

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FMA 549 of 2025
+
IA No. CAN 1 of 2025

Md. Selim & Anr.
Versus
The State of West Bengal &Ors.

For the Appellants : *Mr. Shamim Ul Bari.*

For the State : *Mr. Vimal Kumar Shahi, Ld. A.G.P.,*
Ms. Kakali Naskar.

For W.B.C.S.S.C. : *Dr. Sutanu Kumar Patra,*
Ms. Supriya Dubey.

Hearing is concluded on : *3rd December, 2025.*

Judgment On : **3rd December, 2025**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging an order dated 26.02.2025 passed by the learned single Judge in the writ petition being WPA 3011 of 2025.

2. The said writ petition was preferred primarily praying for issuance of necessary direction upon the respondents *‘to include those existing unfilled vacancies during 1st phase counseling, as mentioned in para 14 of this writ application or any other non-joining vacancies for the subject Pure Science under OBC-A Male Female Category in the present counseling process which is under going on and from 28th January, 2025 for recruitment of Assistant Teachers in Upper Primary Level and further allow the petitioners to exercise further option in any of those vacancies for the district Malda which may be available to the petitioners during the said counseling process in accordance with law’.*

3. The following facts are not in dispute. The appellants/writ petitioners participated in the 1st State Level Selection Test for recruitment of Assistant Teachers (Upper Primary Level except physical education and work education) in Government aided/sponsored school notified *vide* memo dated 23.09.2016. They were empanelled in the wait list. Subsequent thereto, they were called in the third phase of counselling during the period from 28.01.2025 to 31.01.2025. The appellant no.1 was recommended to the school of Hatimara Junior High School *vide* memo dated 29.01.2025 and the appellant no.2 was also recommended to Sarbeswar Joyduar Junior High School *vide* memo dated 29.01.2025. However, the appellants did not join the said schools and claimed for issuance of recommendation in respect of five schools as stated in paragraph 14 of the writ petition but such prayer was not considered and as such, the appellants filed the writ petition which was dismissed by the order impugned in the present appeal.

4. Mr. Bari, learned advocate appearing for the appellants strenuously argues that in the third phase of counselling only the remaining candidates in the wait list being 53 were called. On the date of first phase of counselling admittedly the persons recommended in other schools detailed in paragraph 14 of the writ petition did not join. Such fact of non-joining was within the knowledge of the Commission prior to the period fixed for third round of counselling. However, the said vacancies were not included in the vacancy list and not displayed at the time of counselling. Due to such failure on the part of the Commission the appellants were deprived of recommendation to the said vacancies.

5. Mr. Bari submits that a recommendation letter was issued in favour of one Nasida Parvin *vide* memo dated 22.11.2024 and a letter dated 13.01.2024 was issued by the concerned school to the Commission intimating that the concerned candidate did not join the post in spite of issuance of appointment letter. Similarly, a recommendation letter was issued in favour of one Mijanur Rahaman Parvin *vide* memo dated 22.11.2024 and responding to an application of the appellant no.2 under the Right to Information Act, 2005, a letter dated 09.04.2025 was issued by the concerned school stating that the recommended candidate did not join the post. The Commission in spite of full knowledge of the existing vacancies did not display the same vacancy at the time of third phase of counselling and as a consequence thereof, the appellants' legal right to exercise option in such vacancies was interfered with.

6. He argues that the learned single Judge failed to appreciate that the Commission had failed to discharge their statutory obligation by not

displaying the said vacancies at the time of third phase of counselling. In support of such contention reliance has been placed upon an unreported decision in the case of *Krishna Chandra Hore -vs- The State of West Bengal & Ors.* being WPA 149 of 2020.

7. Dr. Patra, learned advocate appearing for the Commission, however, denies and disputes such contention of Mr. Bari and submits that Rule 17 of the West Bengal School Service Commission (Selection for appointment to the Posts of Teachers for Upper Primary Level of Schools) Rules, 2016 (in short, the 2016 Rules) provides, *inter alia*, that a recommendation letter shall remain valid for a period of 90 days from the date of issuance of the same and the Commission would also have a discretion to extend the validity of such recommendation for a further period of 60 days. A recommendation letter shall remain valid for a period of 90 days from the date of issuance of the same and the Commission would also have a discretion to extend the validity of such recommendation for a further period of 60 days. In view thereof, a post cannot be treated as vacant till at least 90 days from the date of issuance of the recommendation, as specified under Rule 17(3). In view thereof, the learned single Judge rightly did not exercise discretion in favour of the appellants.

8. Dr. Patra argues that admittedly the appellants did not join the schools to which they were recommended acting upon the option exercised by them. In view thereof, they stood depanelled and no right survived in their favour to be recommended in any other school. There is no provision under the 2016 Rules towards re-recommendation.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record.

10. Rule 17(3) clearly provides that a recommendation letter shall remain valid for a period of 90 days from the date of issuance of the said letter. Records do not reveal that within the said stipulated period of 90 days any intimation was given to the Commission that the candidates recommended in the concerned posts did not join. The period of validity of the recommendation has also been incorporated in the recommendation letter issued to the appellants. In the same it has been clearly indicated that the candidate has '*to join the post within stipulated period in terms of Rule 17 sub-rule 3 of the Rules 2016 in Govt. aided/ Sponsored Schools (Except Hill Region), 2016*'.

11. In the case of *Krishna Chandra Hore (supra)* the Commission accepted that there was a mistake on their part in not including the concerned vacancy in the vacancy list and as such the said judgment has no manner of application in the instant case. Furthermore, the appellants did participate in the third phase of counselling and exercised option in respect of the schools displayed and also signed a declaration as provided under Schedule 5 of the said Rules. In the said conspectus, we are of the opinion that there had been no violation of any statutory obligation on the part of the Commission.

12. The learned single Judge upon dealing with the factual issues arrived at specific findings and we do not find any infirmity in the same warranting interference in the present appeal.

13. Accordingly, the appeal and the connected application are dismissed.

14. There shall, however, be no order as to costs.

15. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)