

16.04.2026
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MAT 551 of 2025
Soumendu Chattopadhyay
- Versus -
The State of West Bengal & Others
And
IA No.: CAN 2 of 2025
Md. Alamgir Hossain & Another
- **Applicants**

Mr. Soumya Majumdar,
Mr. Anindya Bose,
Mr. Santanu Maji,
Mr. Subhayu Das,
Ms. Debrani Mondal,
... for the Appellant.
Mr. Shamim ul Bari,
Ms. Indrani Nandi
... for the State.
Mr. Pratik Dhar,
Ms. Madhurima Sarkar
... for the Madrasah Service Commission/
Respondent nos.2-4.
Mr. Shamim Ahmed,
Mr. Khairul Alam
... for the Applicants/
Interveners.

The present appeal has been preferred challenging an order dated 19th March, 2025 passed by the learned single Judge in a writ petition being WPA 243 of 2024, which was preferred by the appellant primarily praying for issuance of necessary direction upon the respondents to grant him appointment to the post of Assistant Teacher as a successful candidate in the 6th State Level Selection Test, 2013 (hereinafter referred to as the 6th SLST). The writ petition was heard on contest and dismissed by the order impugned. Upon arriving at a finding that the appellant '*approached the Court in the*

present case on 3rd January, 2024 which is approximately five years after expiry of the panel' on 30th June, 2019, it was observed that the appellant is not entitled to get benefit of the ratio of the judgment delivered in the writ petition being WPA 10450 of 2019 (*Akmol Hossain & Ors. versus The State of West Bengal & Ors.*) since the said writ petition was filed on 14th June, 2019 that is prior to the expiry of the panel. It was also observed that the appellant was a fence sitter.

Mr. Soumya Majumdar, learned senior advocate appearing for the appellant submits that the learned single Judge arrived at an incorrect finding that the appellant had approached the Court after expiry of the panel though the records would reveal that prior to expiry of the panel, the appellant along with others did prefer a writ petition earlier being WP No.24096 (W) of 2018 (*Kazi Sahabaz Ahamed & Ors. versus The State of West Bengal & Ors.*) primarily seeking a direction upon the West Bengal Madrasah Service Commission (hereinafter referred to as the Commission) to fill up all the vacancies which have cropped up till 5th September, 2016.

According to Mr. Majumdar the issue that trained candidates have to be given preference in terms of the proviso to Rule 3 of the West Bengal Madrasah Service Commission Recruitment (Selection and

Recommendation of Persons for Appointment and Transfer to the Posts of Teachers and Non-Teaching Staff) Rules, 2010 (hereinafter referred to as the 2010 Rules), is no longer *res-integra* and has attained finality upon dismissal of the Special Leave Petition on 16th April, 2024 preferred by the Commission challenging the order dated 6th September, 2023 passed in the appeal being MAT 987 of 2022 affirming the order dated 14th June, 2022 passed in *Akmol Hossain (supra)*. In view thereof, the appellant's claim cannot be negated on the ground of limitation. In support of the arguments advanced reliance has been placed upon the judgment delivered in the case of *LT.COL. Suprita Chandel Vs. Union of India & Ors.*, reported in, *AIR 2025 SC 83*.

Per contra Mr. Dhar, learned senior advocate appearing for the Commission and its functionaries submits that pursuant to the order passed in the earlier writ petitions, in which the appellant was a party, the Chairman of the Commission passed a reasoned order on 6th December, 2019 rejecting the claim of the writ petitioners therein. After such disposal on 6th December, 2019, the appellant preferred the writ petition about five years thereafter without any explanation as regards such delay. It was within the knowledge of the appellant that the panel had expired on 30th June, 2019 but still after disposal

of the issue by the Chairman on 6th December, 2019, the appellant did not take any step whatsoever. From such factual scenario, the only conclusion that can be drawn is that the appellant was a fence sitter.

Mr. Dhar further submits that the appellant appeared in the 6th SLST. The panel pertaining to the said selection process had admittedly expired on 30th June, 2019 and there is no existing vacancy pertaining to the said selection process.

He further submits the earlier writ petition in which the appellant was a party, no issue was urged for grant of appointment by giving the preference to B.Ed candidates. The scope and ambit of the said writ petition does not in any manner dilute the delay in preferring the present writ petition. In support of the arguments advanced reliance has been placed upon the judgment delivered in the case of *State of Orissa and Another vs Rajkishore Nanda and Others*, reported in (2010) 6 SCC 777.

An application being CAN 2 of 2025, as filed by two applicants seeking leave to intervene is allowed and Mr. Ahmed, learned advocate appearing for the appellants have been heard.

The short point which arises for consideration in the present appeal is as to whether the learned single Judge acted erroneously in dismissing the writ petition at the admission stage on the ground of

delay. The learned single Judge did not go into the merits of the matter and refused to exercise discretion upon arriving at a finding that the appellant was a fence sitter.

A declaration of law is a judicial mechanism where a Court's rulings are generally retrospective unless the Court explicitly declare them prospective. The issue, as urged, on behalf of the appellant that in terms of the proviso to Rule 3 of the 2010 Rules, a person having desirable qualification shall, if qualified in written examination, get preference over the candidates, who have qualified in written examination but do not have desirable qualification, has attained finality, needs to be decided by the learned single Judge on merits. It is not a case that entertainment of the writ petition would reopen any settled issue. Had any proceeding been initiated claiming the benefit of declaration of any law and had the appellant waited till the outcome of such a proceeding, he may have been construed to be a fence sitter.

In view thereof, the impugned order is set aside and this Court remands the writ petition to the learned single Judge for hearing on merits upon exchange of affidavits, without being influenced by the observations made in this order.

The respondents are directed to file their affidavits-in-opposition within four weeks and reply thereto if any, be filed, within two weeks.

The parties would be at liberty to mention the matter for final hearing after expiry of the period as fixed towards exchange of their affidavits.

The learned single Judge is requested to dispose of the writ petition, expeditiously, without granting any necessary adjournment to either of the parties.

The appeal and its connected applications are, accordingly, disposed of.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)