On February 21, 2014 the Hon'ble Division Bench passed its order holding that there was a clear violation of the provisions of the recruitment rules for the appointment of primary teachers by appointing unreserved candidates for the post reserved for schedule castes candidates.
14. Since no steps were taken to remove the said 56 nos. of unreserved candidates who were appointed illegally under the schedule castes category, a further writ petition was moved being **W.P. No. 25584 (W) of 2014**. By an order dated November 3, 2014 the said writ petition was disposed of by a coordinate bench in favour of the petitioners therein. Another writ petition **W.P. No. 26537 (W) of 2014** was moved assailing the illegal action on the part of the respondent authorities in appointing the candidates for the post of primary teacher which were reserved for schedule castes candidates in connection with the said selection process initiated by the District Council in the year 1996. The said writ petition was disposed of by a coordinate bench by its order dated October 1, 2015 by directing the chairman of Paschim Midnapore District Primary School Council to take steps in terms of the Division Bench order dated February 21, 2014. The coordinate bench was further pleased to direct that by

complying the order of the Division Bench, the concerned chairman would consider the case of the petitioners therein who belonged to the schedule caste category and would take a decision in their case also. The coordinate bench also directed the chairman of the District School Councils to inform the result to the petitioners after such consideration within two weeks from the date of taking such decision and the entire exercise was directed to be completed within six weeks. Alleging contempt of the said order dated October 1, 2015 a contempt petition **CPAN 788 of 2016** was also filed.

15. On August 3, 2016 a memo was issued by the Paschim Midnapore District Council directing cancellation of appointments of 12 candidates with a caveat that as all the records of the teachers were not placed before the School Councils and it was difficult task to trace out the candidates. However, the Sub-Inspector of Schools of Paschim Midnapore District was directed to trace out the said records of the teachers to enable the council to take necessary decision on its end.
16. Another writ petition **WPA No. 2478 (W) of 2016** was filed, when a coordinate bench by its order dated November 17, 2016 was pleased to direct the Directorate of School Education to dispose of the representation of the petitioners by a reasoned order within a period of twelve weeks.
17. Pursuant to and in terms of the said direction dated November 17, 2016 the Directorate of School Education by its memo dated **August 10, 2017** took a decision that 56 nos. of candidates were appointed who belonged to unreserved category and out of them 44 nos. of candidates had already retired and the

balance 12 nos. of candidates were not entitled to be empanelled in the panel which was specifically reserved and meant for the schedule caste category. The employment of the said 12 nos. of candidates were also directed to be terminated and after such termination there was a direction for recast of panel by accommodating the petitioners herein as claimed by the petitioners.

18. Being aggrieved by the said order dated November 17, 2016 an appeal being **M.A.T. No. 52 of 2017** was preferred. By an order dated April 13, 2017 the appeal was dismissed on technical ground.
19. On January 30, 2018 a representation was made before this District School Councils to implement the decision of the School Education Department dated August 10, 2017. Identical representation was also made on April 4, 2018. Since the said decision of the Directorate of School Education dated August 10, 2017 was not implemented a writ petition being **W.P. No. 5623 of 2018** was moved. By an order dated June 24, 2019 the writ petition was disposed of by directing the authority to terminate the employment of the private respondents therein whose empanelment was decided to be illegal in the said decision dated August 10, 2017 taken by the Directorate of School Education and to recast the panel in terms of the said decision dated August 10, 2017 with all consequential benefits within a period of fortnight. Following the said direction steps were taken by the respondent authorities to terminate the illegal appointment and to give appointment to the petitioners in the said **W.P. No. 5623 (W) of 2018**.

20. Pursuant to the said direction made by the coordinate bench dated June 24, 2019 the two District Councils both Purba and Paschim Midnapore issued appointment letters for filling up the vacancy of 12 nos. of primary teachers. The petitioners hererin claimed appointments in respect of the balance 44 nos. of posts. In view of above, the petitioners filed the said two writ petitions.

