

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Smita Das De

MAT 1026 of 2025

CAN 1 of 2025

Bibek Paria & Ors.

Vs.

State of West Bengal & Ors.

For the Appellants	: Mr. Anindya Kumar Mitra, Sr.Adv., Mr. Shaunak Ghosh, Adv., Mr. Sakhawat Khandakar, Adv. Mr. Abhrajit Roy Chowdhury, Adv. Mr. Dipankar Bhakta, Adv. Ms. Swati Jha, Adv.
For the State/Respondent	: Mr. Kishore Datta, Ld. A.G., Mr. Sirsanya Bandopadhyay, Sr. Counsel, Mr. Biswabrata Basu Mallick, Ld. AGP., Mr. Vivekananda Bose, Jr. St. Counsel, Mr. Soumen Chatterjee, Adv. Mr. Sandip Das, Adv. Mr. Debayan Sen, Adv. Mr. N. Ojha, Adv.
For W.B.C.S.S.C	: Mr. Kalyan Bandopadhyay, Sr. Adv. Mr. Biswarup Bhattacharya, Adv. Mr. Arka Kumar Nag, Adv. Mr. Rahul Kumar Singh, Adv.
Hearing concluded on	: 14 th July, 2025
Judgment on	: 16 th July, 2025

Soumen Sen, J :

1. The appeal is arising out of an order passed by the learned Single Judge on 7th July, 2025 in connection with several writ petitions heard analogously relating to the recruitment process initiated under the notification dated 30th May, 2025 issued by the Secretary of West Bengal Central School Service commission vide Memo no. 1092/7016/CSSC/ESST 2025 and the West Bengal School Service Commission selection for appointment to the post of Assistant Teachers for upper primary level of Classes except work education and physical education classes IX -X and Classes XI-XII Rules of 2025 (hereinafter referred to as “said Rules of 2025”) For the purpose of convenience henceforth West Bengal School Service Commission shall be described as “WBSSC” and West Bengal Central School Service Commission shall be described as “WBCSSC” in abbreviated form.
2. The present appeal is directed against a portion of the impugned order whereby the contention of the appellant that the recruitment process initiated in 2025 on the basis of the said Rules of 2025 could not be fully made applicable to the present appellants insofar as the eligibility criterion and posts to be filled up under the recruitment Rules 2016 was rejected by a reasoned order.
3. The present appellants are the Assistant Teachers in Class IX-X and Class XI-XII whose services have been extended till the end of the academic year or until the process of such appointment to such posts is concluded subject to the following conditions of the Hon’ble Supreme

Court in disposing of Misc. Application no. 709 of 2025 in SLP no. 4805 of 2025.

“i) An advertisement for fresh recruitment to the advertisement aforesaid post(s) shall be published before 31.05.2025.

ii) The examination and the entire recruitment process shall be completed by 31.12.2025.

iii) The State Government, the applicant/appellant, West Bengal Board of Secondary Education, and the West Bengal Central School Service Commission shall file their respective affidavits by 31.05.2025, enclosing therewith a copy of the advertisement for the fresh recruitment as well as the schedule therefor, so as to ensure completion of the recruitment process by 31.12.2025.

In case the advertisement is not published by 31.05.2025 and the affidavits are not filed by that date, appropriate orders will be passed by this Court, including imposition of costs and vacating of the present order.”

4. The said prayer was allowed considering academic interest of the student as would appear from the following observation of the Hon’ble Supreme Court:

“What has prompted us to pass this order in respect of Assistant Teachers not found to be tainted is that students undergoing study presently should not suffer on account of the lack of teachers and the lapses and failures, which have resulted in the order passed by this court.”

Submission on behalf of the Appellants

5. Mr. Anindya Kumar Mitra, the learned Senior Counsel appearing on behalf of the present appellants has submitted that the appellants are not challenging the Rules of 2025 and Recruitment Notification dated 30th May. 2025.

