

Form No. J (1)

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

**Present:**

**The Hon'ble Justice Biswajit Basu.**

**W.P.A. 29050 of 2024**

**MANASHI PAUL**

-Vs-

**THE STATE OF WEST BENGAL & ORS.**

|                            |   |                                                                                                                  |
|----------------------------|---|------------------------------------------------------------------------------------------------------------------|
| <i>For the petitioners</i> | : | <i>Mr. Ashis Kumar Chowdhury,<br/>Mr. Biswarup Biswas,<br/>Mr. Babhru Bahan Bera,<br/>Mr. Avisek Chatterjee.</i> |
| <i>For the State</i>       | : | <i>Mr. Supriyo Chattopadhyay (Ld. AGP),<br/>Ms. Sayantanee Bhattacharjee.</i>                                    |
| <i>For the WBCSSC.</i>     | : | <i>Dr. Sutanu Kumar Patra,<br/>Ms. Supriya Dubey</i>                                                             |
| <b>Heard on</b>            | : | <b>01.07.2025</b>                                                                                                |
| <b>Judgment on</b>         | : | <b>09.07.2025</b>                                                                                                |

**Biswajit Basu, J.:**

1. The issue falls for consideration in the instant writ petition is whether the petitioner was overage as on the date of making online application to participate in the 1<sup>st</sup> State Level Selection Test, 2016 ('1<sup>st</sup> SLST, 2016' in short) for recruitment of Assistant Teachers, in Upper Primary Level of Schools.

2. The undisputed facts necessary to address the said issue are thus; the petitioner had applied to take the Teacher Eligibility Test (**'TET'** in short) 2013 to participate in the 13<sup>th</sup> Regional Level Selection Test (**'13<sup>th</sup> RLST'** in short) but neither the TET 2013 nor the 13<sup>th</sup> RLST was held, however, the West Bengal Central School Service Commission (the **'Commission'** in short), by an Advertisement bearing No. 01/TET/2015 dated June 10, 2015 had notified TET 2015, the petitioner had participated in the said Test and was declared qualified.
3. The School Education Department (Secondary Branch), Government of West Bengal, thereafter, in exercise of the power conferred to it by Section 17 of the West Bengal School Service Commission Act, 1997 (hereinafter referred to as **'the said Act of 1997'** in short) vide notification bearing No. 485-SE(S)/1S-26/2010 (Part-I) dated June 03, 2015, had notified West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers in Upper Primary Level) Rules, 2015 (hereinafter referred to as **'the said Rules of 2015'** in short) thereby prescribing the manner and scope of selection of persons for recruitment of Assistant Teachers in Upper Primary Level of Schools and Rule 4 thereof had prescribed the minimum and maximum age limit to participate in such selection process, however, the second proviso to the said Rule had prescribed age relaxation, the petitioner was within the said *relaxed age limit* but no recruitment drive was taken in terms of the said Rules of 2015.
4. The School Education Department (Secondary Branch) Government of West Bengal, thereafter, vide notification No. 1104-SE/S/1S-26/2010 (Part-III) dated September 20, 2016 and in supersession of the said Rules of 2015, had notified the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers in Upper Primary Level) Rules, 2016

(hereinafter referred to as '**the said Rules of 2016**' in short). The Commission, following the said Rules of 2016 had conducted 1<sup>st</sup> SLST, 2016. The petitioner had participated in the said selection test but was not called for the verification of her testimonials on the ground that she is overage.

5. The petitioner and some other similarly placed candidates, aggrieved by the said refusal, had filed a writ petition being WP 23603(W) of 2018. In the said matter, an interim order was passed to the effect that in the event any interview is held and the candidates come within the zone of consideration on the basis of the marks obtained in TET 2015 and other qualifications, the Commission shall allow them to participate in the ensuing personality test but such participation in the interview shall not create any equity in favour of the said candidates towards appointment.
6. In compliance with the said direction, the petitioners of the said writ petition were called for verification of their testimonials and in the said process, *only the petitioner* came out to be eligible, consequently, she was empanelled. The petitioner thereafter on November 20, 2024 was called for counselling but the Commission did not issue any recommendation letter, instead, on November 22, 2024 by an *e-mail*, has intimated the petitioner that her candidature cannot be considered as she had exceeded the prescribed age-limit as on January 01, 2015. The petitioner in the instant writ petition has challenged the said rejection.
7. Mr. Ashis Kumar Chowdhury, learned advocate for the petitioner submits that the petitioner was within the *relaxed age limit* as prescribed under Rule 4 of the said Rules of 2015 to participate in the selection Test supposed to be held in 2015 but no selection test was conducted in the said year which was spilled over to the next year i.e. 2016, the petitioner had participated in the said selection test as such. The petitioner though initially was not called for interview on the