21. The reliefs claimed in the second writ petition are quoted below:

“a) A writ in the nature of mandamus commanding the respondents their men, agents, authorities particularly the Respondent no.3 and 4 being the Chairman, Purba Medinipur District Primary School Council and Chairman District Primary School Council, Paschim Medinipur to issue appointment letter vacant in favour of the petitioners in the 44 posts of Primary Teachers fallen vacant due to the retirement of the were unreserved candidates who were illegally appointed by the Respondent authorities out of the 56 reserved posts pursuant to the order passed in W.P. No. 5623 (W) of 2018 by the Hon’ble High Court and in compliance with the order passed by the commissioner of School Education.

b) A Writ of Mandamus or a Writ in the same nature thereof commanding the respondent authorities, more particularly the respondents Nos. 2 and 3 to act in terms of the representation dated 30.01.2018 made by the petitioners through their Learned Advocate being annexure “P-12” of the instant writ application and to act in accordance with law in compliance with the order passed in W.P. No. 5623 (w) of 2017 of the Hon’ble High Court;

c) A Writ of Certiorari or a writ in the nature thereof directing the respondent authorities more particularly the respondent Nos. 2, 3 and 4 to certify and transmit the entire records pertaining to this case as such conscionable justice may be administered upon perusal of the same;

d) Rule Nisi in terms of prayer (a), (b) and (c);

e) Any other appropriate writ, order or direction to safeguard the interest of the petitioners as regards implementation of the order dated 10.08.2017 bearing memo No. 365-LP/Ic/225/LP/2G16 passed by the Commissioner of School Education, West Bengal passed in compliance of the order passed by the Hon’ble High Court in W.P. No. 5623 (w) of 2018 as stated above;

f) To pass such other or further other order or orders as to Your Lordships may seem fit and proper”.

22. The relief claimed in the first writ petition herein are quoted below:

“a) A writ in the nature of mandamus commanding the respondents their man, agents, assigns and each one of them to cancel rescind and/or set aside the impugned order dated 19.07.2016 being Memo No. 243-LP forthwith;

*.....
IC/233/LP/2016*

b) A writ in the nature of Mandamus directing the respondents to give appointment to the petitioners upon condoning age bar after removing the B.T./B.Ed. Primary teacher or by creating supernumerary post with notional benefits since 1996;

c) A writ in the nature of Mandamus directing the respondents to pay compensation to the petitioner who have crossed 60 years.

d) A writ in the nature of certiorari commanding the respondents to bring all records before the Hon’ble Court so that conscionable Justice may therein be administered.

e) Rule NISI in terms of prayers (a), (b), (c) and (d) above and make the Rule absolute;

f) Pass such other order or orders, direction and directions as will be deemed fit and proper equitable and for the ends of justice”.

23. Affidavits were also filed and exchanged by and between the parties, which are on record.

24. The petitioners in the respective writ petitions and both the Purba and Paschim Primary School Council have filed their written notes and the same are on record.

Submissions:

25. Mr. Arunava Banerjee learned counsel appearing for the petitioner at the threshold submitted that the direction of the Directorate of the School Education dated August 10, 2017 has not been complied with and the posts against the 44 nos. of retired vacancies have not been filled up. The order of the coordinate bench dated June 24, 2019 passed in **W.P. No. 5623 of 2018** was very specific directing by terminating the illegal appointment of the private respondents in that writ petition to recast the panel in terms of the said

decision dated August 10, 2017 with consequential benefits, which has not been carried out and complied with. The petitioners specifically claimed their appointments in the said 44 nos. of vacant posts as the petitioners are eligible for the same.