6. The appellants are not praying for a declaration of said Rules of 2025 and Recruitment notification as ultravires. The appellants are aggrieved by the abolition and/or reduction of posts and modification of the eligibility criteria for the untainted candidates protected under paragraph 49 of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 4805 of 2025 (Arising out of Special Leave Petition (Civil) No. 9586 of 2024) ***State of West Bengal v. Baishakhi Bhattacharyya (Chatterjee) & Ors.***, decided on 3rd April, 2025. Mr. Mitra has submitted that almost 68 posts which were declared vacant in 2016 and filled up by the 2016 Selection process have not been declared as vacant posts in 2025. Mr. Mitra has referred to the list annexed to the petition to show the posts not included but ought to have been included in the recruitment process 2025 as these posts were advertised and included in the previous recruitment process, 2016. To illustrate it is submitted that in 2016, there was one post of Physics Teacher in Nepali Medium Schools. In fact, one Chottelal Gupta was recruited for such post through the 2016 selection process. In view of the judgment passed by the Hon'ble Supreme Court in India on April 17, 2025 in Misc Application No. 709 of 2025, the said Chottelal Gupta (untainted candidate) is still continuing his services. In paragraph 363(xi) of the order of the Hon'ble Division Bench which have been confirmed by the Hon'ble Supreme Court of India, specifically directed the SSC to undertake fresh selection process in respect of declared vacancies involved in the selection process, meaning thereby 2016, within a fortnight from the date of declaration of Election. Only the time limit has

been modified by Hon'ble Supreme Court upto 31st December, 2025. Therefore, posts declared as vacant for 2016, cannot be obliterated in 2025 by abolition or otherwise. This is circumvention of order, and amount to inroad into judicial order by the Executive and is without jurisdiction and void.

7. Mr. Mitra has submitted that if such reduction of posts and/or abolition of posts are not audacious it must be held to be an inadvertent error. Candidates, who have not been found to be specifically tainted in the 1st SLST, 2016 cannot now be disqualified or prevented from appearing in the 2025 fresh selection process by SSC by framing eligibility different from eligibility criteria fixed for 1st SLST, 2016.
8. It is further submitted that many successful candidates, in the 1st SLST, 2016 had secured less than 50% marks in their Graduation and Post-Graduation, but had secured more than 45%, in Graduation or Post Graduation degree, which was the qualification marks in the 2016 selection process and thus were eligible to participate and had participated successfully in the 2016 recruitment process. One such example has been given in WPA 12713 of 2025. Under the 2025 Rules (Schedule I framed under Rule 3) candidates securing less than 50% marks in their Post-Graduation and Graduation from a recognized University are not qualified to participate in the fresh selection process. Thus, successful candidates not specifically tainted, would be debarred, despite the specific direction of the Hon'ble Supreme Court from appearing in the fresh selection process, if they had secured 45% marks or above, but below 50% marks in their Graduation/Post Graduation.

Successful candidates not specifically tainted, cannot now by imposition of different eligibility criteria, be debarred, despite the specific direction of the Hon'ble Supreme Court that they are to be allowed to participate in the fresh selection process.

9. Mr. Mitra has referred to the judgment of the Hon'ble Supreme Court in Civil Appeal no. 4805 of 2025 arising out of an SLP Civil no. 9586 of 2024 reported at 2025 INSC 437 and has drawn our attention to the paragraphs under the heading factual matrix and more particularly the following sub-paragraphs :

"In 2016, WBSSC, the statutory selection body, had issued a notification for regional and state level selection tests and commenced the selection process for the following posts:

- (1) 12,905 Assistant Teachers for Classes IX & X;*
- (ii) 5,712 Assistant Teachers for Classes XI & XII;*
- (iii) 2,067 Non-teaching Staff under Group C; and*
- (iv) 3,956 Non-teaching Staff under Group D."*

10. In referring to the aforesaid sub-paragraph it is submitted that both in respect of Assistant teacher for class IX-X and class XI-XII there has been a significant number of abolition of the posts of Assistant teachers which is in clear violation of the order of the Hon'ble Supreme Court as it is no more open for the recruitment authority to reduce or abolish the said post. It is submitted that the appellants are not objecting to fill up further vacancies but the number of declared vacancies of 2016 shall remain unaltered.

