

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

**RESERVED ON: 07.05.2026
DELIVERED ON: 19.05.2026**

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

**WPA 3759 OF 2023
CAN 1 OF 2024**

**SHUVENDU HALDAR & ORS.
VERSUS
STATE OF WEST BENGAL & ORS**

Appearance: -

**Mr. Sudipta Dasgupta, Adv.
Mr. Arka Nandi, Adv.
Ms. Suryatapa Das, Adv.**

..... for the Petitioners

**Md. Sarwar Jahan, Adv.
Sk. Nayemul Hoque, Adv.
Mr. Kaustav Roy, Adv.**

..... For the DPSC/Respondent no. 6

JUDGMENT

Gaurang Kanth, J. :-

- 1.** The present Writ Petition has been filed seeking issuance of a Writ of Mandamus commanding the Respondent authorities to set aside, cancel, rescind and/or withdraw the Order bearing No. 1191(5) dated 21.10.2022 passed by the Chairman, Murshidabad District Primary School Council, and further directing reinstatement of the Petitioners to the post of Assistant Teacher with continuity of service along with all consequential service benefits including payment of arrears of salary.
- 2.** The facts giving rise to the present Writ Petition are briefly set out hereinbelow.

- 3.** The Respondent authorities published an advertisement dated 26.09.2016 inviting applications for the recruitment of Assistant Teachers in primary schools under the State of West Bengal. In pursuance of the said advertisement, the Petitioners applied for the said posts in Murshidabad District under Respondent No. 5, the Murshidabad District Primary School Council, in the category of untrained teachers. The Petitioners appeared in the interviews conducted by the Respondent authorities and, upon successful selection, were appointed as Primary Teachers under the Murshidabad District Primary School Council.
- 4.** Upon receipt of their respective appointment letters issued by Respondent No. 5, the Petitioners joined their respective schools and diligently discharged the duties assigned to them. However, on 14.02.2017, Respondent No. 6 issued a letter abruptly cancelling their appointments. The ground assigned for such cancellation was that the Petitioners had been appointed on the basis of their Special B.Ed. qualification; however, since Special B.Ed. was not recognised as a valid training qualification under the applicable rules at the relevant point of time, the Petitioners were held to be bereft of the requisite training qualification, and consequently, their appointments were cancelled.
- 5.** Aggrieved by the aforesaid cancellation, the Petitioners preferred Writ Petition No. WPA 13613 of 2017 before this Court. Vide Order dated 12.09.2022, this Court disposed of the said Writ Petition by granting liberty to the Petitioners to approach Respondent No. 5 with a representation, and further directed Respondent No. 6 to decide the said representation after affording the Petitioners a reasonable opportunity of hearing.

6. In compliance with the said directions, the Petitioners submitted a representation to Respondent No. 5 on 20.09.2022. Respondent No. 6, after affording personal hearings to the Petitioners, passed an Order dated 21.10.2022, noting that the West Bengal Board of Primary Education is the competent authority for preparing and approving the District-wise Panel for recruitment of Primary School Teachers under all District Primary School Councils in West Bengal. Accordingly, the representations of the Petitioners were forwarded to the West Bengal Board of Primary Education for its perusal and consideration in accordance with the applicable rules.
7. Being aggrieved by the said Order dated 21.10.2022, the Petitioners have preferred the present Writ Petition.

Submissions on Behalf of the Petitioners

8. Learned Counsel for the Petitioners submits that the Petitioners never applied as trained candidates in the selection process. It was the Respondent authorities who, of their own accord, treated the Petitioners' Special B.Ed. qualification as a sufficient training qualification and appointed them after following the prescribed process of selection. There was no suppression of facts or misrepresentation whatsoever on the part of the Petitioners in procuring their appointments.
9. It is further submitted that even if the marks awarded in respect of the training qualification are entirely excluded from the aggregate score of the Petitioners, they would still secure marks well in excess of the cut-off marks of the last selected candidate in the untrained category within their respective reservation categories under the Murshidabad District Primary School Council. The following comparative position has been placed on

record: Petitioner No. 1, a General Category candidate, secured 17.100 marks after deducting the marks for Special B.Ed., against a General Category cut-off of 16.134 marks. Petitioner No. 2, an OBC-A Category candidate, secured 17.520 marks after the said deduction. Petitioner No. 3, a Scheduled Caste candidate, secured 17.092 marks after the said deduction, against an SC Category cut-off of 15.925 marks.

- 10.** Learned Counsel places reliance upon the Judgments of the Coordinate Bench of this Court in **Ananda Banik v. State of West Bengal, WPA 6290 of 2017 (decided on 30.06.2022)**, and **Arpita Biswas v. State of West Bengal, WPA 31101 of 2017 (decided on 20.05.2022)**, to contend that where a candidate secures more marks than the cut-off in their respective category even after deducting the marks allotted for Special B.Ed., they are entitled to appointment.
- 11.** Learned Counsel further places reliance upon the judgment of the Hon'ble Supreme Court in **Bharat Sanchar Nigam Limited v. Sandeep Choudhary, reported as (2022) 11 SCC 779**, to contend that a candidate belonging to the OBC category who qualifies against the General Category cut-off is entitled to be considered for appointment against a General Category vacancy.
- 12.** On the aforesaid submissions, Learned Counsel for the Petitioners prays that the present Writ Petition be allowed.

