

13.02.2026
Sl. No. 33 (DL)
Ct. No.14
AN

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

**W.P.A. No. 28555 of 2025
Tapas Kumar Mandal & ors.
Versus
The State of West Bengal & Ors.**

Mr. Sabyasachi Chatterjee
Mr. Badrul Karim
Mr. Sarajit Roy
Mr. Aritra Ghosh
Mr. Sayed Hossain

...for the Petitioner.

Mr. Subir Sanyal, Id. Sr. Adv.
Mr. Dwarikanath Mukherjee
Mr. Ratul Biswas,
Mr. Kaushik Chowdhury

...for the WBBPE.

Mr. Sirsanya Bandopadhyay, Id. Sr. Adv.
Ms. Tapati Samanta

...for the State

Ms. Asha G. Gutgutia

...for the NCTE.

1. Affidavit of service filed on behalf of the petitioners is taken on record.
2. By the present writ petition, the petitioners seek for relaxation of age in order to participate in the ongoing recruitment process in terms of the Notification dated 25th September, 2025.
3. The petitioners contend that they are enrolled as Para Teachers under “Sarva Siksha Abhijan”, a scheme of the Government of India that was launched for eradicating drop out rates amongst the students from Class I to Class V who live in urban as well as rural areas. The

petitioners have passed the Teacher Eligibility Test 2022 (*in short, 'TET'*). They have also passed the Diploma in Elementary Education (*in short, 'D.El.Ed'*) in the year 2019 for the Session 2015-17. The petitioners are unable to participate in the ongoing recruitment process in terms of the Notification of Board dated 25th September, 2025 since they have crossed the maximum age limit of 50 years. Hence this writ petition claiming for relaxation of age upto 55 years.

4. Mr. Sabyasachi Chatterjee, learned advocate appearing for the petitioners submits that in the Rules pertaining to recruitment of Assistant Teachers in upper primary level provides the age limit relaxable upto 55 years. He also indicates that in the direct recruitment of Special Educators under the West Bengal Primary Schools Special Education Teachers Training Rules, 2025, the age is relaxable upto 55 years. Therefore, the petitioners should also be granted relaxation of age till 55 years. He seeks for appropriate orders.
5. On the contrary, Mr. Subir Sanyal, learned senior advocate appearing for the Board submits that Rule 6(1) of West Bengal Primary School Teachers Recruitment Rules, 2016 (**as amended upto date**) (*hereinafter referred to 'Rules of 2016'*) clearly provides that no person shall be appointed by the Council as a teacher unless he has completed 18 years as on 1st Day of January of the year of advertisement and has not completed the age of 40 years as on 1st Day of January of the year of advertisement. Therefore, there is a clear

bar for any relaxation of the age. For the para teachers as per Note 7, 10% of the total posts that have been earmarked without disturbing the 100 point roster. The Note further provides the maximum age limit relaxation upto 50 years for the para teachers. There cannot be any issuance of a mandamus contrary to the statutory rules. Moreso, the rule does not provide for relaxation of age after attainment of the maximum age limit. In support of his contention, he relies on the following decisions:

- (i) ***Malda District Primary School Council & anr. versus Md. Faridur Rahaman & ors.*** reported in ***(2001) 1 CHN 204;***
- (ii) ***Chairman, Ad-hoc Committee, District Primary School Council, Burdwan versus Rabindra Nath Ghosh & ors.*** reported in ***(2001) 2 CLJ 161;***
- (iii) ***Golam Morshed Mondal & ors. versus The State of West Bengal & ors. (MAT 2101 of 2025)***

6. Furthermore, the recruitment rules of 2016 have not been challenged in the present proceedings. The rules for the special educator and upper primary are altogether separate rules and the petitioners cannot seek for parity on the basis of the said rules. He seeks for dismissal of the writ petition.
7. Heard learned advocates for the respective parties and perused the materials on record.
8. The only issue which falls for consideration is whether the petitioners are entitled to relaxation of age limit upto 55 years or not.

9. In order to examine the aforesaid issue, it would be apposite to reproduce rule 6(1) of the Rules of 2016 and Note 7 as hereunder:

“6(1). No person shall be appointed by the Council as a teacher unless he is a citizen of India and has completed the age of 18 years as on 1st day of January of the year of advertisement and has not completed the age of 40 years on the 1st day of January of the year of advertisement as specified in sub-rule (3).”

