

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Shekhar B. Saraf

WPA No 7283 OF 2020

With

CAN No 1 OF 2020

ARNAB ROY

Vs.

THE STATE OF WEST BENGAL & ORS.

WITH

WPA 507 OF 2021

SUVAJIT KARAN

Vs.

STATE OF WEST BENGAL & ORS.

For the Respondents : Mr. Soumen Kr. Dutta
Mr. Subhas Jana

For the State : Mr. Pinaki Dhole
Mr. Sayan Datta

Last Heard On : October 16, 2023

Judgement On : November 16, 2023

Shekhar B. Saraf J:

1 Two writ petitions have been tagged together, bearing writ petition number WPA 7283 of 2020 and WPA 507 of 2021. The cause of action arises from two orders bearing writ petition number W.P. 1749 (W) of 2009 and W.P. 30068 (W) of 2013, wherein the co-ordinate bench of this court instructed respondent no. 3 to grant prior permission for the appointment of six non-teaching staff positions in the school, among which the position of one clerk and two laboratory attendants was included. The prayers of the two writ petitions have been delineated below: -

- a. WPA 7283 of 2020 is filed by the petitioner challenging the purported decision of the Additional District Inspector of Schools (SE), Purba Medinipur (hereinafter referred to as 'ADI') communicated under the Memo dated July 03, 2020. The petitioner prayed for a writ of mandamus to compel respondent no. 4 i.e., ADI to revoke, annul, or withdraw the Memorandum dated July 3, 2020, whereby the ADI had communicated the dissolution of the panel responsible for appointing Group C staff (clerk) category S.C in permanent vacancy (hereinafter referred to as 'position of clerk'), citing various grounds as detailed in the memo. The petitioner had also prayed that the respondents may be commanded to approve the panel for the post of Group C staff in Marishda BKJ Banipith School, located in Purba Medinipur

and further command the school authority to issue an appointment letter in favour of the petitioner being the first empanelled candidate and to approve the appointment forthwith.

- b. WPA 507 of 2021 is filed by the petitioner challenging the purported decision of the ADI communicated under the Memo dated October 14, 2020. The Petitioner prayed for a writ of mandamus to compel the ADI to revoke, annul, or withdraw the Memorandum dated October 14, 2020, whereby the ADI had communicated the dissolution of the panel responsible for appointing Group D (Laboratory Attendant) staff (hereinafter referred to as 'position of laboratory attendant'), citing various grounds as detailed in the memo. The petitioner had also prayed that the DI may be commanded to approve the panel for the post of Group D staff in Marishda BKJ Banipith School, located in Purba Medinipur and further command the school authority to issue an appointment letter in favour of the petitioner being the first empanelled candidate and to approve the appointment forthwith.

Facts

- 2 The factual matrix for writ petition number WPA 7283 of 2020 is as follows:

- a. The narrative of this writ petition began to take shape when the managing committee of Marishda BKJ Banipith School, located in Purba Medinipur, filed two writ petitions, bearing numbers W.P. 1749(W) of 2009 and W.P. 30068 (W) of 2013, wherein the co-ordinate bench of this court instructed respondent no. 3 to grant prior permission for the appointment of the position of clerk.
- b. In light of the above directions, the District Inspector of Schools, Purba Medinipur (hereinafter referred to as the 'D.I') granted permission to fill up the aforementioned posts on June 14, 2016.
- c. Subsequent to receiving the prior permission, the Marishda BKJ Banipith School, located in Purba Medinipur (hereinafter referred to as the 'school authorities') requested the District Employment exchange, Contai, Purba Medinipur (hereinafter referred to as 'employment exchange') to sponsor the name of eligible candidates to which the employment exchange provided the names of 20 eligible people vide a memo dated February 28, 2017.
- d. The school authorities also published an advertisement in the newspaper on April 25, 2017, thereby, inviting applications from eligible candidates to fill up the position of clerk and laboratory attendant for the school concerned within 10 days from the date of the notification. The petitioner submits that having the

requisite qualifications, he applied for the position of clerk.

- e. The interview date was fixed on February 4, 2019. However, it was later changed to January 18, 2020. The DI was informed of this delay vide a letter dated January 25, 2019. The reason of some 'unwanting situation' was given and it was communicated that the interviews would be postponed, and all candidates have been duly informed of the delay. The school authorities received neither any approval nor rejection of the change in date of interview from the DI.

- f. The panel was submitted to the ADI. Vide a memo dated July 03, 2020 (hereinafter referred to as the 'impugned memo dated July 03, 2020'), the panel for the purpose of appointment for the said position of clerk was disapproved by the ADI for violating G.O. No. 1594-SE(S) dated December 26, 2015 being Rules of West Bengal Schools (Recruitment of non-teaching staff) Rules, 2005 (hereinafter referred to as the '2005 Rules') on the following grounds:-
 - i. The school authorities failed to make requisition to the employment exchange within 45 days for the names of the candidates and is violation of Rule 8 (5) (a) of the 2005 Rules.

- ii. The school authorities postponed the date of the interview without seeking the approval of the DI and is in violation of Rule 8 (8) (a) of the 2005 Rules.
- iii. As per the 2005 Rules, no person shall be appointed unless the person completed eighteen years of age on the 1st January of the year in which the requisition was made to the employment exchange for sponsoring names by the employment exchange i.e. 1st January 2016; however the first candidate of the panel had only completed sixteen years of age on the date of reference and is thus in contravention of Rule 4 (b) of the 2005 Rules.