26. Mr. Banerjee submitted that, the respondent authorities such as the Commissioner of School Education and the Chairman of the District Primary School Councils for both Purba and Paschim Midnapore though had admitted that 56 nos. of candidates were illegally appointed against the reserved posts who had not produced their caste certificates and out of them 44 persons retired and the appointment of 12 persons were cancelled and set aside, yet no fresh appointment was made by them. Learned counsel for the petitioner submitted that, those 44 persons though had retired, were appointed illegally as declared by the Court for the post of Primary Teachers and enjoyed the benefits wrongfully and illegally since 1996 till their retirement and since the petitioners being the eligible candidates were deprived of their lawful right of appointment for the post of Primary Teachers, the respondents must give appointments to the petitioners against such vacant 44 nos. of posts. He further submitted that the appointment was considered only for 12 nos. of posts but the rest 44 were not considered. The petitioners should be appointed in the said 44 nos. of posts by necessary recasting of the panel.
27. Learned counsel further submits that the right of the petitioners to receive the appointment for the post of primary teachers under the said two primary school councils have duly been declared in their favour after travelling the

issue to the Hon'ble Supreme Court. Right to receive such employment by the petitioners had been crystallized. Still after multiple round of litigations the respondents had failed and neglected to give appointment to the petitioners.

28. Mr. Banerjee learned counsel for the petitioner while arguing the second writ petition had **restricted** his claim only in favour of the **petitioner nos. 27, 48, 50, 51, 53, 57 and 59** therein being **WPA 18250 of 2021**.
29. Mr Banerjee learned counsel then argued that, there has to be a justifiable reason to decline to appoint a person who is on the select panel. Where there is a vacancy which can be offered to a selected candidate on the basis of its merit position, denial of appointment to him without a proper reason is unjustified and arbitrary exercise of power by the appointing authority. He submits that the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. In support, he placed reliance upon a judgment of the Hon'ble Supreme Court ***In the matter of: R.S. Mittal vs. Union of India, reported at 1995 Supp (2) Supreme Court Cases 230.***
30. Learned counsel further submitted that, right of appointment against the post of a selected candidate cannot be taken away on the pretext that the panel has already expired and post has already been filled up by somebody else. He submits that, usurpation of post due to erroneous decision on the part of the selected candidate, the candidates should not suffer. In support, he placed reliance upon a decision of the Hon'ble Division Bench of this Court ***In the matter of: Kaushik Mallick vs. West Bengal College Service Commission & Ors., reported at 2010 (4) CHN (CAL) 69.***

31. In the light of the above submissions, Mr. Banerjee learned counsel submitted that both the writ petitions should be allowed.
32. Mr. Aurobinda Chatterjee learned senior counsel appeared for the Paschim Midnapore District Primary Schools' Council. He submitted that, in both the writ petitions the claim of the petitioners centered around the said decision of the Commissioner of School Education dated August 10, 2017. The principle claim of the petitioners now before this court is that the petitioners must receive appointments for the post of primary teachers in the said 44 nos. of posts, which are lying vacant due to the retirement of the candidates.
33. Mr. Chatterjee submits that the petitioners seek to implement and to execute the said decision of the Commissioner of school education dated August 10, 2017 by granting appointment to the petitioners in the place of 44 nos. of posts lying vacant due to retirement.
34. For the purpose of recasting the panel in terms of the said direction dated August 10, 2017 the chairman of the District Primary School Council was required to verify the documents for participation in the relevant recruitment process by the petitioners as schedule caste candidates along with other relevant documents. To carry out such exercise notices were duly served upon all the petitioners through registered post for the purpose of verification of documents on July 18, 2019. Pursuant to such notices only 12 nos. of petitioners in **W.P. 5623 (W) of 2018** had appeared for verification of their documents. After due verification of all the documents of the said 12 nos. of petitioners, 11 nos. of them were included in the recasted panel by excluding

the name of the unreserved candidates from the panel and one candidate was left out, who belongs to schedule tribe category. The Commissioner of School Education **approved** the said panel on **September 29, 2021** and all the 11 nos. of petitioners were **given appointment** on October 4, 2021.