Submissions on Behalf of Respondents No. 2, 3 & 4

- 13.** An Affidavit in Opposition was filed on behalf of Respondents No. 2, 3 and 4 in August 2024, wherein it is stated that a Coordinate Bench of this Court, vide Judgment dated 12.05.2023, cancelled all the appointments of

untrained candidates made pursuant to the recruitment process of 2016. An Appeal against the said Judgment is stated to be pending consideration before the Division Bench, and on that ground, it is submitted that the present Writ Petition ought not to be taken up for hearing pending disposal of the said Appeal.

- 14.** On the merits, the said Respondents deny that the Petitioners had applied under the untrained category and that the Respondent authorities erroneously considered them as trained teachers. It is their case that the Petitioners had obtained a Bachelor of Education in Special B.Ed. prior to the date of interview and produced the said certificates at the time of interview, apparently with a view to being considered as trained teachers, since trained teachers were accorded priority in the appointment process. The appointments were made on a temporary basis, subject to verification. Upon scrutiny, it was found that the Petitioners did not possess the training qualification prescribed under the Primary Teachers' Recruitment Rules, 2016, and their appointments were accordingly cancelled. The Respondents further contend that since the Petitioners were appointed as trained teachers and their qualification was found to be deficient, they cannot, after exhaustion of the panel, claim appointment as untrained teachers on the ground that their scores exceed the cut-off of the last selected candidate in their respective categories after excluding the marks for Special B.Ed. It is additionally stated that all vacancies under the 2016 recruitment process have been filled and that no vacancies remain. In particular, Petitioner No. 2's OBC-A category was filled entirely by trained teachers. Accordingly, Respondents No. 2, 3 and 4 pray for dismissal of the Writ Petition.

Submissions on Behalf of Respondent No. 6

- 15.** Learned Counsel for Respondent No. 6 contends that Respondent No. 5 issued the appointment letters on the basis of the list prepared by Respondents No. 2 and 3 following the interviews conducted by them. As per the said list, the Petitioners were considered against the post of trained teacher. Since they were appointed as trained teachers and their qualification was subsequently found to be insufficient, their appointments were rightly cancelled.
- 16.** However, Learned Counsel for Respondent No. 6 fairly acknowledges the following factual position: Petitioner No. 1 obtained 17.100 marks after deducting the marks for Special B.Ed., against a General Category cut-off of 16.134 marks. Petitioner No. 2, who is an OBC-A category candidate obtained 17.520 marks after the said deduction. It is, however, submitted that since the OBC-A category vacancies have been filled entirely by trained teachers, no untrained teacher can be considered against that category. Petitioner No. 3 obtained 17.092 marks after the said deduction, against an SC Category cut-off of 15.925 marks.
- 17.** Learned Counsel for Respondent No. 6 further draws the attention of this Court to the impugned Order dated 21.10.2022, passed in compliance with the directions of this Court in WPA 13613 of 2017. It is submitted that the representations of the Petitioners were not rejected but were forwarded to Respondent No. 2, Board for perusal and consideration. Since Respondent No. 5 acts under the directions of Respondent No. 2, it is submitted that appropriate directions may be issued to Respondent No. 2.

Legal Analysis and Findings

- 18.** This Court has carefully considered the submissions advanced by Learned Counsel for all parties and has examined the documents as well as the judicial precedents placed on record.
- 19.** At the outset, it is necessary to address the preliminary objection raised by Respondent Nos. 2, 3 and 4 regarding the pendency of an Appeal before the Division Bench against the Judgment dated 12.05.2023, whereby a Coordinate Bench had set aside approximately 35,000 appointments of untrained teachers made pursuant to the 2016 recruitment process. This Court notes that the Hon'ble Division Bench, vide Order dated 03.12.2025 in MAT 873 of 2023, has set aside the said Judgment dated 12.05.2023. In view thereof, there exists no legal impediment in adjudicating the present matter on merits, and the preliminary objection accordingly stands overruled.
- 20.** Turning to the merits, Learned Counsel for the Petitioners has placed on record the original application forms submitted by the Petitioners at the time of applying. A careful perusal of these documents unequivocally establishes that the Petitioners had applied in the category of untrained teachers. Notwithstanding such clear position, Respondent No. 2, the Board, erroneously considered the Petitioners against the category of trained teachers on the basis of their Special B.Ed. certificates, which was not a recognised training qualification under the Primary Teachers' Recruitment Rules, 2016. It is further noteworthy that the appointment letters issued to the Petitioners do not specify the category under which they were appointed. In these circumstances, the erroneous classification of the Petitioners as

trained teachers was an error entirely attributable to Respondent No. 2. The Petitioners had applied as untrained teachers and never sought to be treated as trained teachers. It is a well settled principle of law that no party can be permitted to take advantage of its own wrong, and it would be manifestly unjust to allow the Respondents to rely upon their own administrative error to defeat the legitimate claims of the Petitioners.