ground that she is over age however, the learned Single Judge of this Court vide order dated January 16, 2019 passed in WP 23603(W) of 2018, had condoned the said age bar and had directed the Commission to allow the petitioner to participate in the interview. The petitioner, in the said interview, was found to be eligible, accordingly, her name has been included in the panel of successful candidates, the Commission, now at the stage of counselling, cannot re-open the issue of overage to deny the recommendation of appointment to the petitioner.

8. He further submits that the Hon'ble Division Bench by its judgment dated August 28, 2024 passed in MAT 638 of 2021 has approved the panel and has observed that after completion of the personality test, the Commission had no jurisdiction to re-evaluate or re-check or scrutinize different aspects of each of the empanelled candidates. He refers to an order dated December 20, 2024 passed by a Co-ordinate Bench of this Court in WPA 30460 of 2024 to contend that the recommendation for appointment of a similarly placed candidate was directed and such direction has been complied with, therefore, the Commission cannot take a contrary stand in the case of the petitioner as in service jurisprudence, *all similarly situated persons should be treated similarly* and to buttress the said argument, he places reliance on the decisions of the Hon'ble Supreme Court in the case of the **STATE OF KARNATAKA AND OTHERS vs. C. LALITHA** reported in **2006 1 Supreme 640**, in the case of **STATE OF KARNATAKA AND ANOTHER vs. KARNATAKA STATEPATELS SANGHA AND ANOTHER** reported in **2007 2 Supreme 165**, and the unreported judgment in the case of **RENUKA vs. STATE OF KARNATAKA AND ANOTHER** (Diary no. 55944 of 2024).
9. Dr. Sutanu Kumar Patra, learned advocate for the Commission submits that the manner, eligibility and the scope of the selection of persons in the 1<sup>st</sup>SLST, 2016 was prescribed by the said Rules of 2016, Rule 4 read with Schedule 1 thereof prescribes the essential qualifications as well as minimum and maximum age to

participate in the said selection process, in terms thereof, the maximum age limit is 40 years. The first proviso appended to the said Rule 4 prescribes age relaxation *only* to the candidates, who, on the '1<sup>st</sup> day of January of the year of holding the TET' *in which the candidate has appeared*, were within the said prescribed age limit. The petitioner had qualified TET 2015, her date of birth is April 02, 1974; as on January 01, 2015, her age was 9 months above the prescribed upper age limit of 40 years, as such, she is not eligible for recommendation.

Heard learned counsel for the parties, perused the materials-on-record.

10. The learned Single Judge of the Court, in W.P 23603(W) of 2018, though had directed the Commission to allow the petitioner to participate in the personality Test but with a rider that such participation would not create any equity in favour of the petitioner to get appointment. The observations of the Hon'ble Division Bench in its judgment dated August 28, 2024 passed in MAT 638 of 2021, on which Mr. Chowdhury has placed much reliance, were in relation to a different context, altogether, therefore, the argument of Mr. Chowdhury that the Commission had condoned the age bar by allowing the petitioner to participate in the interview or after the said observations of the Hon'ble Division Bench, the Commission cannot re-agitate the issue of age bar of the petitioner, is devoid of any merit, as such rejected.
11. The answer to the issue under consideration rests on the interpretation of the first proviso appended to Rule 4 of the said Rules of 2016. For the sake of convenience, the relevant portion of the said Rule is quoted below :-

***“4. Name of post, essential qualification and age.-***

**(1)**The name of the posts, and its qualifications shall, subject to rule 5, be such as specified in Schedule I:

*Provided that the candidates possessing valid TET Certificates shall be eligible for appearing in the selection under these rules, in spite of the fact that they have exceeded upper age-limit, subject to the condition that the age of such candidate on first day of January of the Year of holding the TET has been within the prescribed age-limit.*

.....”

