

22.12.2025
Sl. No.602
Ct. No.14
ss

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 20624 of 2019

CAN 1 of 2020

**Apurba Karmakar & ors.
Versus
The State of West Bengal & Ors.**

Mr. Subir Sanyal, Sr. Adv.
Mr. Ali Ahsan Alamgir
Ms. Rabia Khatoon
Ms. Soma Mal
Ms. June Modak

...for the Petitioners.

Mr. Talay Masood Siddiqui, Sr. Adv.
Mr. Avishek Prasad
Mr. Sourodeep Singha

...for the DPSC, Malda.

Mr. Supriyo Chattopadhyay
Ms. Iti Dutta

... for the State.

1. Supplementary affidavit filed on behalf of the petitioners is taken on record.
2. By the present writ petition, the petitioners have sought for publication of the panel with regard to recruitment process initiated in the year 2009 and for issuance of appointment letters in favour of the empanelled candidates including the petitioners, forthwith.
3. The writ petition is moved on behalf of the petitioner nos.1, 2, 4, 5, 10, 12, 13, 14 and 16.
4. At the very outset, Mr. Talay Masood, Siddiqui, learned Senior Advocate appearing on behalf of the District Primary School Council, Malda submits that the writ

petition is not at all maintainable. In the present writ petition, the petitioners herein have prayed for publication of the panel. However, the said panel has already been published on 10th February, 2021 pursuant to order of this Hon'ble Court passed on 8th January, 2021 in *WPA 15128 of 2017 (Nihar Biswas & others –versus- State of West Bengal & others)* along with other writ petitions and as such the writ petition has become infructuous. The petitioners by way of supplementary affidavit have tried to mould their prayers in order to seek for their appointment, which is a change in cause of action. It is settled proposition of law that one has to file a separate writ petition in the event of change in cause of action and the prayer cannot be moulded subsequently. He further informs that three of the writ petitioners namely, petitioner no.3, 6 and 11 who were empanelled has been given appointment. The petitioner nos.8, 9 and 15 filed separate writ petitions and pursuant to order passed in those writ petitions appointment has been given. The aforesaid facts have not been disclosed in the present writ petition. One can claim equity if he comes to Court with clean hands. There is suppression of material facts. He also indicates that petitioner no.1, Apurba Karmakar has mentioned the name of his mother in the cause-title and in the subsequent writ petition filed by him being WPA 13419 of 2024 he has mentioned his father's name in the

cause-title. In light of his aforesaid submissions, he prayed for dismissal of the writ petition.

5. On the contrary, Mr. Subir Sanyal, learned Senior Advocate appearing on behalf of the petitioners submits that the petitioners in their prayer apart from praying for publication of panel have also sought for issuance of appointment letters in their favour. As such there is no change in cause of action by seeking appointment. Therefore, the instant writ petition is very much maintainable. Upon considering the fact that the recruitment process undertaken in the year 2009 had irregularities galore, this Hon'ble Court passed order on 26th April, 2024 in WPA 25712 of 2022 directing for giving appointment to candidates who fulfils two conditions, *firstly* they have been called for interview and *secondly* they have filed the writ petition till 25th April, 2024. The order dated 26th April, 2024 does not specify the nature of the writ petition. The present writ petition has been filed on 7th November, 2019. Subsequent orders have been passed by this Court wherein benefit of order dated 26th April, 2024 has been extended to the petitioners who fulfilled the twin conditions. He informs this Court that the petitioner nos.3, 6 and 11 and 8, 9, 15 and 17 have already been given appointment. Petitioner no.7 does not intend to press his prayer before this Court. Therefore, the petitioner nos.1, 2, 4, 5, 10, 12, 13, 14 and 16 seek for similar relief as has been extended in favour of the

candidates who were called for interview and who filed writ petition within 25th April, 2024. Referring to page 18 of the supplementary affidavit dated 5th August, 2025 he submits that there are 431 non-joining candidates out of which 312 have joined. Therefore, there are still vacancies in which the present petitioners can be accommodated and given appointment. He seeks for appropriate direction.

6. Mr. Siddiqui, learned Senior Advocate, in reply, submits that this Court has turned down the prayer of the petitioners who approached this Court after 25th April, 2024. Therefore, the petitioners should not be extended the benefit of the order dated 26th April, 2024.
7. Upon hearing the learned Advocate for the respective parties, following issue has fallen for consideration.
 - (i) Whether the instant writ petition is maintainable or not?
 - (ii) Whether the petitioner nos. 1, 2, 4, 5, 10, 12, 13, 14 and 16 are entitled to the benefits of order dated 26th April, 2024 passed in WPA 25712 of 2022 (*Md. Asiruddin and others –versus- State of West Bengal and others*)?
8. With regard to issue no.1, the maintainability of the writ petition is challenged on the following grounds. *Firstly*, that the prayer for publication of panel has already been complied, hence the writ petition has become infructuous. *Secondly*, for seeking appointment the petitioners need to file separate writ petition since the

cause of action is different. *Thirdly*, suppression of material facts.

