

19.05.2025
SI No.27
Court No.8
(gc)

**FMA 983 of 2023
CAN 1 of 2023**

**Md. Abdul Jabbar & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Golam Mastafa,
Mr. Samirul Sardar,
Mr. K.A. Iqbal
...for the Appellant.
Mr. Supriyo Chattopadhyay, Ld. A.G.P.,
Ms. Sayantani Bhattacharyya
...for the State.
Mr. Avishek Prasad,
Mr. Sourodeep Singha
...for the DPSC, Malda.

1. The writ petition is based on an order passed on 1st June, 2015 in WP 5754(W) of 2015 (Md. Abdul Jabbar & Ors. Vs. The State of West Bengal & Ors.). The writ petition was disposed of by directing the Chairman, Malda District Primary School Council to recommend the name of the petitioner before the Commissioner of School Education by two weeks from the date of communication of that order and the Commissioner was directed to grant approval within two weeks thereafter and send approval to the Chairman of the Council. On receipt of such approval, Chairman was directed to issue appointment letter in favour of the petitioners by two weeks.

2. Due to non-compliance of the said direction, a contempt petition was filed which, however, was not pursued.
3. The learned Counsel appearing on behalf of the petitioners submitted that in view of the fact that the petitioners were duly selected as exempted category candidates but they were not given employment in respect of the order passed by the learned Single Judge and by passage of time they are over-aged, monetary compensation may be granted to each of the petitioners following the decision in ***State of Uttar Pradesh & Ors. Vs. Ali Hussain Ansari & Anr.*** reported at **(2020) 3 SCC 99**.
4. The second writ petition in which the impugned order was passed, the learned Single Judge declined to grant any relief by way of compensation in view of the fact that no appointment letter was issued in favour of the writ petitioners and as such the question of joining in the employment did not arise. Moreover, the said order was passed by the Hon'ble Supreme Court in peculiar facts and circumstances of the case. It appears that the order which forms the basis of the second writ petition was an ex parte order. The learned Single Judge has recorded that due to delay

on the part of the authorities to process the application, the petitioners became over-aged.

5. In the affidavit filed on behalf of the respondent authorities, it is clearly stated that on 2nd March, 2014, de novo examination was held and all the writ petitioners participated in the said written examination. Thereafter, on 9th February, 2015, result of written test was published by Malda District Primary School Council and all the appellants/writ petitioners herein were qualified for interview. Further on verification, it was found that they have crossed their age limit even after extending the benefit of statutory relaxation of three years as they were all exempted category candidates. Thus, it would appear that they do not fall within the zone of consideration.
6. This aspect of the matter was not gone into before the learned Single Judge. Moreover, the issues raised in favour of the disputed questions of fact which cannot be conveniently decided in a writ petition.
7. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.
8. The appeal fails.
9. However, the cost imposed by the learned Single Judge is set aside.

10. Accordingly, the appeal and the connected application are dismissed.
11. However, there shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)