3 The factual matrix for writ petition number WPA 507 of 2021 is as follows:

- a. The Managing Committee of the school authorities filed two writ petitions, bearing numbers W.P. 1749(W) of 2009 and W.P. 30068 (W) of 2013, wherein the co-ordinate bench of this court instructed respondent no. 3 to grant prior permission for the appointment of two positions of laboratory attendant.
- b. In light of the above directions, the DI granted permission to fill up the aforementioned posts on March 13, 2015, as per the 2005

Rules. The order was revalidated vide a memo dated January 4, 2017.

- c. The school authorities published an advertisement in the newspaper on April 25, 2017, thereby, inviting applications from eligible candidates to fill up the position of clerk and laboratory attendant for the school concerned within 10 days from the date of the notification. The petitioner submits that having the requisite qualifications, he applied for the position of clerk.
- d. The interview date was fixed on February 3, 2019. However, it was later changed to January 19, 2020. The DI was informed of this delay vide the same letter dated January 25, 2019, stating that owing to some 'unwanting situation', the interviews have to be postponed and all candidates had been duly informed of the delay. The school authorities received neither any approval nor rejection of the change in date of interview from the DI.
- e. The panel was submitted to the ADI. Vide a memo dated October 14, 2020 (hereinafter referred to as the 'impugned memo dated October 14, 2020'), the panel for the purpose of appointment for the said position of laboratory attendant was disapproved by the ADI for violating the 2005 Rules on the following grounds: -
 - i. The interview was postponed for reason that were neither of the nature of severe emergency nor of

natural calamity, and the reason was devoid of any supporting documents. Approval for shifting the date of the interview was not obtained from the DI and this act was in violation of Rule 8 (8) (a) and (b) of the 2005 Rules.

- ii. The school authorities called all candidates for the interviews irrespective of the marks obtained in class VIII examination without constituting the selection committee and the selection committee neither received the applications before the date of interview nor could short list the candidates on the basis of marks obtained in the relevant examination. This act was in violation of Rule 8 (7) (b) of the 2005 Rules.
- iii. A relative of the secretary of the Managing Committee took part in the selection process, violating Rule 7 (5) (a) of the 2005 Rules.
- iv. The marks awarded to the candidates have not been recorded as the procedure outlined in Rule 9 (4) of the 2005 Rules.
- v. The appointing authority did not submit the panel within the stipulated time given in Rule 9 (7) (b) of the 2005 Rules.

- 4 Challenging both the impugned memos dated July 3, 2020, and October 14, 2020, the petitioners have approached this Court.

Contentions:

- 5 The counsel for the petitioners for writ petition number WPA 7283 of 2020 has made the following submissions: -

- a. The decision of the ADI is not at all tenable in law in view of the order passed by the Hon'ble Court. Regarding the ground where the ADI rejected the panel of appointment on the basis that the school authorities should have made requisition to the employment exchange within 45 days, the counsel for the petitioner placed reliance on the unreported judgement of ***Kumar Probal Narayan vs. The State of West Bengal & Ors. W.P No. 28930 (W) of 2013*** and ***Raju Naskar vs. The State of West Bengal & Ors.*** reported in ***(2014) 1 CHN 654*** to show that Rule 8 (5) (a) of the 2005 Rules is only directory in nature.
- b. The decision of the ADI to reject the panel on the ground that the date of the interview was postponed without taking permission or intimating the DI and was thus, contrary to the provision laid down in Para 8 (8) (a) of the 2005 Rules is not tenable as there was no need to take fresh permission from the DI. The interview was not cancelled, rather it was postponed. The DI was informed of this delay vide letter dated January 25, 2019, stating that owing to some 'unwanting situation', the interviews had to be

postponed and all candidates were duly informed of the delay. Furthermore, Rule 8 (8) (a) of the 2005 Rules is directory in nature.

- c. The decision of the ADI to reject the the panel on the basis that Rule 4(b) of the 2005 Rules as the first candidate of the panel had only completed sixteen years of age on the first of January and was thus, not an eligible candidate is not a tenable ground as the age of the candidate for eligibility should have been taken from the date of the advertisement. As per law laid down in a three-judge bench of this court in ***Rabindra Nath Mahata vs. State of West Bengal and Ors.*** reported in **2005 (3) CHN 337**, and as per law laid down by the Hon'ble Supreme Court in ***Rekha Chatturvedi vs. University of Rajasthan*** reported in **1993 Supp (3) SCC 168**, ***Ashok Kumar Sharma vs. Chander Shekhar and Ors.*** reported in **(1997) 4 SCC 18**, ***Rakesh Kumar Sharma vs. Govt. of NCT of Delhi and Ors.*** reported in **(2013) 11 SCC 58**, ***Excise Superintendent Malkapatnam Krishna District, A.P vs. K.B.N. Visweshwara Rao and Others*** reported in **(1996) 6 SCC 216**, and ***Raj Kumar and Others vs. Shakti Raj and Others*** reported in **(1997) 9 SCC 527**, that apart from recruiting from sponsored candidates, the recruiting authority have to advertise the vacancy of the position in national news and the eligibility criteria of a candidate shall be determined on the date of advertisement or last date of application.