8.1. With regard to the first ground, this Court finds that apart from praying for publication of the approved panel the petitioners have also prayed for issuance of letters of appointment in favour of the empanelled candidates including the petitioners. Therefore, such argument advanced on behalf of the DPSC, Malda that the writ petition has become infructuous, does not stand to reason.

8.2. Regarding the second ground, it is not in dispute that appointment has been sought for by way of the present writ petition filed on 7th November, 2019. The supplementary affidavit filed discloses certain relevant facts. Be that as it may, cause of action of the original writ petition still persists. Therefore, the prayer of the petitioners seeking issuance of appointment letters can be considered in the present writ petition.

8.3. As far as the aspect of suppression of material facts is concerned, suppression of material facts arise in the context when it is relevant for adjudication of *lis*.

8.4. The Hon'ble Apex Court in the case of *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar* [*S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*, (2004) 7 SCC 166] made an observation that-

"13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the

merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken [R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] ...”

8.5. Bearing in mind the aforesaid, it is fact that some of the petitioners have already granted appointment, which has not been disclosed. However, such aspect does not affect the *lis* so far as the issuance of appointment letter to remaining petitioners is concerned.

8.6. Therefore, in light of the above discussion, it is found that the writ petition is very much maintainable in its present form.

9. With regard to issue no.2, it is found that by order dated 26th April, 2024 passed in WPA 25712 of 2022 the Coordinate Bench of this Court after considering the irregularities in the recruitment process of 2009 directed as follows :-

“13. In the above circumstances, following the order dated 9th April, 2024 passed in WAPA 3268 of 2015 (Sourav Naskar and Ors. Vs. State), for the reasons stated therein, in respect of the DPSC, Howrah, this Court by consent of all parties, is inclined to direct that all candidates who were called for interview in the aforesaid recruitment process of the year 2009 and have filed writ petitions until 25th April, 2024, shall be entitled to appointments against existing or future vacancies.”

9.1. The aforesaid order dated 26th April, 2024 was challenged in MAT 1057 of 2024 (*District Primary School Council, Malda & ors. –versus- Md. Asiruddin & ors.*) with other appeals. The appeals were dismissed on 29th August, 2024 however, liberty was granted to the appellants to pursue the remedy in accordance with law before the learned Single Judge. Subsequent thereto, review petitions were filed before the learned Single

Judge and the learned Single Judge on 25th September, 2024 recalled the order dated 26th April, 2024. Against the said order Special Leave Petition was filed before the Hon'ble Supreme Court in *Civil Appeal No.853 of 2025 arising out of S.L.P.(Civil) No.27722 of 2024 (Rimpa Saha & ors. –versus- District Primary School Council, Malda & ors.)* whereby the order of recall of the learned Single Judge was set aside and order dated 26th April, 2024 was restored.

9.2. Several candidates who satisfied the twin conditions approached the Court and they were extended the benefit of order dated 26th April, 2024. The petitioner nos.1, 2, 4, 5, 10, 12, 13, 14 and 16 similarly circumstanced as of the candidates who have already been extended benefits. It is not in dispute that these petitioners have called for interview and the writ petition has been filed on 7th November, 2019 i.e. within 25th April, 2024. Therefore, the petitioner nos.1, 2, 4, 5, 10, 12, 13, 14 and 16 fulfils the twin conditions of order dated 26th April, 2024.

9.3. Accordingly, the petitioner nos. 1, 2, 4, 5, 10, 12, 13, 14 and 16 are entitled to the benefit of order dated 26th April, 2024 passed in WPA 25712 of 2022 (*Md. Asiruddin and others –versus- State of West Bengal and others*). The petitioners shall be entitled to appointment in the same terms and conditions as mentioned in the aforesaid order.

10. It is indicated by Mr. Siddiqui, learned Advocate for the DPSC, Malda, that the petitioner no.1 along with others have filed another writ petition being WPA 13419 of 2024 seeking similar relief.
11. To this, Mr. Sanyal, learned Senior Advocate for the petitioners submits that the petitioner no.1 undertakes not to pursue his prayer in WPA 13419 of 2024.
12. With the aforesaid directions, the writ petition being **WPA 20624 of 2019** stands disposed of.
13. Since no affidavits have been called for, the allegation made in the writ petition is deemed to be not admitted.
14. Interim order, if any, stands vacated.
15. All connected applications, if any, stand disposed of.
16. There shall be no order as to costs.
17. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
18. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)