

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 10699 of 2019

**Sri Dibakar Bera
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. S. P. Pahari

For the Board : Mr. Subir Sanyal, Id. Sr. Adv.
: Mr. Ratul Biswas
: Mr. Kaushik Chowdhury

Judgment on : **13.02.2026**

Rai Chattopadhyay, J. :-

1. An order of the Secretary, West Bengal Board of Primary Education dated October 3, 2018, is under challenge in this writ petition. Before entering into the contentions of the petitioner in the writ petition and the grounds of the said order as impugned, it is necessary to discuss the factual background of the case in a nutshell.
2. The petitioner has been a successful candidate in Teachers' Eligibility Test (TET), 2012, who was called for interview [Roll No.150266702], but could not attend due to unavoidable circumstances. This Court vide order dated January 2, 2014, in writ petition No. W.P. 38348(w) of 2013, directed him to make a representation before the authorities, to consider his prayer to allow him to be interviewed for the purpose of empanelment. The

authority has been directed to amend the panel, which has already been prepared, by adding the name of the petitioner, if he is found to be qualified in the interview.

3. Vide an order dated October 6, 2016, in W.P. No. 23795 (w) of 2016, this Court has further directed the Secretary and the President of the respondent Board to allow the petitioner to participate in the process of interview along with the successful candidates of the following TET examination, held in 2014.
4. On February 15, 2017, the petitioner filed a written representation before the President and the Secretary of the respondent Board, with his prayer for appointment as an assistant teacher in primary school/section.
5. Vide another order of this Court dated June 4, 2018, in W.P. No. 18028 (w) of 2017, the Secretary of the Board has been directed to consider and dispose of the petitioner's representation dated February 15, 2017, after granting him an opportunity of hearing. A hearing took place in the office of the Secretary, West Bengal Board of Primary Education on August 2, 2018. The resultant order is that dated October 3, 2018, which is under challenge in the instant writ petition.
6. The respondent/Secretary of the Board has found that in accordance with 2013 Rules, the candidates with training qualification were to get preference over the candidates without the same; and the writ petitioner being an untrained unreserved category candidate could not have been employed any further, as the vacancy in that category has already been filled up with the trained unreserved category candidates. So, due to non-availability of a suitable vacancy for the petitioner, his prayer was turned down, by dint of the said impugned order.

7. The petitioner is aggrieved that training qualification was not a compulsory requirement in the examination of 2012, in which he has participated and become successful. Also, that it was never stipulated that candidates with training qualification would get a certain amount of preference over the other candidates without any training qualification. According to the petitioner, as per norms and rules applicable for the examination of 2012, there was no difference as regards candidates on the basis of their having training qualification or not. The learned advocate appearing for the writ petitioner has submitted that the Court considered the petitioner's case as a special case and directed for his interview to be conducted with the successful candidates in the subsequent examination. According to him, considering the case of the petitioner on the basis of any other rules than that which governed the examinations in 2012, is only unreasonable and arbitrary on the part of the respondent authorities. Furthermore, as he was a successful candidate prior in time to those who qualified in 2014, the petitioner's candidature should have been prioritized for the opening before evaluating the successful candidates from the 2014 examination.
8. With reference to the orders of the Court dated January 2, 2014, in writ petition No. W.P. 38348(w) of 2013, and that dated October 6, 2016, in W.P. No. 23795 (w) of 2016, he has submitted that a conjoint reading thereof would suggest an out-of-the-box treatment to have been directed to be extended to the writ petitioner. That neither of these orders has ever been challenged by the respondent authority. In such view of the matter, the respondent's action, treating the petitioner at par and under the same Rules, which governed the examination held in the subsequent year of 2014, is not only in violation of the order of the

Court, but also violates standards of reasonableness, justice, equity, and fair play. The alleged inaction has been attacked as marred with irrationality and arbitrariness. Hence, the writ petitioner has prayed for setting aside of the impugned order dated October 3, 2018, and direction upon the respondent authorities to appoint the writ petitioner.

- 9.** The principal answering respondent Board is represented by Mr. Subir Sanyal, learned Senior Advocate. On behalf of the said respondent, strong objections have been raised as against the contentions and prayer of the writ petitioner. It has been submitted that the entire examination process of 2014 has been conducted as per the 2012 amendment of the West Bengal Primary School Teachers Recruitment Rules, 2001, and the writ petitioner cannot claim to be treated differently than other than the provisions of the said amended Rules. It has been submitted that training is a preferable and desirable qualification in 2014 examinations, and trained candidates are preferred as per the norms. Only in case of non-availability of a trained candidate, the vacancy may or may not be filled up by the authority, with an untrained candidate, as per its discretion. It has further been submitted that by the date, the petitioner has submitted his written representation, that is, February 15, 2017, the entire selection process of the year 2016 was also concluded.
- 10.** Hence, according to the said respondent, there is no scope to apply any other rules in case of the writ petitioner than that which controlled and governed the recruitment process of 2014, that is, the 2012 amendment of the West Bengal Primary School Teachers Recruitment Rules, 2001. That, in accordance with the same, the petitioner who admittedly was an untrained candidate at the relevant point of time, could not have been preferred over the

candidate with training qualification in the category in which he belonged, as the entire vacancy was fulfilled with the successful trained candidates. Hence, according to the said respondent, in the instant writ petition, neither is there any cogent ground to interfere with the order dated October 3, 2018 as prayed for by the petitioner, nor is there any scope for appointment of the writ petitioner. The respondent has prayed for dismissal of the writ petition.

