

03.04.2024.
Court No. 13
Item No. 530
ap

W.P.A. No. 28506 of 2014

**Narayan Das
Versus
The State of West Bengal & Ors.**

Md. Sarwar Jahan,
Mr. Debajan Sen.

...For the petitioner.

Mr. Bhaskar Prasad Vaisya, AGP,
Mr. Ranjan Saha.

...For the State.

Mr. Gourav Das.

...For the DPSC, South 24 Parganas.

1. The writ petitioner participated in a selection process for the posts of Assistant Teachers conducted by the District Primary School Council, South 24 Parganas (in short 'DPSC') in the year 2006. Examination was thereafter held in the year 2009. The result was published in the year 2010. The life of the panel expired in the year 2012.
2. A number of writ petitions came to be filed in connection with the recruitment process. The issue that was central to the writ petitions was that the Chairman, DPSC called upon the Employment Exchanges in the District to sponsor the names of those persons, who were registered with the Employment Exchanges upto the year 1993.
3. There is some dispute as to whether the communication of the Chairman, DPSC in fact stated

as such. The issue has now become academic. Suffice it to say that the Employment Exchanges sponsored the names of candidates, who registered even after 1993 and upto the year 1997.

4. All the sponsored candidates were called for written examination. Empanelment was however made of only those candidates, who were registered with the Employment Exchanges before 1993. Some non-empanelled candidates approached the Court immediately after the panel was published in the year 2010. One of such person was Dilip Pradhan. All such candidates obtained orders of appointments on the directions of the High Court on the ground that they had secured higher marks than the empanelled candidates.

5. Few other candidates also approached Court before expiry of the panel in 2012 and obtained orders of appointment at the intervention of the High Court, on the same ground.

6. Admittedly, all the candidates who approached the Court either before expiry of the panel or immediately thereafter secured higher marks than the candidates empanelled.

7. Another batch of candidates approached the Court by way of writ petitions, after realizing the success of fellow candidates upto 31st August, 2012 (the date of expiry of the panel). Initially certain orders were

passed in the writ petitions at the stage of admission including in the present writ petition. The DPSC was directed to extend the life of the panel till the disposal of the writ petition and keep a post vacant in each of the writ petitions.

8. The DPSC challenged the said interim order before a Division Bench of this Court as they did against the interim order dated 6th January, 2015 passed in the instant case.

9. A Division Bench of this Court on 14th February, 2017, set aside the interim order and observed that if the petitioners succeeded in the final disposal of the writ petition, they could be accommodated appropriately.

10. Against the dismissal of said writ petitions after final hearing, particularly in the case of Bhupati Halder, Snehashis Maity, Saktipada Pramanik and Provas Bar. The appeals were carried before a Division Bench of this Court. The said appeals were dismissed by a common judgment in ***Bhupati Halder – Vs. – The State of West Bengal & Ors.*** reported in **2017 SCC OnLine Cal 11504**.

11. In respect of Dilip Pradhan, another candidate who obtained orders of appointment from the Single Bench being M.A.T. No. 710 of 2011 was carried by the Council. The appeal was dismissed and the order directing appointment was confirmed.

12. In respect of another candidate, namely, Jayanta Samanta likewise the Single Bench had directed grant of appointment. The order was carried in appeal before a Division Bench of this Court in F.M.A. No. 3537 of 2015. The Division Bench set aside the order of the Single Bench relying upon the decision in the case of **Bhupati Halder (supra)**.

13. **Jayanta Samanta** carried the decision dismissing his appeal in F.M.A. No. 3537 of 2015 before the Hon'ble Supreme Court of India in Civil Appeal No. 1066 of 2022. The Special Leave Petition was dismissed upholding the view of the Division Bench of the High Court. In essence the decision in the case of **Bhupati Halder (supra)** was indirectly upheld.

14. The Hon'ble Supreme Court of India was of the view that a belated challenge to a recruitment process after expiry of the panel ought not to be entertained.

15. The Hon'ble Supreme Court of India went on to observe that in respect of two appointments made accepting the orders of the High Court, in the writ petitions were filed after expiry of the panel in the case of two candidates, **Chandan Sasmal** and Sandip Kumar Ojha, it was the DPSC to take a call as to whether they would continue or cancel the order of appointment.

16. Md. Sarwar Jahan, learned Counsel for the petitioner would argue that in the instant case the DPSC had not come clean in any of the proceedings before the Single Judge, Division Benches or the Supreme Court of India at any point of time. The real reason for some candidates not to be empanelled despite being allowed to participate in the examination process was never ever disclosed to any Court. It is also argued that DPSC has not brought on record as to whether in fact the candidates registered only upto the year 1993 with the Employment Exchanges were asked to be sponsored. There are several gray areas in the facts according to Mr. Jahan. The decision of the Division Bench in the case of **Bhupati Halder (supra)** and by the Hon'ble Supreme Court of India in **Jayanata Samanta (supra)** have not addressed vital points on merits. The appeals have been dismissed on proposition of law.

17. These are the matters that cannot be reopened before this Court any further. The decision of the Division Bench in the case of **Bhupati Halder (supra)** and the Hon'ble Supreme Court of India in the case of **Jayanta Samanta (supra)** are binding upon this Court.

18. Admittedly, the petitioner had already approached the High Court in the year 2013 by filing WP 37482 (w) of 2013 albeit after expiry of the panel in

2013 and obtained an order dated 23.12.2013 for consideration of his representation by the DPSC.

19. The DPSC except for saying that the panel has expired has not bothered to indicate or clarify the reason for exclusion of the writ petitioner from the panel.

20. The matter cannot be reopened or questioned by this Court in view of the binding dicta in the cases of **Jayanta Samanta (supra)** and **Bhupati Halder (supra)**.

21. The petitioner against the answer given by the respondents to his representation on 12th March, 2014 filed the instant writ petition and an interim order similar to those passed in the other matters and referred to hereinabove was passed directing that the panel should be kept alive until disposal of the writ petition and one post must be kept vacant for the petitioner.

22. An appeal filed by the DPSC against the said order being F.M.A. No. 1879 of 2015 was dismissed on 10th October, 2023 on merits recording the absence of the representation of the DPSC. It does not appear that the decision of Jayanata Samanta (supra) and Bhupati Halder (supra) were at all placed before the Division Bench.

23. The upshot and clear dicta laid down in the above two decisions is that a vigilant candidate, who

participated in the recruitment process must approach the Court immediately upon coming to know that his name has not featured in the panel and only during its lifetime.

24. In the backdrop of the above, this Court is of the view that no relief can be granted to the writ petitioner in this writ petition.

25. The instant writ petition is, thus, dismissed.

26. There will be no order as to costs.

27. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)