35. Mr. Chatterjee Learned Counsel then submitted that, after careful scrutiny of records the petitioner nos. 7, 33, 37, 38, 39, 40, 42 to 58 in the writ petition no. **W.P. No. 5623 (W) of 2018** were also served with notice under registered post for verification of documents.
36. Mr. Chatterjee then submitted that, the petitioners herein have failed to produce any document to show that they had participated in the recruitment process which was initiated by the primary school council in the year 1996.
37. He submitted that, the petitioner nos. 16, 17, 29, 30, 33, 36, 39, 40, 43, 45, 47, 49 and 54 in the second writ petitioner had filed their respective appeals before the Hon'ble Division Bench challenging the same selection procedure and claiming that the appellants therein belonging to the schedule caste category were eligible to receive appointments. By a judgment and order dated June 30, 2023 all these appeals one of such was **M.A.T. No. 258 of 2022** were dismissed.
38. In the light of the above submissions, Mr. Chatterjee learned senior counsel submitted that, as the writ petitioners had failed to produce any document to show that they had participated in the relevant selection process in 1996 they could not and cannot claim any right for appointment.

39. Mr. Chatterjee submitted that, both the writ petitions are devoid of any merit and are liable to be dismissed.

Decision:-

40. After hearing the learned counsel for the parties and upon perusal of the materials on record, at the threshold it appears to this Court that, the reliefs claimed in both the writ petitions are interlinked. The petitioners in both the writ petitions finally claimed appointment for the Post of Primary Teachers in respect of the said vacant 44 nos. of posts.
41. To decide the issue, the paramount principle to be kept in mind that even mere empanelment cannot give rise to any right of employment to the empanelled candidates. So long the appointment letters are not issued, no right of employment is created in favour of the candidates. The decision and direction of the Directorate of School Education dated **August 10, 2017** not under challenge. The relevant observations and directions of the Directorate of the School Education appearing in the said decision dated August 10, 2017 is quoted below:-

*“Considering the above facts and circumstances and prevalent recruitment rules at the material point of time, the Chairman, District Primary School Council, Purba Medinipur and the Chairman, District Primary School Council, Paschim Medinipur are directed to terminate the services of the aforesaid 12 (twelve) primary school teachers under their jurisdiction, as the case may be, after giving an opportunity of hearing to them. After termination of services of those 12(twelve) primary school teachers, the Chairman, District Primary School Council, Paschim Medinipur will recast the said panel (as panel was prepared by the Council and is kept under his jurisdiction) by excluding the names of unreserved candidates from the panel of ‘Schedule Caste Category’ and accommodate the writ petitioners herein in the said ‘Schedule Caste Category’ panel according to the marks obtained by them in terms of the prevalent recruitment rules. Before recasting the panel, the Chairman, District Primary School Council, Paschim Medinipur is requested **to verify the documents regarding participation of the petitioners herein in the aforementioned recruitment process**, their Schedule Castes Certificates, mark sheets, marks*

obtained in the recruitment process and other relevant documents including the sponsorship of the petitioners made by the concerned Employment Exchange Office. After recasting the panel in terms of the prevalent recruitment rules, the Chairman, District Primary School Council, Paschim Medinipur will submit the same to this Directorate for getting necessary approval in terms of the recruitment rules prevalent at the material point of time. The Chairman, District Primary School Council, Purba Medinipur is requested to extend his co-operation to the Chairman, District Primary School Council, Paschim Medinipur in this matter.

*The matter is thus disposed of.
All concerned be informed”.*

42. Pursuant to and in terms of the said decision/direction of the Directorate of School Education Department dated August 10, 2017, termination of service in respect of those 12 primary school teachers had already taken place and there is no dispute about it. Insofar as the, rest 44 nos. of posts were concerned, the candidates according to the said direction dated August 10, 2017 were summoned for verification of their documents regarding their participation in the relevant selection process. The candidates who had produced all relevant documents to the satisfaction of the Jurisdictional Chairman of the District Primary School Council had already received appointment. The panel of the selected candidate had also been approved on September 29, 2021 by the Commissioner of School Education.
43. Insofar as the participation of the petitioners were concerned for receiving appointment after verification of their relevant documents by the Jurisdictional Chairman of the District Primary School Council, the specific stand taken by the Primary School Councils that the petitioners failed to produce the relevant document at the time of verification. The material averments from the affidavit-in-opposition affirmed by the Chairman, District Primary School Council, Purba Medinipur affirmed on January 31, 2022 are quoted below:-

“4(xix) I say that after careful scrutiny it is seen that the petitioners No.7, 33, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 were impleaded in the writ petition bearing W.P. No. 5623 (W) of 2018 who were duly served by registered post for verification of documents.

