

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 80 of 2024

Chittaranjan Bhunia & Ors.

vs.

The State of West Bengal & Ors.

with

M.A.T. 66 of 2024

Bandana Atha & Ors.

Vs.

The State of West Bengal & Ors.

For the Appellants : Mr. Arunava Banerjee, Advocate
Sk. Qareeb, Advocate
Ms. Ritika Mandal, Advocate

For the State : Mr. Bhaskar Prasad Vaisya, Ld. A.G.P.
Mr. Mrinal Kanti Ghosh, Advocate

For the DPSC
Paschim Medinipur : Mr. Aurobinda Chatterjee, Senior Advocate
Mr. Ranjan Saha, Advocate

Heard on : 11.06.2025 and 12.06.2025

Judgment on : 12.06.2025

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for analogous hearing as they emanate out of the same impugned judgment and order dated December 6, 2013 passed by the learned Single Judge in WPA 23735 of 2019 and WPA 18250 of 2021.
2. By the impugned judgment and order, learned Single Judge dismissed both the writ petitions and the connected applications therein.
3. The appellants are the writ petitioners in the two writ petitions.
4. Learned advocate appearing for the appellants submits that, learned Single Judge misconstrued and misunderstood the materials placed in the two writ petitions. He submits that, the writ petition first in point of time being WPA 23735 of 2019 (hereinafter referred as the first writ petition) for the sake of convenience, sought quashing of an order passed by the Commissioner, School Education, West Bengal. He submits that, the vacancies earmarked in the selection process for scheduled castes/scheduled tribes were filled up by the persons from the unreserved category. He submits that, learned Single Judge failed to take such aspect into consideration.
5. Learned advocate appearing for the appellants, draws the attention of the Court to the list of dates with regard to the entire selection process. He submits that, from time to time, diverse writ petitions were filed. The issue of appointment in such selection process received consideration in such

writ petition, at the level of the learned Single Judge, Division Bench as well as Hon'ble Supreme Court. He draws the attention of the Court to various orders passed by the Courts from time to time. He submits that, essentially, the respondent authorities reiterated the initial list over the period of time. He submits that, the respondent authorities persisted with the illegalities committed thereby depriving the writ petitioners of their legitimate right of appointments.

6. Learned advocate appearing for the appellants, submits that, the writ petition being WPA 18250 of 2021 (hereinafter referred to as the second writ petition), for the sake of convenience, received junior basic training. He submits that, persons with junior basic training were bypassed for BT/B.Ed candidates in the selection process. He refers to various documents in support of such contention.
7. Learned advocate appearing for the appellants submits that, Supreme Court recognized that, junior basic training candidates are better candidates than B.T/B.Ed candidates.
8. Learned Senior Advocate appearing for the answering respondents submits that, the appellants did not press the second writ petition before learned Single Judge. He submits that, there is an issue of delay in both the writ petitions. He, however, points out that, although, he took a point of delay before learned Single Judge, it was the desire of the learned Single Judge

that, such point of delay should not be canvassed and that both the writ petitions should be disposed of on merits.

9. Learned Senior Advocate appearing for the answering respondents submits that, the issue as to whether the Recruitment Rule of 1940 or subsequent Recruitment Rule will apply was settled by the Division Bench. He submits that, the last order of 2015 passed by the learned Single Judge was per incurium. Therefore, he submits that, answering respondents did not act illegally in the selection process.
10. Learned Senior Advocate appearing for the answering respondents refers to the prayers made in the two writ petitions and submits that with the passage of time, the reliefs sought for by the appellants cannot be granted.
11. In course of hearing of the two appeals, the issue arose as to whether, the appellants participated in the selection process or not. We required the appellants to submit documents of their participation which the appellants did. Documents of such fact filed in Court was taken on record.
12. It is admitted at the Bar, by the appellants before us as well as the answering respondents that, the appellants participated in the selection process of 1996. Apparently, around 3500 vacancies were declared. Those particulars, however, in exactitude are not available on record presently. It is, however, accepted at the Bar that selection process is of 1996 and that, the appellants participated in such selection process.

13. We are considering the two appeals directed against the impugned judgment and order disposing of two writ petitions. First writ petition in the order of time dealt with by the learned Single Judge is WPA 23735 of 2019. Prayers in such writ petition are as follows:-

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

IC/233/LP/2016

forthwith;

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.”

