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WPA 3268 of 2015
With
CAN 2 of 2022
With
CAN 3 of 2022
With
CAN 4 of 2023
With
CAN 5 of 2023
Sourav Naskar & Ors.
-Versus-

The State of West Bengal & Ors.
With
WPA 21524 of 2023
Manabendra Chaulia & Ors.
-Versus-
State of West Bengal & Ors.
With
WPA 21529 of 2023
Sangita Ghosh & Ors.
-Versus-
State of West Bengal & Ors.
With
WPA 21764 of 2023
Tarun Pakhira & Ors.
-Versus-
State of West Bengal & Ors.
With
WPA 22498 of 2023
Rajkumar Barui & Ors.
-Versus-
State of West Bengal & Ors.
With
WPA 25044 of 2023
Debabrata Bayen & Ors.
-Versus-
State of West Bengal & Ors.
With
WPA 27682 of 2023
Ranu Bag Das & Ors.
-Versus-
State of West Bengal & Ors.
With
WPA 25705 of 2023
With
WPA 3421 of 2024
With
WPA 21629 of 2023
With
WPA 1826 of 2023

With
 WPA 21316 of 2023
 With
 WPA 23368 of 2023
 With
 WPA 27253 of 2023
 With
 WPA 28125 of 2023
 With
 WPA 19622 of 2023
 With
 WPA 1093 of 2024
 With
 WPA 5180 of 2024
 With
 WPA 8415 of 2024
 With
 WPA 23447 of 2023
 With
 WPA 23391 of 2023
 With
 WPA 23392 of 2023
 With
 WPA 13051 of 2023
 With
 WPA 1826 of 2023 (file not here)

Mr. Samim Ahammed,
 Ms. Ambiya Khatun
 ..for the petitioners (in WPA 3268 of 2015)

Mr. Rabi Lal Maitra,
 Mr. Rajit Lal Maitra,
 Mrs. Debopriya Chakraborty
 ..for the petitioners (in WPA 21524 of 2023 and WPA
 21529 of 2023)

Mr. Rabi Lal Maitra,
 Mr. Rajit Lal Maitra,
 Mr. S. Mondal,
 Ms. Arunima Das Sharma
 ..for the petitioners (in WPA 21764 of 2023 and WPA
 27682 of 2023)

Mr. Rabi Lal Maitra,
 Mr. Amlan Kr. Mukherjee
 ..for the petitioners (in WPA 22498 of 2023)

Mr. Rabi Lal Maitra,
 Mr. Rajit Lal Maitra,
 Ms. Anjana Mahabub
 ..for the petitioners (in WPA 25044 of 2023)

Mr. Tulsi Das Maiti,
 Mr. Pradip Kr. Ghosh,
 Mr. Snehasis Bala,
 Mrs. Namita Basu,
 Mr. Kamal Mishra

...for the petitioners (in WPA 21316 of 2023, WPA 23368 of 2023, WPA 27253 of 2023, WPA 28125 of 2023, WPA 19622 of 2023, WPA 1093 of 2024, WPA 5180 of 2024, WPA 8415 of 2024 and WPA 23447 of 2023).

Mr. Sudipta Dasgupta,
 Mr. Sutirtha Nayek,
 Ms. Suryatapa Das

..for the petitioners (in WPA 25705 of 2023, WPA 3421 of 2024, WPA 21629 of 2023 and WPA 1826 of 2023).

Mr. Firdous Samim,
 Ms. Gopa Biswas,
 Ms. Payel Shome,
 Ms. Sampriti Saha,
 Ms. Purba Mukherjee,
 Mr. Avijit Kar,
 Ms. Mohona Das

...for the petitioners in (WPA 23391 of 2023 and WPA 23392 of 2023)

Mr. Santanu Kr. Mitra,
 Mr. Sandip Sarkar

...for the State (in WPA 3268 of 2015)

Mr. Sirsanya Bandopadhyay,
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...for the State (in WPA 21524 of 2023 and WPA 21529 of 2023).

Mr. Biswabrata Basu Mallick,
 Mrs. Rajyashree Mukherjee

...for the State (in WPA 25044 of 2023)

Mr. Subhajit Chowdhury

...for the State in WPA 21764 of 2023

Mr. Bhaskar Prasad Vaisya,
 Mr. Suman Dey

...for the State in WPA 22498 of 2023

Mr. Subir Sanyal,
 Mr. Ratul Biswas,
 Mr. Kaushik Chowdhury

...for the DPCS, Howrah in all matters

1. A unique paradoxical situation has arisen in which this Court is required to, by consent of the parties, deviate from the laws of practice and procedure followed under Article 226 of the Constitution of India.
2. The facts of the case are that a recruitment process, that was initiated sometime in the year 2009 by the Howrah DPSC and written examination already conducted thereunder came to be cancelled by an order dated June 21, 2012 passed by the Governor. The written examination was to be conducted de novo.
3. It was further directed in the said order that only those candidates, who sat in the examination in the year 2009, would be allowed to sit in a de novo examination. Accordingly, Admit Cards were to be issued only to those persons who participated in the earlier examination process of the year 2009.
4. The eligibility criteria of the year 2009 must, therefore, be understood as also applicable to the de novo examination process held in 2012.