(xx) I say that the writ petitioners herein have failed to produce any documents that they have participated in the recruitment proceedings which was initiated by the Council in the year 1996.

(xxi) I say that after completion of the recruitment process and a lapse of long period, the petitioners herein are challenging the said recruitment process and by contending now praying for their appointment in 44 posts alleging that which lying vacant which is absolutely wrong since after verification of documents of the candidates, the Commissioner of School Education issued vide D.S.E. Memo No. 365/1(5) LP dated 18.07.2017 and instructed the Chairman of both the Purba Medinipur and Paschim Medinipur District Primary Schools Councils to terminate the service of the 12 primary teachers who were then in service mentioned in paragraph 8 of the said order of the Commissioner after giving opportunity of hearing to them and as such writ petitioners herein have miserably failed to justify that the instant writ petition is maintainable”.

44. In the affidavit-in-reply filed by the petitioners affirmed on February 8, 2022, the petitioners chose not to deny the said stand of the Primary School Council specifically and a mere evasive denial is there. The relevant averment from the affidavit-in-reply is quoted below:-

“17. With reference to (xix), (xx), (xxi) and (xxii) I deny and dispute each and every allegations brought against the writ petitioners save and except the matters of record”.

45. On a harmonious reading of the averments of the parties made in their respective pleadings as stated above it appears to this Court that the decision/direction of the Directorate of the School Education dated August 10, 2017 was complied with. The petitioners were duly summoned by the Jurisdictional Chairman of the District Primary School Council to produce the necessary documents, inter alia, to show their participation in the selection process, however, the petitioners failed to do so.

46. Thus, from the materials available on record before this Court, it appears that the direction of the Directorate of Education Department dated August 10, 2017 was duly carried out but the petitioners failed to qualify the tests laid down thereunder. It is, therefore, incorrect to allege on the part of the petitioners that the direction of the Directorate dated August 10, 2017 had not been implemented or executed. The Jurisdictional Chairman of the Primary School Council had implemented the said direction of the Directorate dated August 10, 2017. In course of such implementation, the petitioners were summoned to produce the relevant documents to which the petitioners failed to show and prove that they appeared and participated in the relevant selection process for recruitment for the Post of Primary Teachers. The moment the petitioners failed to do so, the petitioners could not and cannot claim any right of appointment under the relevant selection process. A detail fact finding enquiry was made by the Jurisdictional Chairman of the Primary School Council in terms of the direction of the Directorate dated August 10, 2017 in which the petitioners were found to be disqualified. This Court is now convinced that, there was no perversity or irregularity in the decision making process of the Jurisdictional Chairman of the Primary School Council by not granting appointment to the petitioners. This Court is also of the considered opinion that, there was no further scope for reopening or revisiting of the decision of the Jurisdictional Chairman of the Primary School Council.

47. Inasmuch as, challenging the said selection process under the said decision/direction of the Directorate of School Education dated August 10, 2017 the petitioner nos. 16, 17, 29, 30, 33, 36, 39, 40, 43, 45, 47, 49 and 54 in the second writ petition had raised the issue in several appeals, inter alia, in MAT 258 of 2022. After considering the submissions made on behalf of those petitioners, the Hon'ble Division Bench by judgment and order June 30, 2023 dismissed all those appeals with costs with the following observations:-

"16. That the writ petitioners herein have failed to produce any documents that they have participated in the recruitment proceedings which was initiated by the Council in the year 1996. That after completion of the recruitment process and a lapse of long period, the petitioners herein has been challenging the said recruitment process and praying for issuance of appointment letter in respect of 44 posts alleging that which lying vacate which is absolutely wrong since after verification of documents the Commissioner of School Education issued on vide D.S.E. Memo No. 365/1(5) LP dated 18.07.2017 and instructed the Chairman of both the Purba Medinipur and Paschim Medinipur District Primary Schools Councils to terminate the service of the 12 primary teachers who were then in service mentioned in paragraph 8 of the said order of the Commissioner after giving opportunity of hearing to them and as such writ petitioners herein have miserably failed to justify that the instant writ petition is maintainable.