- d. The process was initiated under the old Rules and the same should be completed under those Rules. As per law laid down in ***Managing Committee, Mohiary Rani Bala Kundu Balika Vidyalaya vs. State of West Bengal*** reported in **2011 (3) CHN (Cal) 79**, if the selection process has started under certain rules, then the amendment to the rules would not affect the existing rights of the candidates who have been considered for selection.
 - e. As per law laid down in a division bench of this court in ***Nomita Chowdhury vs. State of West Bengal*** reported in **1999 (2) CLJ 21**, when a statutory functionary is asked to perform a statutory duty within a prescribed time, the same would be directory in nature and not mandatory.
 - f. As per law laid down by the Hon'ble Supreme Court in ***Kailash vs. Nankhu and Others*** reported in **(2005) 4 SCC 480** if there are no penal consequences for contravention of the rules, then the said rules should be considered directory in nature.
- 6 The counsel for the respondents for writ petition WPA 7283 of 2020 has made the following submissions: -
- a. The petitioner has not annexed the application made by him in response to the advertisement for position of clerk. Furthermore, he has not annexed copies of the call letter issued by him by the

school authorities. The department is unaware of the application of the employee.

- b. The West Bengal School Service Commission (Amendment) Act, 2009 came into force with effect from 1st January, 2009, whereby power is vested with the School Service Commission to fill up the post in terms of the West Bengal School Service Commission (selection of persons for Appointment to the post of Non-teaching staff) Rules, 2009 (hereinafter referred to as 'The 2009 Rules'). Thus, with introduction of the 2009 Rules, the 2005 Rules has been superseded and does not apply to the current case. Thus, it is argued that the panel may be cancelled, and the resultant vacancy may be forwarded to the **West Bengal School Service Commission. State of West Bengal & Ors. vs. The Managing Committee, Nirjharini S.B. Vidyalaya (H.S) Etc, Civil Appeal No. 20883 of 2017**, the Hon'ble Supreme Court was pleased to hold that no vested right arises in favour of the candidates merely by initiation of selection process and the new Rules should apply to the selection. process. The same was observed in a three judge bench of this court in **Managing Committee, Kadamtala High Madrasah and Ors. vs. State of West Bengal and Ors.** reported in **(2019) 2 CHN 1**.
- c. The petitioner was sixteen years of age as on January 1, 2016, when the requisition was made to the employment exchange for

sponsoring names of candidates by the employment exchange. In this circumstance, the petitioner was ineligible as he was underaged and had no right to appear in the interview for the post of clerk in the said school. As per Rule 4 (b) of the 2005 Rules, no person shall be appointed unless he has completed the age of eighteen years on the 1st January of the year in which the requisition was made to the employment exchange for sponsoring names of eligible candidates.

- d. There was an unnecessary delay which is contrary to the Rule 8 (5) (a) of the Rule of 2005 and the petitioner has given no reason for the apparent delay.
- e. The interview was postponed, and a subsequent date was fixed for holding the interview without seeking any approval from the DI. The said action of the school authorities is not permissible under Rule 8 (8) (b) of the 2005 Rules. As per the rules, if the interview is postponed the school authorities shall obtain the approval of the DI for holding the interview on any other date. Furthermore, the school authorities have given no explanation why the interview was held after a lapse of 1 year 8 months from the date of advertisement.
- f. The High Court cannot issue a mandamus directing a statutory body to violate its own Rules as per law laid down by the Hon'ble

Supreme Court in ***State of Haryana and Others vs. Vijay Singh and Others*** reported in **(2012) 8 SCC 633**.

7 The counsel for the petitioners for writ petition WPA 507 of 2021 has made the following submissions: -

- a. The plea of the ADI that the school authorities have erred in allowing all applicant to appear in the interview without preliminary screening is not at all tenable. Sending requisition before the employment exchange is a mere formality and the interview is to be held on the basis of wide publication of employment news. Subsequently, there is no such guideline under the recruitment rule for preliminary screening of candidates.
- b. There was no need to take fresh permission from the DI for the interviews, as the interviews were postponed and not cancelled.
- c. According to the prior permission given on March 13, 2015, the interview was held on January 19, 2020, and there were no procedural lapses in the recruitment process.
- d. The process was initiated under old Rules and the same should be completed under those Rules.
- e. As per law laid down in ***Managing Committee, Mohiary Rani Bala Kundu Balika Vidyalaya vs. State of West Bengal*** (supra) if the selection process was started under certain rules,

then the amendment to the rules would not affect the existing rights of the candidates who have been considered for selection.

- f. There was no person in the selection committee whose blood relation appeared in the selection process. Furthermore, the selection committee members had submitted a non-relation certificate.
- g. The marking of number in the selection process is the prerogative of the members of the selection committee and the ADI should not have interfered in the decision-making process.
- h. As per law laid down in ***Kumar Probal Narayan vs. The State of West Bengal & Ors*** (supra), the time frame enshrined under the Rules are directory in nature.

8 No affidavits in oppositions have been submitted by the respondents for writ petition WPA 507 of 2021.

Analysis

9 This court shall first deal with the writ petition arising from WPA 7283 of 2020.

10 As per two orders passed by co-ordinate benches in ***Marishda Bijoy Krishna Jagrihi Vidyapith (H.S) & Anr. (In re: W.P. 1749(W) of 2009)*** and ***Marishda Bijoy Krishna Jagrihi Banipith vs. State & Ors W.P. 30068 (W) of 2013***, the DI was directed to give prior

permission within a period of two months. Prior permission was given on June 14, 2016, and subsequently, the school sent requisition to the employment exchange on December 13, 2016, that is 6 months later. The School Authorities received a list of 20 candidates on February 28, 2017.