**12.** The petitioner had applied to participate in the TET 2013 in the name of the 13<sup>th</sup> RLST but the TET 2013 was not held; 13<sup>th</sup> RLST, though was notified, but the said selection process also did not commence. The Commission however, by the advertisement dated June 10, 2015, had notified to conduct TET 2015. The candidates who had already applied for TET 2013 were given option to use the examination fees and other particulars given in TET 2013 in respect of TET 2015. The petitioner had availed the said option and had appeared in the TET 2015 and was declared qualified in the said Test.

**13.** The Government of West Bengal, School Education Department(Secondary Branch),to open the selection process for recruitment of Assistant Teachers in Upper Primary Level of Schools in the state, had notified the said Rules of 2015, the second proviso appended to Rule 4 thereof had prescribed age relaxation for the candidates who have already applied for TET in the name of the 13<sup>th</sup> RLST, thereby, declaring such candidates eligible to take the next selection process under the said Rules inspite of the fact that they had exceeded the upper age limit. To appreciate the scope of the said proviso, the same is quoted below:-

**“(4).** The minimum age-limit shall be 20 years and maximum 40 years so long as the West Bengal Services(Raising of Age-limit), Rules, 1981, is in force.

.....

.....

Provided further that the candidates who have already applied for TET in the name of 13<sup>th</sup> RLST within the above age limit in the last year before coming in to force of these rules, shall be eligible for appearing in next selection under these rules in spite of the fact that they have exceeded upper age-limit

.....”

**14.** In terms of the aforementioned second proviso to the Rule 4 of the said Rules of 2015, the petitioner, being an applicant of the TET in the name of the 13<sup>th</sup> RLST was entitled to age relaxation and was eligible to appear in the next selection under the said Rules of 2015, a right therefore had accrued to the petitioner to participate in the next selection process under the said Rules, unfortunately, no recruitment drive was taken in terms of the said Rules of 2015 which was held in the next year i.e. 1<sup>st</sup> SLST, 2016 in terms of the said Rules of 2016, which though was in supersession of the said Rules of 2015 but the first proviso appended to Rule 4 of the said Rules of 2016 cannot be interpreted so as to take away the right accrued to the petitioner to get the age relaxation by the said Rules of 2015 to appear in the next selection process i.e. 1<sup>st</sup> SLST, 2016.

**15.** In this regard, another relevant factor demands consideration. The petitioner had applied for TET 2013 in the name of the 13<sup>th</sup> RLST which was not held but was spilled over to the year 2015 being TET 2015. The Commission, by a notification, had given option to the candidates who have already applied for TET 2013 to proceed with their earlier application to take TET 2015, therefore, giving a restrictive meaning to the words “on first day of January of the Year of holding the TET” appearing in the body of the first proviso appended to Rule 4 of the said Rules of 2016 to mean ‘the TET in which the candidate had appeared’ instead of ‘the TET in which the candidate had applied’ in reckoning the age limit to exclude such candidates from the selection process of 1<sup>st</sup> SLST, 2016 would be unjust.

16. The decisions cited by Mr. Chowdhury do not demand detailed discussion inasmuch as there is no dispute with regard to the proposition of law laid down in those judgments.

Dr. Patra has submitted that the Commission intends to seek review of the order of the Co-ordinate Bench of this Court dated December 20, 2024 passed in WPA 30460 of 2024, nonetheless, the said Hon'ble Bench has reached to the same conclusion as this Court but on a different reasoning.

In view of the discussion made above, this Court is of the considered opinion that the e-mail communication of the Commission to the petitioner dated November 22, 2024 rejecting her candidature in 1<sup>st</sup> SLST, 2016 on the ground that she is overage, is not sustainable and is accordingly set aside. The petitioner is entitled to get appointment from the date of her empanelment. The Commission is directed to issue recommendation letter in favour of the petitioner after arranging appropriate counselling **within a period of two weeks from date.**

W.P.A. 29050 of 2024 is thus allowed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

Parties to act on the server copy of this judgment duly downloaded from the official *website* of this Court.

**(Biswajit Basu, J.)**