17. The name of the petitioner Nos. 16, 17, 29, 30, 33, 36, 39, 40, 43, 45, 47, 49 and 54 herein have filed Mandamus Appeal being M.A.T. No. 258 of 2022, M.A.T. No. 259 of 2022, M.A.T. No. 260 of 2022, M.A.T. 261 of 2022, M.A.T. No. 264 of 2022, M.A.T. No.265 of 2022, M.A.T. No. 267 of 2022 and M.A.T. No. 434 of 2018 before this Hon'ble High Court challenging the same selection procedure and the appellants claims to belong to the SC category candidate and prayed for setting aside the illegal appointments given to the 56 number of General Category candidates and their appointments in place and stead of general category candidates. The aforesaid appeals were dismissed with cost by the Hon'ble Divisiosn Bench of this Hon'ble Court, the operative portion of the said judgment and order dated 30.06.2023 is set out as under:-

"...Mr. Banerjee was permitted to supply the roll numbers of all the 16 appellants to Mr. Chatterjee, Learned Counsel appearing on behalf of the respondent authority. The written instruction was handed over earlier in Court by the Secretary, PMDPSC dated June 21, 2023. The said Written Instruction was retained with the record.

Upon perusal of the original records produced in Court by AI, it transpired that out of the 16 candidates, records were untraceable in respect of only

one candidate i.e., Sri Subhas Chandra Das. His name appeared in Sl. No. 14, 281 of the Original Register. However, the names of the other candidates did not appear in the said Register. The Serial Numbers provided by Mr. Banerjee did not tally with the Serial Numbers in the Original Register except for 4 appellants. Out of the said four only one appellant Subhas Chandra Das appeared in the interview.

This Court had the occasion to personally verify the documents produced in Court by the AI. The names of the appellants apart from four appellants did not match with the names of the candidates whose serial numbers were produced by Mr. Banerjee. The appellant No.2 in MAT 258 of 2022 was the only candidate who appeared in the interview. Unfortunately his records are purportedly lost by the authorities.

Considering the submissions of the parties and the materials placed on record, this court is of the view that most of the appellants have not been able to show their locus standi in filing the writ petition and also in preferring the appeal. A writ court cannot allow roving enquiry of this kind.

This Court is constrained to hold that without appearing for the interview and without being given Admit Cards, most of the writ petitioners/appellants have filed the writ applications challenging the decision of the respondent concerned in purportedly giving the appointments to the 56 General Category candidates in the SC Category. Such stand of the writ petitioners/the appellants cannot be appreciated by this Court.

In such view of the matter, the appeals being M.A.T. No. 258 of 2022, M.A.T. No. 259 of 2022, M.A.T. No. 260 of 2022, M.A.T. No. 261 of 2022, M.A.T. No. 264 of 2022, M.A.T. No. 265 of 2022, M.A.T. No. 266 of 2022, M.A.T. No. 267 of 2022 and M.A.T. No. 434 of 2018 alongwith the connected applications are dismissed with costs assessed at Rs.10,000/- to be paid severally by each of the appellants. The said costs will be paid by each of the appellants to the State Legal Services Authority within a period of one month from the date of this order.

In the event, the said costs are not paid within the stipulated period, the District Magistrates, respectively of Purba and Paschim Medinipur shall recover the said costs from the appellants under the Bengal Public Demands Recovery Act and forward the same to the State Legal Services Authority within a period of one month from the date of communication of this Order by the Registrar General, Appellate Side of this Hon'ble Court, who will take steps for communicating the same after expiry of one month from date, in the event the costs are not paid.