- 11 Subsequently the school issued an advertisement for the vacant post on April 25, 2017. The petitioner applied for the position of clerk. The interview was fixed on February 4, 2019, but was postponed to January 18, 2020, due to the Lok Sabha Elections. The DI was informed of this delay vide letter dated January 25, 2019, stating there was 'some unwanting situation'. The school authorities received neither any approval nor rejection of the change in date of interview. On finalizing the panel, it was submitted to the ADI for approval. However, it was rejected vide the impugned memo dated July 3, 2020, on mainly three grounds: -

- a. The school authorities failed to make requisition to the employment exchange within 45 days for the names of the candidates and is violation of Rule 8 (5) (a) of the 2005 Rules.
- b. The school authorities postponed the date of the interview without seeking the approval of the DI and is in violation of Rule 8 (8) (a) of the 2005 Rules.

- c. As per the 2005 Rules, no person shall be appointed unless the person completed eighteen years of age on the first of January of the year in which the requisition was made to the employment exchange, in the current petition that is the 1st of January 2016. However, the first candidate of the panel had only completed sixteen years of age on the date of reference and is thus in violation of Rule 4 (b) of the 2005 Rules.

12 The petitioner of WPA 7283 of 2020 has argued that the above-mentioned grounds are not tenable in the eyes of law. Thus, it is pertinent to revisit the law laid down by this court.

13 I have heard the learned counsels appearing for the parties and perused the materials on record. There are four issues that have come before this Court from the writ petition being WPA 7283 of 2020 and have been listed below: -

- I. **Issue I-** Whether the time limit of 45 days is a mandatory provision?
- II. **Issue II-** Whether the panel is liable to be rejected on the grounds that the authorities postponed the date of the interview without seeking the approval of the DI?

III. **Issue III-** Whether the age of the candidate of the panel is to be considered from the date the vacancy was notified or the from the date of the advertisement?

IV. **Issue IV-** Whether the 2005 Rules or the 2009 Rules shall apply to the impugned memo?

V. **Issue V-** Whether the petitioner can be granted any relief?

14 I will now consider each of the aforementioned issues in detail.

Issue I- Whether the time limit of 45 days is a mandatory compulsion?

15 The impugned memo dated July 3, 2020, had rejected the panel on the grounds that requisition to the employment exchange for the names of the candidates was not done within 45 days and is in violation of Rule 8 (5) (a) of the 2005 Rules. The question before this Court is whether noncompliance with the time frame enshrined in the Rules should result in rejection of the entire selection process. The relevant Rules are given below: -

“8(5) (a) On receipt of the sanction from the District Inspector of Schools, the school authority shall make a requisition to the employment exchange for sponsoring, within forty-five days, names of the candidates.

(b) In case of receipt of a non-availability certificate from the employment exchange, the school authority shall, under intimation to the District Inspector of Schools, make an

advertisement with complete postal address of the school and other relevant particulars in a daily newspaper having circulation throughout the State.”

- 16 It is settled law by a catena of judgements that procedural law cannot frustrate the objectives of the Act and Rules they wish to fulfil. Procedural law must assist in achieving the purpose of the Act and cannot be the means through which the intent is thwarted. Conditions that are mandatory must be abided. However, noncompliance with conditions which are directionary should not warrant harsh penalty. In the ***State of Punjab & Anr. vs. Shamlal Murari & Anr.*** reported in **(1976) 1 SCC 719**, the following was laid down by the Hon’ble Supreme Court

“7.The use of “shall” — a word of slippery semantics — in a rule is not decisive and the context of the statute, the purpose of the prescription, the public injury in the event of neglect of the rule and the conspectus of circumstances bearing on the importance of the condition have all to be considered before condemning a violation as fatal.

8.We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho’ procedural, will thwart fair hearing or prejudice doing of justice to

parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities....”

17 In ***Kamakshya Narayann Pandey vs. State of West Bengal and Ors*** reported in **2018 (4) CHN (CAL) 390**, this Court while determining the nature of the time frame enshrined under Rule 9 (7) of the 2005 Rules for the selection dealt with the distinction between a mandatory and a directory provision. The relevant paragraphs are delineated below: -

“10. On the issue of whether a provision is directory or mandatory, it would be appropriate to consider the ratio laid down by the Hon’ble Supreme Court in the case of Dalchand v. Municipal Corporation, Bhopal reported in (1984) 2 SCC 486. The relevant paragraph is cited below.

‘There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the

provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many Rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done is not the prescription of a period of limitation with painful consequences if the act is not done within that period.'

11. Furthermore, in *Chandrika Prasad Yadav v. State of Bihar and Others* reported in (2004) 6 SCC 331, the Hon'ble Supreme Court held:

'31. The question as to whether a statute is directory or mandatory would not depend upon the phraseology used therein. The principle as regards the nature of the statute must be determined having regard to the purpose and object the statute seeks to achieve.'

12. On perusal of the above judgments of the Supreme Court and Calcutta High Court, the following principles emerge that are enumerated below:

(a) Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition

to non-compliance of the provision is necessary to invalidate the Act complained of.

(b) A direction made to public authorities to carry out an Act within a specified time is usually directory in nature but is mandatory when it is accompanied with penal consequences of some kind.

(c) A direction made to public authorities to carry out an Act within a specified time is usually directory in nature when no consequences are provided in the statute on the non-compliance of such time frame.

(d) A direction made to private authorities to perform a specific Act within a specified time period is generally mandatory in nature.