5. The eligibility criteria for the examination are morefully described in a notified advertisement, which was as follows:-

**Howrah District Primary School Council
18 Nityadhan Mukherjee Road, Howrah-I**

Notification

In modification of the earlier Provisional List (in connection with recruitment of Primay Teachers 2009) published and displayed in the office Notice Board on 23.04.2010, it is hereby notified that a revised and final list of candidates eligible as per rules for written test (to be held on 20th June 2010) has been published and will be displayed in the website www.dpschowrah.com on and from 20.05.2010. The lowest % of Madhyamik/equivalent examination marks for eligibility appeared as :

Medium	Gen	SC	ST	OBC	PH-Bengali		PH-Hindi		PH-Urdu
Bengali	67.625	55.375	32.55	63.5	Ortho	44.556	Ortho	39.556	1 Vacancy
Hindi	62.5	43.625	49.44	54	Visual	37.667	Visual	59.625	Un-rese-
Urdu	60.250	X	X	59.66	Hearing	36.778	Hearing	53.556	rved. 48%

All the candidates under Ex-Servicemen category have been enlisted for Written Test and all the Candidates under Exempted and PH Category who have submitted documents in response to the Notification published on 23.04.2010 and found eligible, have been enlisted according to merit.

Eligible candidates are requested to download the "INTIMATION CARD" from the website and collect the ADMIT CARD following the instruction noted in the intimation.

Sd/- Smritis Bandyopadhyay
Chairman
DPSC, Howrah

6. After the de novo examination in 2012, a panel was prepared of successful candidates. Appointment letters were issued. Several writ petitions challenging

the selection process came to be filed since the year 2015 until 2023. The ground for challenge was that ineligible candidates were granted appointment.

7. On June 9, 2023, a Co-ordinate Bench of this Court, in WPA 13051 of 2023, (Barnali Senapati and Ors. V. State of West Bengal and Ors.) WPA 28899 of 2022, WPA 27960 of 2022 and WPA 1025 of 2023, found irregularities in the recruitment process of the year 2012 committed by the DPSC, Howrah.
8. The irregularities were two-fold.
 - (a) Persons who did not sit in the written examination in the year 2009 were allowed to sit in the de novo examination in the year 2012;
 - (b) Persons who are not qualified to sit in the examination in the year 2009, and sat in such examination, were allowed to once again sit in the de novo examination. Several of such disentitled candidates were empanelled and issued letters of appointment by the DPSC, Howrah.
9. By the order dated June 9, 2023 (supra), the Coordinate bench directed each of the petitioners in the four writ petitions to be

appointed absorbed as teachers under the DPSC, Howrah.

10. Before this Court today, the petitioners in the subject writ petitions seek the same benefit as conferred to those petitioners by order dated June 9, 2023.
11. Mr. Subir Sanyal, learned counsel for the DPSC, Howrah submits that the Co-ordinate bench in its order dated June 9, 2023, committed error in entertaining the writ petitions after 11 years of the conclusion of a recruitment process. A wrong order cannot be a precedent.
12. This Court cannot brush aside the argument of Mr. Sanyal. The delay in approaching Court even against an apparent illegality, negates a right to relief. The law on the principle of delay and laches under Article 226 of the Constitution of India is now too well-settled.
13. The only consequence that would follow, is cancellation of the entire recruitment process. Such cancellation is supported by the settled principle of law that “fraud unravel all”. Even a delayed approach to Court for undoing a ‘fraud’ and revoking a

fraudulent benefit can be entertained and such delay will not stand in the way of addressing an illegality arising out of a 'fraud'.

14. On the other hand it would be extremely onerous and unfair to cancel appointments made in the year 2012 after a period of 12 years even if they are found to be improper.

15. This Court however finds consensus ad idem between the counsel for the petitioners, the State and the Howrah DPSC as follows:-

(a) All writ petitions in respect of the recruitment process of 2012 filed until March 31, 2024 shall be entertained.

(b) Each of the petitioners in the aforesaid writ petitions shall be entitled to appointments as successful empanelled candidates in the recruitment process for the year 2009, reconducted in the year 2012, under the Howrah DPSC as directed in the order dated June 9, 2023.

(c) Their appointments will be effective from the date of issuance of appointment letters.

(d) They shall not have any claim towards any arrears since 2012 till date, either monetary or notional.

(e) The petitioners' length of service and terminal benefit shall be calculated from the date of issuance of the letters of appointment to each of them in terms of this order.

16. Mr. Sanyal has indicated that as on date, there are 151 vacancies in the DPSC, Howrah in the post of Assistant Teacher under the WBBPE. The aforesaid posts shall be filled up first. If any more writ petitioners remain for appointment in terms of this order, they shall be issued letters of appointment as and when vacancies would arise. Letters of appointment shall be issued to the petitioners subject to production of all the original documents of participation in the denovo examination.

17. It is expected that the filling up of 151 vacancies shall be completed within a period of one month from date. The balance appointment letters, if any, shall be issued as and when vacancies shall arise. In case the xerox copies are

produced by the petitioner, the council shall verify the same with the records available with them.

18. This Court as an exception, is inclined to entertain an application for addition of parties being CAN 4 of 2023 and CAN 5 of 2023 field in WPA 3268 of 2015 and allows the same. The two applicants shall be treated as added petitioners in the said writ petition.
19. It is made absolutely clear that this order is passed in the very special facts and circumstances of the case. It shall not be treated or cited as a precedent in any writ petition filed after March 31, 2024. In fact, no further writ petition after March 31, 2024 shall be entertained in respect of the subject recruitment process of the year 2009 of the DPSC, Howrah.
20. This order is passed with the consent of the petitioners, the State and the DPSC Howrah.
21. All the writ petitions and their connected applications are disposed of.
22. There shall be no order as to costs.

23. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)