11. Mr. Mitra has submitted that the alteration of the eligibility criteria by increasing the percentage of marks and reduction of the number of

vacancies is a direct inroad into the judgment of the Hon'ble Division Bench and the Hon'ble Supreme Court which is clearly not permissible under the law. It is not a case of removing the basis of the decision rendered by a competent court but a clear act of disobeying or disregarding the decisions given by the courts. For the proposition that the legislature without removing the basis of the decision of court cannot disobey or disregard decision of court reliance has been placed on ***The Municipal Corporation of The City of Ahmedabad & Ors. v. New Shrock Spg. and Wvg. Co. Ltd. and Ors.***¹

"7. This is a strange provision. Prime facie that provision appears to command the Corporation to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. The State of Gujarat was not well advised in introducing this provision. That provision attempts to make a direct inroad into the judicial powers of the State. The legislatures under our Constitution have within the prescribed limits, powers to make laws prospectively as well as retrospectively. By exercise of those powers, the legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective. But no legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts.....".

12. Consequently the executive do not have power which the legislature do not have. This would be evident from Article 162 of the Constitution of India. In this regard reliance has been placed on paragraph 10 of the decision of the Hon'ble Supreme court in ***Naraindas Indurkha v.***

¹ AIR 1970 SC 1292

State of M.P & Ors.² Mr. Mitra has submitted that it is well settled that the judicial pronouncement cannot be made ineffective by enacting any provision which in substance, overrule such judgments as clearly laid down in paragraph 12 of the decision of the Hon'ble Supreme Court in **S.R. Bhagwat v. State of Mysore**,³ which reads as follows:

“12. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect.....”

13. Mr. Mitra has submitted that the appellants were all qualified under the recruitment rules 2016 as they had secured 45% marks or above and appointed against the vacant posts which is now sought to be disturbed by enhancing the percentage of qualifying marks from 45% to 50% which was not the criteria to be applied to the untainted candidates who were given the appointment in terms of the recruitment Rules 2016. Hence to the extent it affects the right to such candidates by altering the eligibility criterion is in violation of the order of the Hon'ble Division Bench and the Hon'ble Supreme Court for the recruitment process, 2025.

14. However, Mr. Mitra has submitted that all other criterion including prior experience are valid and required for selection of talented

² AIR 1974 SC 1232

³ (1995) 6 SCC 16

candidates and in this regard reliance is placed on the decision of the Hon'ble Supreme Court in ***Ram Sharan Maurya v. State of U.P.***⁴ and ***Mahesh Chand Bareth & Anr. v. State of Rajasthan & Ors.***⁵ (paragraphs 28,29,34 and 46).

Submission on behalf of the WBCSSC

15. Mr. Kalyan Bandopadhyay, learned Senior Counsel appearing on behalf of the School Service Commission has submitted that the contention of the writ petitioners that the post of Physics Teacher in Nepali Medium has been abolished by 2025 Selection Process is factually incorrect as the Notification dated 30th May, 2025 would show that post of Physics Teacher in Nepali Medium has not been abolished.
16. It is submitted that vide notification dated 30th May, 2025 one post of physics teacher in Nepali Medium was notified. Furthermore none of the writ petitioner are teachers of physics in Nepali Medium and thus the writ petitioners cannot be permitted to enlarge the scope of the writ petition by raising issues alien to their own cause.
17. Mr. Bandopadhyay in this regard has relied upon the decisions relied by him in ***Arunima Paul & Ors. Vs. State of West Bengal (MAT 1017 of 2025)*** heard analogously with other connected appeals with regard to the limited interference in policy decision and fixation of minimum criteria as well as increase or reduction in the number of seats.
18. It is submitted that the number of vacancies in the 2nd SLST is much more than the number of vacancies which were sought to be filled up

⁴ AIR 2021 SC 954

⁵ 2024(8)SCC 124

vide the 1st SLST. However, the posts of Assistant Teachers in some subjects, where sufficient teachers were not recommended during the 1st SLST due to a lack of eligible candidates and no further requirement was felt for such Assistant Teachers in the successive decade, were not declared vacant during the 2nd SLST. The posts that have been reduced were found to be vacant, as no one was recommended against these posts. No case has been made out by the Writ Petitioners that the reduced posts have affected them in any manner. In the absence of infringement of any legal right, no mandamus can be sought by the Writ Petitioner.

