

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE PRASENJIT BISWAS

MAT 819 OF 2024
with
CAN 1 OF 2024

SRI GOBINDALAL BISWAS & ORS.
Vs.
THE STATE OF WEST BENGAL & ORS.

FOR THE APPELALNT : MR. GOUTAM DEY, ADVOCATE
MR. PRITAM CHOUDHURY, ADVOCATE
MS. ANKITA GHOSH, ADVOCATE
MS. SOMASREE BAKSHI, ADVOCATE
MS. UPASANA ACHARAYA, ADVOCATE

FOR THE STATE : MR. BISWABRATA BASU MALLICK, LD. AGP

FOR THE DPSC, : MR. ARABINDA CHATTERJEE, SR. ADV.
NORTH 24- PARGANAS MR. BHASKAR PRASAD VAISYA, ADVOCATE
MR. PINAKI BHATTACHARYYA, ADVOCATE

HEARD ON : JANUARY 06, 2025

JUDGMENT ON : JANUARY 06, 2025

THE COURT:

1. A stale claim is sought to be resurrected using the tool of Article 226 of the Constitution of India at the behest of the unsuccessful candidates in the recruitment process ensued in the year, 2010 for the vacancies of the year, 2006 on various grounds including that the authority while notifying the vacancy for the said year did not include the anticipated vacancies, thereby, violated the provisions contained in Rule 8(3) of the West Bengal Primary Teachers Recruitment Rules, 2001. The writ petition was dismissed by the impugned order holding that the provisions contained in Rule 8(3) of the aforesaid Rules is held by a Division Bench of this Court in *Abhijit Roy & Anr. Vs. The State of West Bengal & Ors. (FMA 665 of 2015)* dated 23rd

February, 2017 to be directory and not mandatory. The challenges made by the unsuccessful applicants to the said order in the instant appeal reiterating the stand that unless the anticipated vacancies are included in the declared vacancies, it would offend the provisions contained in Rule 8(3) of the said Rules. It is further contended by the Counsel for the appellant that, infact, a resolution was taken by the Managing Committee of the School to include 797 vacancies as anticipated vacancies and a panel in this regard was also forwarded to the District Primary School Council, North 24 Parganas. It is thus contended that even if the process for recruitment is over, there is no fetter on the part of the Court to issue a writ of mandamus upon the authorities to fill up the 797 posts being anticipated vacancies for the said year from the panel so prepared and if such order is passed, there is a fair chance of the petitioners being brought within the zone of appointment.

2. It is further sought to be contended that Rule 8(3) of the said Rules is mandatory in nature and does not dispense with the non-adherence thereof and, therefore, the decision of the Single Bench is infirmed and warrants interference.
3. At the very outset, we must record that the writ petition, at the behest of appellants, were filed in the year, 2022, pertaining to a recruitment process initiated and completed in the year, 2010 for the vacancies arose in the year, 2006. Our endeavour has failed to find out any explanation offered for such delay, rather, the paragraphs if read *in seriatim*, percolate a sense that the cause of action is pleaded on the basis of an information received under the Right to Information Act.
4. It further appears that several RTIs were filed and the writ petition came to be filed upon disclosure of the information on the last application. A person, who sat over his right for a considerable period of time, cannot resuscitate his claim taking a circuitous route under the Right to Information Act creating an illusory cause of action. The process of recruitment was completed in the year, 2010 and the appointments have already been made and the successful candidates who have been appointed are discharging their duties in different schools within the State. A clever draftsmanship creating an illusion of the cause of action being conscious that after such a long period of time, more particularly upon participation in the recruitment process, the challenge to

the recruitment process cannot be made or may not be accepted by the Court but the shelter is taken under the anticipated vacancies to be notified while undertaking an exercise of ascertaining and/or determining the vacancies for the particular year to be included even after the closure of the entire recruitment process so that the panel, which, infact, is dead now, can be resurrected and the appointments be made thereupon.