It is not lost to the mind of this Court that the appellant No.2 in MAT 258 of 2022, being Subhas Chandra Das, was a candidate, who admittedly

appeared in the interview but his records are lost. The appellant No.2 will not be required to pay any costs.

In the event, the appellant No.2 is found to meet the eligibility criteria of obtaining the cut-off marks of 30%, the appellant No.2 in MAT No. 258 of 2022 will be given appointment subject to compliance of the formalities within three months from the date of this order.

In the event, the records of the said appellant cannot be traced out within a period of three months, he will be given the benefit of doubt and will be appointed subject to compliance of the formalities. The appointment of the appellant No.2, if granted, shall be on the same terms and conditions of the candidate, who were appointed earlier. The appellant No.2 will be entitled to receive the notional benefits from the date on which the 56 General Category Candidates were appointed.

After dictation of the Order it was submitted on behalf of Menoka Munda Bisai, Appellant No.1 in MAT No. 434 of 2022 has already been given appointment and she has erroneously preferred the appeal. The said stand of the appellant No.1 in MAT 434 of 2022 is not appreciated. However, in view of the admitted position she will be exempted from praying of costs.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, for supplied to the parties, subject to compliance with all requisite formalities”.

48. This Court has been informed by the parties that the said judgment and order of the Division Bench dated June 30, 2023 has not been challenged and is still holding the field and is binding on the issue.
49. In view of the above, this Court is of the firm view that, the issue raised by the petitioners in these two writ petitions had received a complete adjudication on law and fact and there remains nothing further to be adjudicated upon in these two writ petitions. Furthermore, the selection process was of 1996 which stands closed immediately upon the adjudication had taken place by the Hon'ble Division Bench. This Court is also of the firm view that, the direction of the Directorate of the School Education dated August 10, 2017 stands

complied with and there is nothing left for any further compliance or implementation thereunder.

50. ***In the matter of: R.S. Mittal (supra)*** relied upon on behalf of the petitioners the Hon'ble Supreme Court was of the view that it is no doubt correct that a selected person has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person stands selected by the selection board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily there is no justification to ignore him for appointment. Applying this ratio in the fact situation of the instant case in these two writ petitions, this Court is of the view that following the decision/direction dated August 10, 2017 the petitioners were summoned for production of the relevant documents for verification in the manner as directed therein, however, the petitioners failed to produce the same and thereby failed to satisfy the appointing authority for receiving the appointments for the post of primary teachers. Therefore, the appointing authority in the instant case had justification to decline the appointment. Hence, the ratio laid down by the Hon'ble Supreme Court ***In the matter of: R.S. Mittal (supra)*** would not apply in the facts and circumstances of these two writ petitions.
51. ***In the matter of: Kaushik Mallick (supra)*** the Hon'ble Division Bench held that right of appointment against the post of a selected candidate cannot be taken away on the pretext that the panel has already expired and the post has

already been filled by somebody else. In the facts and circumstances in these two writ petitions, the petitioners were granted due opportunity to follow the due process of law for appointment as directed in the direction/decision dated August 10, 2017 made by the Directorate of School Education but ultimately the appointing authority after carrying out the direction of the school directorate rejected the claim for appointment by the petitioners. This does not amount to taking away of right of appointment of the petitioners on the pretext that the panel has expired or that the post has been filled up. Here the petitioners were disqualified. Therefore, the ratio laid down by the Hon'ble Division Bench ***In the matter of: Kaushik Mallick (supra)*** has no application in the facts and circumstances of these two writ petitions.

52. In view of the foregoing discussions and reasons, this Court is of the considered opinion that both the writ petitions are devoid of any merit and no relief can be granted to the petitioners.
53. Accordingly this two writ petitions **WPA 23735 of 2019 with I.A. No. CAN 2 of 2022 and WPA 18250 of 2021 with I.A. No. CAN 1 of 2022 stand dismissed** without any order as to costs.
54. Consequently all the connected interlocutory applications filed in both these two writ petitions stand disposed of.

(Aniruddha Roy, J.)