(e) A provision must be construed with the object of the legislation in mind. The provision cannot be construed to be mandatory when its implementation in such a manner would defeat the purpose of the legislation and therefore, must be considered as directory in nature.”

(Emphasis Added)

- 18 This Court is of the opinion that if the time frame in Rule 8 (5) (a) of the 2005 Rules is strictly implemented, it would defeat the very purpose for which the Rules were enacted. The legislative intent was to ensure speedy appointment of staff and prevent unnecessary delay so that the schools may function properly. However, if non compliance with the time frame results in the cancellation of the entire selection process, the appointment process is frustrated and appointment is

delayed rather than made more efficient. It can not be said that the framers of the Rules intended for such mischief. **Therefore, the time frame is directionary in nature and noncompliance with the time frame of 45 days as enshrined under Rule 8 (5) (a) does not warrant complete cancellation of the selection panel.**

- 19 It is also pertinent to mention that ***Prabir Kumar Maji vs. State of West Bengal*** reported in ***2008 (1) CLJ 823***, a co-ordinate bench of this court declared Rule 8 (5) (a) and 8 (5) (b) of the Rules 2005 as ultra vires the Constitution of India on the ground that it offended Articles 14 and 16 of the Constitution of India. Candidates who have the requisite qualification are denied equal opportunity as advertisement for posts are only issued when the vacant positions are in excess to the list of names sponsored by the employment exchange. It is astonishing to this Court that the ADI penalized the school authorities via Rules that has been ruled as ultra vires.

Issue II- Whether the panel is liable to be rejected on the grounds that the authorities postponed the date of the interview without seeking the approval of the DI?

- 20 The panel was rejected on the grounds that the date of interview was fixed on February 4, 2019, but was refixed on January 18, 2020, without any concurrence from the DI and is in violation of para 8 (8) (a) of the 2005 Rules. The relevant Rules are reproduced below: -

“(8) (a) Once the date of interview has been fixed up and communicated to any of the candidates, the interview shall not be postponed except for the reason of a severe emergency or natural calamity.

(b) If the interview is postponed, the selection committee shall forthwith communicate the fact to the District Inspector of Schools and shall obtain his approval (but not his sanction afresh) for holding the interview on any other date.”

- 21 Vide letter dated January 25, 2019, the school authorities had informed the DI that they would be postponing the interview due to ‘some unwanting situation’. The petitioners later submit that it was due to the upcoming Lok Sabha election. The DI neither approved nor rejected the plea for change of interview date. **After keeping silent despite being intimated about the change in interview date, the ADI cannot penalize the School Authorities vide the impugned memo dated July 3, 2020.**

Issue III- Whether the age of the candidate of the panel is to be considered from the date of reference to the employment exchange or from the date of the advertisement?

- 22 The third issue is whether the whether the age of the first candidate of the panel shall be considered from the date of requisition to the employment exchange or the from the date the notice of advertisement was published. The respondents have argued that the selection

process started on the issuance of date of requisition as per Rule 4 (b) of the 2005 Rules, being January 1, 2016. Considering the date of birth of the petitioner is March 8, 1999, and the Rules consider the first January of the year in which the requisition is made, he was sixteen years of age and thus ineligible to be part of the panel. The petitioner has argued that the eligibility criteria has to be determined on the date of advertisement which is April 25, 2017. If the date of advertisement is considered, the petitioner has already attained eighteen years of age and was eligible for the selection process. It is pertinent to note that the petitioner was not among the sponsored names submitted by the employment exchange but had applied after notice for advertisement was issued. The Rules are given below: -

“4. Qualifications :- (1) No person shall be appointed by a school authority as a Librarian or Clerk or a Group D staff in the school, unless the person

....

(b) has completed the age of eighteen years and has not completed the age of thirty-seven years on the first January of the year in which the requisition is made to the employment exchange for sponsoring by the employment exchange names of the candidates: Provided that for a candidate belonging to a reserved category or a candidate who is a member of the family of a deceased teacher or non-teaching staff, the upper age-limit shall be such as is specified for such a candidate in the relevant Government Order.”

23 It is an established fact that unless specified in the advertisement, the date of prior permission is unknown to the candidate. The candidates who are qualified for the post would be unable to apply for the position as they would be uncertain if they have acquired the necessary qualifications. The uncertainty not only causes unnecessary hassle for the citizens who are applying but frustrates the efficiency of the selection process as many applications shall be rendered invalid. Thus, unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, the qualifications of the candidates are to be examined from the date on which the notice of advertisement is issued. This principle has been upheld by the Hon'ble Supreme Court in various judgements.

24 In ***Rekha Chaturvedi vs. University of Rajasthan*** (supra), the issue before a division bench of the Hon'ble Supreme Court was whether the qualifications of the candidates should be examined from the date of selection or with reference to the last date for making applications. The Apex Court held the last date for making applications shall be the date of reference for the qualification of candidates. The relevant paragraph is delineated below: -

'10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be

unable to state whether they are qualified for the posts in question or not if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence viz. even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. ... Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission v. B. Sarat Chandra [(1990) 2 SCC 669] and Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi [(1990) 3 SCC 655].”