14. First prayer in the first writ petition challenges an order dated July 19, 2016. Such order was passed pursuant to a direction contained in an order dated October 1, 2015 of the High Court requiring the Commissioner of School Education to reconsider the matter in terms of an order passed by the learned Single Judge. By such order dated October 1, 2015, the earlier exercise of the answering respondents of recasting the panel following the 1940 Rule was set aside.
15. The Commissioner of School Education undertook such exercise in terms of the order dated October 1, 2015 of the High Court and passed the order dated July 19, 2016. The writ petition challenging such order dated July 19, 2016 was affirmed in December 20, 2019 that is after a period of three years from date of such order. There is no explanation for the delay in filing the first writ petition.
16. Although the provisions of the Limitation Act, 1963 are not attracted in a proceeding under Article 226 of the Constitution of India, nonetheless, delay is a factor which is required to be considered by a Writ Court while considering the grant of reliefs.
17. In the facts of the present case, it is the contention of the answering respondents that, the point of delay was canvassed before learned Single Judge who was of the view that, the writ petition should be decided on merits.

18. Be that as it may, we do not find any adequate explanation in the writ petition explaining the delay of more than 3 years in assailing a decision of the Commission of School Education as impugned in the first writ petition.
19. So far as the second prayer in the first writ petition is concerned, it requires, the answering respondents to remove the B.T./B.Ed Primary Teacher from the appointment and to give appointment to the writ petitioners by creating supernumerary with notional benefits since 1996. Third prayer requires payment of compensation to the writ petitioners who crossed 60 years of age.
20. As on the date of filing of the first writ petition, some of the writ petitioners were beyond the age of superannuation for the purpose of appointment. As noted above, the selection process is of 1996. Taking into consideration the fact that, the panel was recast in 2016, pursuant to the direction given by the High Court, in 2015, then also, validity of the panel cannot be stretched to 2019 that is, the date of filing of the writ petition for a direction for grant of appointment to the writ petitioners, assuming though not admitting that every contentions of the writ petitioners are correct. There is no material on record to suggest that, panel survived a period in excess of 3 years till the date of filing of the writ petition for the purpose of grant of appointment to the writ petitioners. That apart, as the prayers suggest in the first writ petition, some of the writ petitioners crossed the

age of superannuation of the post to which they seek appointment, even prior to the filing of the writ petition.

21. There is no basis for grant of compensation as prayed for made out in the writ petition for the Writ Court to consider the same, assuming though not admitting that the answering respondents dealt with the writ petitions and/or section of them inappropriately.
22. The prayers in the second writ petition being WPA18250 of 2021 are as follows:-

“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 Schools 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.”

23. The first prayer in the second writ petition requires appointment to be granted to the writ petitioners in 44 post of Primary Teachers which fell vacant due to the recruitment of the persons who were already appointed. Again, there is an issue of unexplained delay in filing the writ petition in respect of a selection process of 1996 assuming that, the panel was finalized in 2016 pursuant to an order of the High Court. Then also, the panel of such selection process cannot be said to remain valid for the

purpose of grant of appointment from out of such panel to 44 persons who superannuated after being granted such appointment.

24. The first prayer in the second writ petition speaks of reserved post. We do not find any material on the record to suggest that, post for the reserved category were wrongly filled up by any other category. That apart, there is an issue of delay which we should not overlook.
25. Second prayer in the writ petition requires consideration of a representation made on January 30, 2018. Such representation, made in 2018 cannot extend the validity of a panel by a selection process of 1996 or be construed as an adequate explanation for the delay in approaching the Writ Court.
26. Learned Single Judge, considered the prayers in the writ petitions as also the affidavits filed by the parties. Learned Single Judge is of the view that, adjudication took place by the Division Bench and that, the Directorate of School Education by the writing dated August 10, 2017 concluded the issue. Learned Single Judge is of the view that, there is nothing left for any further compliance or implementation thereon. Learned Single Judge proceeded to discuss the two authorities cited at the Bar and dismissed the two writ petitions.
27. In view of the discussions made above, we do not find any ground to interfere with the impugned judgment and order.

28. **MAT 80 of 2024** and **MAT 66 of 2024** are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

29. I agree.

(Md. Shabbar Rashidi, J.)