21. On the factual matrix discussed above, all three Petitioners have obtained marks in excess of the cut off marks in their respective reservation categories, even after the complete exclusion of the marks attributed to the Special B.Ed qualification. The position of Petitioner No. 2 requires specific consideration. The Respondents have contended that the OBC-A category vacancies were entirely filled by trained teachers and no untrained teacher can be appointed against that category. However, Petitioner No. 2 secured 17.520 marks after exclusion of the Special B.Ed. marks, which exceeds the General Category cut-off marks of 16.134. In view of the law laid down by the Hon'ble Supreme Court in ***Bharat Sanchar Nigam Limited v. Sandeep Choudhary*** (*supra*), Petitioner No. 2 is entitled to be considered against a General Category vacancy.

22. The contention of the Respondents that the panel has been exhausted and no vacancies are available does not merit acceptance in the peculiar facts and circumstances of the present case. The Petitioners had applied, unambiguously, as untrained teachers and never claimed any benefit on account of their Special B.Ed. qualification. It was entirely incumbent upon Respondent No. 2 to correctly assess the applications and to consider the Petitioners under the untrained category. The failure to do so constitutes a clear administrative error. The Petitioners cannot be made to suffer the

consequences of an error for which they bear no responsibility. It is also significant that Respondent No. 6, being fully conscious of this error, vide the impugned Order dated 21.10.2022, specifically forwarded the Petitioners' representations to Respondent No. 2 for reconsideration on the correct factual basis. Despite the passage of considerable time, no action has been taken by Respondent No. 2, which reflects an unacceptable abdication of administrative responsibility.

- 23.** The stand of Respondent No. 2 that the recruitment panel stands exhausted and that no vacancy is available for consideration cannot, in the peculiar facts and circumstances of the present case, operate as an absolute bar to the grant of relief. It is a well settled proposition of law that an authority cannot be permitted to defeat a legitimate claim by taking refuge in a situation brought about entirely by its own administrative default. The exhaustion of the panel in the present case is a direct and proximate consequence of the error committed by Respondent No. 2 in misclassifying the Petitioners as trained teachers, an error for which the Petitioners bear no responsibility whatsoever. Had Respondent No. 2 correctly assessed the applications and considered the Petitioners under the untrained category at the threshold, as it was obligated to do, their names would have found due place in the untrained panel and their appointments would have been sustained. The Respondents cannot be permitted to immunise themselves from the consequences of their own wrong by pointing to the very outcome that such wrong itself produced. It is also relevant to note that Respondent No. 6, having recognised the error, forwarded the matter to Respondent No. 2 vide Order dated 21.10.2022 with a specific request to reconsider the Petitioners' cases, an opportunity which Respondent No. 2 consciously chose

not to utilise for a period of over two years. In these circumstances, to deny reinstatement on the ground of panel exhaustion would be to reward administrative negligence and punish those who were its victims. This Court, while exercising its writ jurisdiction under Article 226 of the Constitution of India, is not only empowered but duty bound to mould the relief in a manner so as to prevent manifest injustice from being perpetuated. The directions issued herein are accordingly to be understood as restoring the Petitioners to the position which they would have occupied but for the error committed by Respondent No. 2. If no substantive vacancy is presently available, Respondent No. 2 shall create supernumerary posts for the purpose of giving effect to this order, which shall thereafter be regularised against the next available substantive vacancy.

- 24.** In view of the foregoing, this Court has no hesitation in holding that the fault lies entirely and exclusively with Respondent No. 2. The Petitioners are wholly blameless and cannot be made to suffer the adverse consequences of the Respondents' administrative error.
- 25.** The findings of this Court are firmly supported by the decisions of the Coordinate Bench in ***Arpita Biswas v. State of West Bengal*** (*supra*) and ***Ananda Banik v. State of West Bengal*** (*supra*), which arose on materially identical facts and directed reinstatement of the concerned Petitioners with all service benefits. Neither of those judgments was challenged in appeal, and both have attained finality.
- 26.** In view of the detailed analysis set out hereinabove, the present Writ Petition is allowed and the Respondent No. 2 is hereby directed to issue appropriate directions to Respondent No. 5 for reinstatement of all three Petitioners to

the post of Assistant Teacher in the untrained category with immediate effect with all consequential service benefits. This direction shall be complied with within a period of eight weeks from the date of receipt of a certified copy of this Judgment.

27. The Writ Petition is allowed in the above terms. All pending application, if any, stand disposed of.

SAKIL AMED (P.A)

(GAURANG KANTH, J.)