- 25 However, in **Ashok Kumar Sharma and Anr. v. Chander Shekher and Anr.** reported in (1994) **ILLJ 267 SC**, it was held that the applicant who had acquired qualification by the time of interview would be sufficient. This was overturned in a review petition in **Ashok Kumar Sharma v. Chander Shekhar** (supra) where a three judge bench affirmed the ratio in held in **Rekha Chaturvedi vs. University**

of Rajasthan (supra) and held that that the qualifications of the candidates should be examined from the date of advertisement. The above case was affirmed by a division bench of the Hon'ble Supreme Court in **Rakesh Kumar Sharma vs. Govt. of NCT of Delhi and Ors.** (supra). The relevant paragraphs are given below: -

“17. A three-Judge Bench of this Court in Ashok Kumar Sharma v. Chander Shekhar [(1997) 4 SCC 18] reconsidered and explained the judgment of Ashok Kumar Sharma (1993) [1993 Supp (2) SCC 611] observing : (Chander Shekhar case [(1997) 4 SCC 18] , SCC pp. 21-22, para 6)

‘6. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is

indisputable and in fact was not doubted or disputed in the majority judgment.'

....

21. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification i.e. eligibility, character verification, etc. Clause 11 of the letter of offer of appointment dated 23-2-2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court."

- 26 The ratio of **Ashok Kumar Sharma v. Chander Shekhar** (supra) was further upheld in **Divya vs. Union of India** reported in **MANU/SC/1132/2023**.

"55. The judgment in Ram Kumar Gijroya case (supra) is also directly in conflict with the judgment of three Hon'ble Judges in Ashok Kumar Sharma and Ors. v. Chander Shekhar and Anr. (1997) 4 SCC 18 wherein in para 6, it was held as under:

'... So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr. T.K. Thommen and v.

Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date, cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis.....’

....

57. Be that as it may, we are bound by the judgment of the three-Judge Bench in Ashok Kumar Sharma (supra)”

- 27 The principles laid down by the Hon’ble Supreme Court is clear. The qualifications of the candidate shall be examined on the last date of application unless otherwise specified in the advertisement. **Thus, the ADI has ignored laid down principles of law when considering the date of requisition made to the employment exchange as the date**

to consider the qualifications of the candidates and this ground cannot be held to be a good ground in law. The petitioner was qualified for the position of clerk and the impugned memo dated July 3, 2020, is liable to be set aside.

Issue IV- Whether the 2005 Rules or the 2009 Rules shall apply to the impugned memo?

- 28 The respondents have argued that that the 2005 Rules have been superseded by the 2009 Rules. Thus the 2009 Rules should apply to the selection process. The petitioner has argued that the Rules under which the selection process had started shall apply.
- 29 It is an established fact that the 2005 Rules were superseded by the West Bengal School Service Commission (Amendment) Act, 2008 with effect from January 14, 2009, that introduced a completely new selection procedure for filling up vacancies and the power of the managing committee to select new candidates was taken away and replaced by the Regional School Service Commissions constituted under the West Bengal School Services Commission Act, 1997. Subsequent to the amendment in 2008, the Government framed the 2009 Rules in supersession of the earlier 2005 Rules. The 2009 Rules framed subsequent to the Amendment Act, 2008 took away the power of the managing committee to recruit persons in non-teaching posts in

non-government aided and unaided schools, and delineated the new manner by which recruitment would take place going forward.

30 When the Rules for appointment to a vacant post have been amended after a vacant post has been notified, the court must ascertain when the selection process had begun in order to assert which Rules shall apply to the selection process. The selection process should take place as per the law in force when the process was initiated. As per law laid down by not only this court, but by the Hon'ble Supreme Court as well, the selection process starts once the advertisement is notified. Thus, the law applicable to the selection process shall be the law that stood at the time the advertisement was issued.

31 With regards to when the selection process would start, the Hon'ble Supreme Court in ***Bhupinderpal Singh and Others vs. State of Punjab and Others*** reported in (2000) 5 SCC 262 held the following:

"13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar [(1997) 4 SCC 18] , A.P. Public Service Commission v. B. SaratChandra [(1990) 2 SCC 669] , District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi [(1990) 3 SCC 655] , Rekha Chaturvedi v. University of Rajasthan [1993 Supp (3) SCC 168] , M.V. Nair (Dr) v. Union of India [(1993) 2 SCC 429] and U.P. Public Service Commission U.P., Allahabad v. Alpana [(1994) 2 SCC 723] the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant

service Rules and if there be no cut-off date appointed by the Rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.”

(Empasis added)

- 32 Furthermore, in ***Pawan Pratap Singh and Others vs. Reevan Singh and Others***, reported in ***(2011) 3 SCC 267*** it was held that the effective date of selection has to be understood in the context of the service rules under which the appointment is made, and the selection process is started on the date of advertisement. The relevant paragraph has been reproduced below: -

“45.the effective date of selection has to be understood in the context of the service Rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be....”

33 Taking cognisance of the above-mentioned Supreme Court judgements, a three-judge bench of this court in ***The Managing Committee, Kadamtala High Madrasah and Ors. vs. The State of West Bengal and Ors.*** (supra) held that the new 2009 Rules shall apply to the selection process when advertisement for the vacant post has been published post the supersession of the old Rules. The relevant paragraphs of the judgement are provided for below: -

“36. There is no doubt about the broad proposition of law that if the process of selection has already been initiated, it should be finished in accordance with law that stood at the time of initiation of the process even if a new law has come into force in the meantime. Indisputably, the new Rules came into effect from 9th July, 2009 and prior thereto no advertisement was published in any of the matters. On the date of prior permission to fill up the vacancy no right crystallised in favour of the candidate. Upon availing such prior permission, a school is required to seek names of eligible candidates for the concerned post by sending requisition to the Exchange and by making open advertisement.