19. It is specifically submitted that no infirmity in law was committed by the WBCSSC while advertising the vacancies. The writ petitioners, are attempting to create a cartel of eligible candidates from amongst other candidates similarly placed like the Writ Petitioners to the exclusion of the lakhs of new candidates who have become eligible and might be better suited to discharge duties as teachers. It is submitted that the Writ Petitioners, through this instant list, desire to formulate a tailor-made selection process to ensure that only the Writ Petitioners and other similarly placed candidates are selected. It is submitted that the Commission is mandated by the National Council of Teachers' Education Act, 1993, to follow the eligibility criteria as prescribed by the NCTE in selection process for appointing Assistant Teachers for Classes IX-XII on the date of the notification of the Advertisement. It is submitted that the Petitioners have not made out any case as to how the change in the eligibility criteria would affect the individual rights of

the Writ Petitioners. In the absence of any individual injury, the Writ Petitioners cannot seek any mandamus to negate the change in eligibility criteria in the 2025 5 Rules.

Submission on behalf of the State

20. Mr. Advocate General appearing on behalf of the State has reiterated the submission he made in the connected appeal ***Arunima Paul & Ors. Vs. State of West Bengal (MAT 1017 of 2025)*** and has also relied upon decisions relied upon by him in the said appeal with regard to the scope of judicial review and the jurisdiction of the commission with regard to increasing or decreasing the number of vacancies and justification for fixing the eligibility criteria as also vacancies.

Observation

21. The limited issue to be decided in this appeal is whether the respondents could alter the eligibility criteria in respect of the untainted in service candidates from 45% to 50% and reduce the number of vacancies. Insofar as the alleged claim for reduction of vacancies are concerned the same is unsubstantiated. The affidavit filed by the School Service Commission has duly clarified the issue. Moreover, the writ petitioners have failed to demonstrate how they are affected in the event some posts are reduced. The commission and State has justified alteration of the vacancy position and in a judicial review the court should be extremely chary in interfering with such policy decision unless it appears to be manifestly arbitrary and capricious. The eligibility criteria and the number of posts have been laid down after due deliberation by an expert body who are more conversant with the

matter in issue and such decision should not be easily interfered with in a judicial review. The eligibility criterion is as prescribed by the NCTE for selection and appointment of Assistant Teacher for Class IX-XII on the date of the notification. Moreover, there is no specific direction in the order under reference by which the power of State has been restricted to adhere to the criteria as existed in the year 2016.

22. In the order dated 17th April, 2025 in disposing of the Misc. Application the Hon'ble Supreme Court allowed the Assistant teachers to continue till the end of the academic year or until the process of fresh appointment to such posts is concluded on certain terms and conditions without "conferring any special right or advantage" after taking into consideration the interest of the students as would be evident from the following observation:

"What has prompted us to pass this order in respect of Assistant Teachers not found to be tainted is that students undergoing study presently should not suffer on account of the lack of teachers and the lapses and failures, which have resulted in the order passed by this court."

23. In fact, the criteria in 2016 and 2023 are remarkably different which, inter alia, includes the prior teaching experience which the present appellants have happily accepted. The writ petitioners have not demonstrated that by reason increasing the eligibility criteria from 45% to 50% any of the writ petitioners are affected and likely to be affected. There is no averment to that effect in the writ petition. In any event, the criteria laid down by the commission is for attracting and selecting the

best of the lot and there cannot be a greater concern for the court that the imparting of quality education to the students. The aforesaid findings are to be read with our observation in ***MAT 1017 of 2025 (Anurima Paul & Ors. v. State of West Bengal & Ors.)*** mutatis mutandis.

24. In such view of the matter we do not find any reason to interfere with the interfered order.

25. On such consideration we are not interfering with the order passed by the learned Single Judge.

26. The appeal and the application are dismissed.

27. However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Smita Das De, J.)