“Note 7. The State Government may, by notification in the Official Gazette, earmark upto 10% of the total posts for the candidates belonging to Para-teachers without disturbing the 100-point roster as notified by the State Government from time to time, in such-manner as may be mentioned in such notification.

Provided that the qualifications for such categories of candidates shall be the same as mentioned in these rules:

Provided further that notwithstanding anything contained in these rules, the upper age limit of candidates to be appointed as teachers by earmarking 10% of the total posts, shall be relaxable upto the period of service rendered by such candidates, subject to maximum of 50 years of age as on the 1st day of January of the year of advertisement.”

10. Upon conjoint reading of rule 6(1) and Note 7 of the said Rules, the maximum age limit for a para teacher under the rules is 50 years. Needless to mention that all the petitioners have crossed the age limit of 50 years.
11. The Hon'ble Division Bench in *Md. Faridur Rahaman (supra)* while answering the similar question observed as follows:

“15. Similarly when the Rule says that candidates upto the age of 40 years are eligible, a candidate who has crossed the age of 40 years is ineligible. There is no power to relax the age limit. If such a candidate is employed and for that matter permitted to appear at the interview, will it not be unauthorized? Statutory law is binding law. Rule of law imposes an obligation to adhere to statutory laws. No Court can give a direction contrary to a statutory law. It is incorrect to assume that in Excise Superintendent's case (supra) Supreme Court gave any direction contrary to a law prescribed by statute.”

12. In *Rabindra Nath Ghosh (supra)*, the Hon'ble Division Bench observed as follows:

“The learned Division Bench held that there is no provision for condonation of age bar in the rules, therefore, the Court cannot in exercise of extraordinary

jurisdiction issue any such direction contrary to the statutory rules and in an identical situation set aside the order of the learned Single Judge. The learned Counsel for the respondent invited our attention to the earlier judgment passed by the same learned single Judge (Amitava Lala) in the case of (16) Tapan Kumar Mondal State of West Bengal & Ors. reported in 2000 (1) CHN 833. It appears that the attention of the learned Single Judge was not invited to the decision reported in Biman Chandra Karmakar v. State of West Bengal (supra), and the learned Single Judge again passed the same order as in the impugned case. Be that as it may, facts remains that the Division Bench has already taken a view in Biman Chandra Karmakar v. State of West Bengal (supra), that no administrative instruction can be issued contrary to Recruitment & Leave Rules, 1991 framed under Section 106 of the West Bengal Primary Education Act, 1973. Therefore, the learned Single Judge was not correct in issuing the direction to the authorities to forward the name of such petitioners as ex-census employees and to consider sympathetically for grant of relaxation in age. The learned Counsel for the respondent invited our attention to the decision of the Supreme Court in (17) Bir Bajrang Kumar v. State of Bihar, AIR 1987 SC 1345, and submitted that inconsistent order should not be passed by co-ordinating bench of same Court. In the present case, we, are only following the decision given by the Division Bench in the case of M. A. T. No. 392 of 2000, therefore, there was no question of passing inconsistent order, on the contrary it appears that the learned Single Judge's attention was not invited to the Division Bench Judgment wherein in an identical situation a similar contention as in the above matter has been overruled by the Division Bench. This appears to be a serious lapse on the part of the Counsel who appeared before the learned Single Judge that they have not invited the attention of the learned Single Judge to the Division Bench Judgment in M. A. T. No. 392 of 2000. Therefore, the view taken by the learned Single Judge in the case of Tapan Kumar Mondal v. State of West Bengal (supra), and in the impugned order is in per curiam. Hence, the appeal is allowed and the order passed by the learned Single Judge is set aside with no order as to costs."

13. In *Golam Morshed Mondal (supra)*, the Hon'ble Division Bench considering the provision of rule 6 dismissed the appeal where the petitioner contended for age relaxation.
14. Therefore, it clearly manifests from the aforesaid proposition laid down by the Hon'ble Division Bench that rule of law imposes an obligation to adhere to the statutory rules and no Court can give a direction contrary to statutory rules. Needless to note that in the present writ petition, there is no challenge to the Rule 6

of recruitment rules of 2016. As observed earlier, the rules since do not provide for age relaxation beyond 50 years, the prayers made in the writ petition seeking for age relaxation falls short of merit.

15. Accordingly, the writ petition being **W.P.A. No. 28555 of 2025** stands dismissed.
16. Interim order, if any, stands vacated.
17. All connected applications, if any, stand disposed of.
18. There shall be no order as to costs.
19. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Bivas Pattanayak, J.)