37. Viewed from a different angle, even during the period of hiatus on and from the date of provisional appointment to the date of confirmation, no right crystallises in favour of the appointee and with the alteration of the Rules in the midst thereof, the appointee would be bound by the rigors of the new Rules even though there is nothing in the new Rules showing any necessary intendment for enforcing the same with retrospective effect.

38. The term 'selection' means exercise of discretion of the members in the selection committee in examining the participants. The candidature of the aspirant cannot be construed to have been

considered on the date of creation of the vacancy or on the date of issuance of prior permission. Since the said two dates are prior to invitation to participate in the interview, the selection process cannot be construed to have commenced on the said dates. It is only on the date of advertisement, when the candidates are invited to apply, the selection process commences and the fourth issue is, accordingly, answered.

....

46. It is in such perspective that I read and understand the decision in Nirjharini S.B. Vidyalaya (supra) to negate any attempt of the Petitioners herein to have the process of selection completed in terms of the West Bengal Schools (Recruitment of Non-teaching Staff) Rules, 2005 and not in accordance with the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 (hereinafter referred to as the '2009 Rules'), particularly when prior to enforcement thereof no advertisement inviting applications was issued by any of the Managing Committees of the concerned schools and hence it had no applications before it from any candidate.

....

48. D. Question No. 4: As to when a selection process is commenced? Whether with the arising of vacancy (due to the death, resignation, or retirement of the incumbent to the said post or with the creation of new posts) or when the post is advertised, and candidates have been called for interview or after the interview is held.

Answer: The selection process would commence only after the advertisement asking candidates to apply for a particular post.”

(Emphasis Added)

- 34 Thus, in the present petition, considering the 2009 Rules were enacted on January 14, 2009, and the date of advertisement for the vacant position of clerk was notified on April 25, 2017, with the deadline for application being within 10 days, the 2009 Rules shall apply to the selection process. **The managing committee has no power to fill up the position of clerk and the authority to fill the position of clerk is to be done by the West Bengal School Service Commission as per the 2009 Rules.**

Issue V- Whether the petitioner can be granted any relief?

- 35 The respondents have argued that as per law set down in ***The Managing Committee, Kadamtala High Madrasah*** (supra), the petitioner has no vested right to appointment merely by initiation of selection process. It is a settled principle of law that a candidate cannot claim a vested right to appointment even if he is selected in the panel. This principle has been discussed in great detail in ***The Managing Committee, Kadamtala High Madrasah*** (supra). However in an obiter dicta comment, the court does imply that if the candidate is empanelled, he does have a have a limited right to be

considered for appointment. The relevant paragraphs have been given below: -

*“45. Law being fairly well-settled that even an eligible candidate, who might have been found suitable by the selectors and thus selected, has no vested right of appointment, the proposition seems to me to be unsound that a candidate who wishes to take part in a selection process and might have offered his candidature or even taken part in such process without a final panel/merit list having been prepared, could claim a better right (than candidates selected) that the selection process must not only be taken forward but that too in accordance with the Rules in force on the date the process commenced, notwithstanding that such Rules may have been amended or repealed during the continuance of such process. **That a candidate for a public post has a right to claim fair consideration of his candidature admits of no doubt, but to enforce a right, if at all, the minimum that is required of him is to show that he has been empanelled/enlisted. However, so long the amendment that is effected in the governing Rules and is sought to be enforced soon after the selection process has commenced or even in the midst thereof does not impair his right of participation and also does not impede a fair consideration of his candidature, it is difficult to comprehend on what basis could a candidate for a public post claim that the process must move forward without the amendments, insofar as they are relevant, being enforced and to take the selection process to its logical conclusion on the basis of the unamended Rules.** If it were a case of repeal of the earlier Rules by a new set of Rules, and initiation of the selection process based on the former not being saved by the latter, the recruitment process itself has to be aborted and commenced afresh in tune with the new Rules.*

....

B. Question No. 2: Whether the law laid down by the earlier Division Bench of this Hon'ble Court in the case of *Snehansu Jas vs. State of West Bengal* reported in MANU/WB/0166/2001 : 2001 Vol. 2 CLJ 558 (Cal), can still be accepted as a law operating in the field of direct recruitment?

Answer: In light of the judgment passed by the Hon'ble Supreme Court in the case of *State of West Bengal and Ors. vs. The Managing Committee, Nirjharini Sarkar Balika Vidyalaya (H.S)* wherein it was held that no vested rights arise in favour of the candidates merely by the initiation of the selection process and the new Rule certainly would be applied to the selection process, the judgment in *Snehansu Jas vs. State of West Bengal* reported in 2001 Vol. 2 CLJ 558 (Cal) no longer is the correct law, and accordingly, the question is answered in the negative.

C. Question No. 3: Whether grant of prior permission alone can create any vested right in the Management to complete the selection process by following the Rules existed as on the date of creation of such vacancy notwithstanding a change was introduced in the selection Rules before publication of advertisement for the vacant post under the old Rules?"

Answer: Following the principles laid down in the case of *Nirjharini Sarkar Balika Vidyalaya (supra)* it is clear that grant of prior permission to the management does not confer any vested right in the management to complete the selection process by following the earlier Rules upon legislative change in the selection Rules before publication of advertisement for the vacant post under the old Rules. Ergo, this issue is also answered in the negative.