- 11.** A recruitment process starts with publication of vacancy notification and concludes with appointment of the successful candidates. In between, examinations are held and interviews are conducted. Preparation of the panel and appointment of the successful candidates are the culminating steps in the entire process of recruitment. The process of recruitment is governed by the relevant rules and the principles of transparency and fairness.
- 12.** The petitioner is a successful candidate of the 2012 TET examinations, and that is an undisputed fact in the instant case. However, for some reasons, he failed to attend the interview process. The 2012 examination process was subsequently concluded, though the petitioner's cause of action remained alive, by dint of this Court's order dated January 2, 2014, in the writ petition No. W.P. 38348(w) of 2013. Pertinent is to note that vide the said order, the Court directed the respondents to consider the petitioner's prayer so that he may be allowed for interview, for the purpose of empanelment; also, that in case he becomes successful in the interview, the panel prepared earlier was directed to be amended accordingly, to incorporate the name of the petitioner in the same. By the date this order has been passed by the Court, the process of the 2012 examinations was completed. Therefore, in the subsequent order dated October 6, 2016, in W.P. No. 23795 (w) of

2016, the Court has again directed that the petitioner should be allowed in the process of interview along with the successful candidates of the examination held in 2014. Pertinent is to note here that the Court has not mentioned as regards the Rules to be made applicable in case of the present petitioner in the year 2014.

13. Proposition of law settled is that the recruitment must conclude under the Rules under which it commenced, though the same is not inflexible. The issue for consideration therefore is whether the respondent/Board acted illegally or arbitrarily in applying the amended recruitment rules/policy in case of the writ petitioner who happened to be an incumbent of the 2012 recruitment process, though considered for interview by virtue of the Court's order, with the successful candidates of the 2014 recruitment process, which has been conducted as per the amended provisions of the recruitment rules.
14. The principle that ordinarily a recruitment process is expected to be completed in accordance with the rules in force at the time of initiation is not an absolute one. The Hon'ble Supreme Court has consistently recognised well-defined exceptions to this principle in general, based on constitutional permissibility, absence of vested rights, stage of recruitment, and public interest.
15. In ***Shankarsan Dash versus Union of India, (1991) 3 SCC 47***, the Hon'ble Supreme Court authoritatively held that: "A candidate whose name appears in the select list does not acquire any indefeasible right to appointment." This principle has been reiterated in ***State of Bihar versus Madan Mohan Singh, 1994 Supp (3) SCC 308***, where it was held that even after selection, appointment may be denied if circumstances or policy so warrant. Thus, at best, the Petitioners had a right to be considered, not a

right to insist upon application of the old rules till completion of the process.

16. In *Tej Prakash Pathak versus Rajasthan High Court, (2013) 4 SCC 540*, the Hon'ble Supreme Court observed that the so-called "rules of the game" doctrine is not inflexible, and that changes in recruitment criteria may be permissible depending on:

- the stage of recruitment,
- the nature of change, and
- the presence or absence of arbitrariness.

The Court expressly declined to treat the doctrine as a rigid bar against all mid-process changes.

17. Change of policy based on administrative and public interest considerations has been upheld by the Supreme Court as due and acceptable in accordance with the Constitutional principles unless non-transparent and arbitrary, but a bona fide policy decision, taken in the public interest to rationalise recruitment and improve administrative efficiency. In *Union of India versus Kali Dass Batish, (2006) 1 SCC 779*, it was held that Courts should not interfere with policy decisions unless they are patently arbitrary, mala fide, or unconstitutional. No such infirmity has been demonstrated in the present case. In *Maharashtra SRTC versus Rajendra Bhimrao Mandve, (2001) 10 SCC 51* and *State of J&K versus Shiv Ram Sharma, (1999) 3 SCC 653*, the Hon'ble Supreme Court upheld procedural changes in recruitment so long as they were reasonable and uniformly applied. The writ petitioner has failed to establish how the change results in hostile discrimination or unequal treatment.

- 18.** In this case, it is noticeable that process of 2014 is a separate recruitment process, initiated after the conclusion of the 2012 process. By virtue of the Court's order, the petitioner has been permitted to take part in an interview with the successful candidates of the 2014 examinations, but the Court has not directed the compulsory application of the Rules in his case of 2012, which governed the examination process at that time. In between the Rules change, which cannot be considered as a mid-process change, insofar as in 2014, a fresh examination process has been initiated. The Rules changed in public interest to rationalise recruitment and improve administrative efficiency. The amended Rules, equally applicable to all the incumbents in the 2014 examinations, cannot be termed as discriminatory or mating out unequal treatment to any individual or class. In such circumstances, when the petitioner's case was being treated as per the Court's order alongside the candidates of 2014, though without the liberty being granted for the old Rules (which have already been amended) to be applied in his case, the Court finds no irrationality, impropriety, or illegality, in case the petitioner was considered as per the existing amended Rules governing the 2014 recruitment process. Hence, in the considered opinion of this Court, the impugned order as above needs no interference by this Court.
- 19.** For the reasons as discussed above and finding no merits, the instant writ petition No. WPA 10699 of 2019 is dismissed.
- 20.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)