5. A submission is advanced that there were several litigations filed before this Court concerning the said recruitment process and ultimately, the petitioner approached the Court and, therefore, it would not be taken as an exception as it was a continuing exercise for challenge to the said recruitment process and, therefore, the delay and latches may not be attributable to their conduct.
6. We are afraid with the aforesaid submissions. A fence sitter who was sitting and watching the proceedings initiated by the other candidates should not be permitted either to reap the benefit of any orders passed in the litigation nor should be permitted to reopen the issue which has already been foreclosed upon determining the same on merit by the Coordinate Bench or the Single Bench. The certainty in law is a virtue. The issue should not remain undecided for all time to come and once the issue has been decided finally, it would not be open to the fence sitter to reopen the same after a gap of a decade. We are conscious that there is no period of limitation provided under the Limitation Act for an application under Article 226 of the Constitution of India but the conduct of the party in not promptly approaching the Court may be one of the relevant factor in denying the reliefs claimed in the writ petition. It is how the concept of delay and latches emerge as a common law principle and in absence of any plausible explanation offered in the petition, the Court may refuse to exercise its discretion under Article 226 of the Constitution of India.
7. We need not have to multiply the judgments rendered on the above common law principle as it is well-known as of now that the exercise of discretion under Article 226 of the Constitution of India may be refused if the writ petitioners approach the Court belatedly and there is no sufficient explanation given in the pleading filed before the Court. Be that as it may, since the writ petition was entertained by the Single Bench on merit, we do

not intend to dilate much on the above issue and proceed to decide the matter on the nuances of law and on facts involved in the instant appeal.

8. Rule 8(3) of the said Rules postulates the determination and/or ascertainment of the vacancies existed on a date and the anticipated vacancies to arise against the sanctioned strength in course of 12 months. It further mandate that after ascertaining the vacancies for the said 12 months, the requisition would be sent to the Employment Exchange for sponsoring the name of the eligible candidates. Though the Rules does not include any provision relating to a wide publication, yet, it is obligatory on the part of the authorities while undertaking the exercise of filling up the posts in public employment to advertise the same in a widely circulated newspaper so that equality in public employment is ensured. All the eligible candidates who may not have registered their names in the Employment Exchange may also participate in the recruitment process and the merit being the hallmark of the entire recruitment process, must be secured and/or strictly adhered to.
9. Admittedly, the vacancies were determined by the authorities and a disclosure was made by way of an advertisement for filling up the said posts. It appears from the record that several candidates, who participated in the said selection process, approached the Court taking the same plea that the anticipated vacancies were not included in the pool of the total vacancies in terms of Rule 8(3) of the said Rules. It appears that those writ petitions were disposed of and ultimately, one of such writ petitions was carried to a Division Bench in an Intra-Court appeal in case of ***Abhijit Roy & Anr. Vs. The State of West Bengal & Ors. (FMA 665 of 2015)***. The said appeal was decided on 23rd February, 2017 and it was categorically observed that in absence of any material that the said recruitment commenced upon notifying the said anticipated vacancies, if it is not so, it does not create any enforceable right to obtain and appointment on such anticipated vacancies.

“The appellants have not demonstrated before us that the recruitment process has commenced upon notifying the 797 vacancies to the concerned employment exchanges. In the absence thereof, they have no enforceable right to obtain appointment on such anticipated vacancies.”

10. The Division Bench further observed that in the event the prayer made in the writ petition is allowed and a direction is passed upon the authority for

appointment of 797 anticipated vacancies, it would virtually mean that appointment would be made on a post which was never notified or advertised. The moment the Coordinate Bench has decided the issue and held that non-inclusion of the anticipated vacancies in terms of Rule 8(3) of the said Rules does not invalidate or render the entire the entire recruitment process to be void, illegal and infirmed, it is binding on the Coordinate Bench. The Division Bench further held that if such direction is passed, as sought in the instant case as well, it would tantamount to an appointment to a post which was neither notified nor advertised and, therefore, will offend the core value of Article 14 of the Constitution of India. It has been held that Rule 8(3) of the said Rules is directory and not mandatory in nature.

11. We do not find any ground to take a dissenting view expressed by the Coordinate Bench. Till date, it has not been demonstrated that any approval was granted by the authority to include 797 posts being an anticipated vacancies within the purview of the said recruitment process and, therefore, it does not create any enforceable right into the appellant. Apart from the same, the Coordinate Bench, in unequivocal terms, held that if such appointment is made to the aforesaid anticipated vacancies, it would run counter to the core of the service jurisprudence applicable to the recruitment in the public employment.
12. We, thus, do not find any infirmity or any illegality in the order of the Single Bench.
13. The appeal stands merit, the same is dismissed.
14. Accordingly, the appeal being MAT 819 of 2024 and the connected application being CAN 1 of 2024 are dismissed. No order as to costs.
15. Urgent Photostat Certified copy of this order, if applied for, be given to the parties upon complying with all necessary formalities.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)