(Emphasis Added)

36 The current case is a peculiar one where in the year 2016, seven years after the 2009 Rules had been passed, the DI had given prior permission as per the procedure laid down in the 2005 Rules on orders passed on October 3, 2013, of W.P. No. 30068 (w) of 2013. It is an established fact that the 2009 Rules took away the power of the managing committee to recruit persons in non-teaching posts in non-government aided and unaided schools. Even if the the candidate had obtained the first position in the panel, it is via a process enshrined under the 2005 Rules which has been supereceded by the 2009 Rules. As per the binding ratio of ***The Managing Committee, Kadamtala High Madrasah*** (supra) and a catena of Hon'ble Supreme Court judgements, the law in force on the date of advertisement will apply to the selection process for the vacant post and under the 2009 Rules, the process of selection for the position of clerk is overlooked by the West Bengal School Service Commission. The petitioner has neither the vested right of selection nor the right to be considered for appointment. Thus, the prudent decision would be to start the selection process afresh as per the process envisioned under the 2009 Rules.

37 The facts of the writ petition being WPA 507 of 2021 is similar to the writ petition being WPA 7283 of 2021. On orders passed on October 3,

2013, in W.P. No. 30068 (w) of 2013, the DI gave prior permission as per the procedure laid down in the 2005 Rules. Notice for advertisement of the position was published on April 25, 2017. The ADI rejected the panel for the position of laboratory attendant vide impugned memo dated October 14, 2020, on the grounds that it is violative of Rule 8 (8) (a), Rule 8 (8) (b), Rule 8 (7) (b), Rule 7 (5) (a), Rule 9 (4) and Rule 9 (7) (b) of the 2005 Rules. In light of the law laid down in ***The Managing Committee, Kadamtala High Madrasah*** (supra) and a catena of Hon'ble Supreme Court judgements, this Court does not find it germane to go into the merits of the impugned memo. The selection process for the position of laboratory attendant should be carried out according to the provisions laid down in the 2009 Rules.

Epilogue

38 The current Indian predicament faces a worrying stagnation of employment structure. The lack of efficient mechanisms for generating employment has left a large percentage of our population unemployed. Many frustrated with the system have actively stopped searching for jobs and youth unemployment is at an all time high. Rather than encouraging the citizens of India to actively seek out jobs and contribute to the flourishing of the nation, institutions have frustrated the youth by creating hurdles borne out of petty technicalities and have misused the discretionary power enshrined on them. In the

current case, a single vacancy of clerk and two vacancies for Laboratory Attendant has been vacant and litigation against it has continued since 2009. Rather than employing combined efforts to ensure the position is filled up, what has ensured is years of legal disputes. To ensure the prosperity of our nations institutions, one must be mindful when applying the relevant recruitment Rules so that they do not become tools of public mischief.

Summary and Conclusion

39 For ease of reference and for the sake of brevity, I have extracted the relevant principles emerging from the aforementioned discussion of the law: -

- a. Procedural law must assist achieving the purpose of the Act and cannot be the means through which its intent is thwarted. The time frame of 45 days as enshrined under Rule 8 (5) (a) is directionary in nature and shall not thwart the entire selection process.
- b. Vide letter dated January 25, 2019, the school authorities had informed the DI that they would be postponing the interview due to 'unwanting situation'. The DI neither approved nor rejected the plea for change of interview date. After keeping silent despite being intimated about the change in interview date, the ADI cannot penalize the School Authorities vide the impugned memo.

- c. The qualifications of the candidate shall be examined on the last date of application unless otherwise specified in the advertisement. The petitioner was of eighteen years of age on the date of advertisement being April 25, 2017, thus para 4(b) of the 2005 Rules does not stand violated.
- d. The selection process should take place as per the law in force when the process was initiated. As per law laid down by not only this court, but by the Hon'ble Supreme Court as well, the selection process starts once the advertisement is notified. Thus, the 2009 Rules shall apply to the selection process.
- e. The petitioners have neither the vested right of selection nor the right to be considered for appointment.

Order and Directions

40 In light of the findings in Issue I, Issue II, and Issue III, it is clear that the reasoning provided by the respondent is bad in law and therefore this court sets aside the impugned memo of the Additional District Inspector of Schools (SE), Purba Medinapur dated July 3, 2020. However, it is to be noted that the law to be applied to a particular selection process is the law enforced on the date the advertisement is notified, and therefore, the West Bengal School Service Commission (selection of persons for Appointment to the post of Non-teaching staff)

Rules, 2009 would apply to the selection process in this particular case. The order passed in the earlier writ petition bearing W.P. No. 30068 (w) of 2013 passed on October 3, 2013, only provided for prior permission to be given by the District Inspector of Schools to the Managing Committee. The court did not go into the aspect of which law would apply for carrying out the entire selection process. In view of the ratio of the three-judge bench in ***The Managing Committee, Kadamtala High Madrasah*** (supra), that law has been settled and one has to apply the law on the date of the issuing of the advertisement notice. Accordingly, it is clear that the filling up of the vacancy of Group C' staff (clerk) category S.C could have only been carried out by the West Bengal School Service Commission and not by the Managing Committee. Similarly, the filling up of the vacancy of Group D (Laboratory Attendant) staff can only have been carried out by the West Bengal School Service Commission as per the West Bengal School Service Commission (selection of persons for Appointment to the post of Non-teaching staff) Rules, 2009 as well. In light of the same, no relief can be provided to both the writ petitioners in the present case.

41 Accordingly, this Writ Petitions being WPA 7283/2020 and WPA 507/2021 are dismissed.

42 There shall be no order as to the costs.

- 43 An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

(Shekhar B. Saraf, J)