

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

Present:

The Hon'ble Justice Moushumi Bhattacharya.

CAN 3 of 2019 (Old CAN 2777 of 2019)

in

WPA 21174 of 2017

With

Pranati Aguan

Vs.

State of West Bengal and Ors.

With

CAN 2 of 2019 (Old CAN 2543 of 2019)

in

WPA 17688 of 2017

Gautam Pramanik & Ors.

Vs.

State of West Bengal & Ors.

With

WPA 21173 of 2017

Narayan Poddar & Anr.

Vs

State of West Bengal & Ors.

With

CAN 1 of 2017 (Old CAN 11548 of 2017),

CAN 4 of 2020

in

WPA 21322 of 2017

Nirmalya Das & Ors.

Vs

State of West Bengal & Ors.

With

WPA 23699 of 2017

Dolan Kundu

Vs

The State of West Bengal & Ors.

With

WPA 24431 of 2017

Sumanta Banerjee

Vs

State of West Bengal & Ors.

With

WPA 24438 of 2017

Biman Kumar Das & Ors.

Vs

State of West Bengal & Ors.

For the Petitioners

: Mr. Kalyan Bandyopadhyay, Sr. Adv.
Mr. Ekramul Bari, Sr. Adv.
Mr. Siddharta Sankar Mandal, Adv.
Ms. Tanuja Basak, Adv.
Mr. Sk. Imtiaz Ali, Adv.

For the State

: Mr. Anirban Ray, Ld. Government Pleader
Mr. Pinaki Dhole, Adv.
Mr. Avishek Prasad, Adv.
Mr. Varun Kothari, Adv.

For the State in 24431 of 2017

: Mr. Bhaskar Prasad Vaisya, Adv.
Mr. Suman Dey, Adv.

For the WBCSSC

: Dr. Sutanu Kr. Patra, Adv.
Mr. Kanak Bandyopadhyay, Adv.
Mr. Supriya Dubey, Adv.

Last Heard on

: 20.05.2022.

Judgment on

: 10.06.2022.

Moushumi Bhattacharya, J.

1. The petitioners pray for cancellation and withdrawal of amendments made to the West Bengal School Service Commission (Selection for appointment to the Posts of Headmaster/Headmistress in Secondary or Higher Secondary and Junior High Schools) Rules, 2016 as notified on 24th March, 2017 and all subsequent Notifications issued thereafter to the extent of imposing enhanced qualifications for selection of Headmasters/Headmistresses in Secondary, Higher Secondary and Junior High Schools. The ground for seeking rescission of the impugned Notification is infringement of Article 14 of the Constitution. The petitioners seek to make out a case that the impugned Notification, enhancing the qualification for selection to the post of Headmaster/Headmistress from 45% to 50% in academic and professional qualifications, is violative of the right to equality and that the petitioners have been discriminated against by the said impugned amendment.

2. The petitioners are Assistant Teachers of High Schools in the State and are presently serving in that position. The petitioners claim to be eligible for being appointed to the post of Headmaster/Headmistress in the concerned schools on the basis of the marks obtained by the petitioners which are in the range of 45%-50% in the post-graduate level. The petitioners contend that by the earlier Gazette Publication on 21st September, 2016 of the Selection Rules, 2016, particularly Rule 4 read with Schedule I of the said Rules, the required qualification of a candidate for appointment to the post of

Headmaster/Headmistress in schools was a Master's degree from a recognized University with at least 45% marks at the post-graduate level.

3. By an order dated 22nd January, 2019, a learned Single Judge of this Court had stayed the counselling scheduled to be held on 24th January, 2019 until further orders. The stay order as well as subsequent orders extending the stay on counselling were vacated by this Court on 25th June, 2019. The selection process for appointing the eligible candidates in terms of the amended Rules of 2016 were allowed to continue and a certain number of seats were directed to be kept vacant for balancing the interest of the petitioners who had approached the Court for relief.

4. Mr. Kalyan Bandhopadhyay and Mr. Ekramul Bari, learned senior counsel appearing for the petitioners, submit that the impugned Notification of 24th March, 2017 has abruptly increased the required percentage from 45% to 50% which is violative of the petitioners' right to equality under Article 14 of the Constitution. Counsel also assail subsequent Notifications including of 12th June, 2017 which published the eligibility criteria for recruitment to the post of Headmaster/Headmistress. It is further submitted that the impugned Notification has restrained the petitioners from participating in the recruitment process even though the petitioners have completed 10 years of continuous service. Counsel submit that the impugned Notification has resulted in an artificial distinction by treating the petitioners as a separate class and further that the State respondents cannot rely upon The National Council for Teacher Education Act, 1993 for prescribing a minimum standard

of education for school teachers. It is also submitted that the impugned Notification creates a classification of the petitioners as teachers in one class and the Headmaster/Headmistress in another class in respect of all their educational qualifications. Counsel have cited several cases to stress on the petitioners' right to equal opportunity in the matter of public employment under Articles 14 and 16 of the Constitution.

5. Mr. Anirban Ray, learned Government pleader assisted by Mr. Varun Kothari, learned counsel, appearing for the State defend the impugned Notification on the ground that the NCTE Act, 1993 provides for certain uniform provisions which are applicable to all schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and that the State is bound by the said Act. Counsel also relies on a Regulation dated 12th November, 2014 issued under the NCTE Act for determining the minimum qualifications for persons who are to be recruited as teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges. Counsel submits that the State enacted the impugned amendment Notification pursuant to the Regulation issued by the National Council for Teacher Education and further that the increase in the eligibility criterion for becoming Headmaster/Headmistress from 45% to 50% in post-graduate is for the purpose of increasing the standard of education imparted to the students of the State. Counsel denies that the impugned Notification is discriminatory or that it creates any artificial distinctions in any manner. It is also submitted that the petitioners cannot have any legitimate expectation of becoming a Headmaster/Headmistress as the same is not a

promotional post and the petitioners would have to fulfil the eligibility criteria for being selected as a Headmaster/Headmistress. Counsel rely on several decisions in support of their contentions.

6. The West Bengal Central School Service Commission is represented and reiterates the stand taken by the State.

7. The controversy in the present matter is whether the School Education Department of the Government of West Bengal could have, by the impugned Notification dated 24th March, 2017, amended Schedule I and Schedule II of the West Bengal School Service Commission (Selection for appointment to the Posts of Headmaster/Headmistress in Secondary or Higher Secondary and Junior High Schools) Rules, 2016, by enhancing the educational qualification including professional qualifications from 45% to 50% for recruitment to the post of Headmaster/Headmistress. The ground taken in the writ petitions in support of such challenge essentially concern the petitioners being deprived of an opportunity to participate in the recruitment for the post of Headmaster/Headmistress as a result of the enhancement of educational qualifications from 45% to 50%. The petitioners are serving as Assistant Teachers in High Schools and/or schools coming within the ambit of the Selection Rules, 2016. The second ground of challenge is the Government Schools having notified a similar increase in the percentage in respect of educational and professional qualifications.

8. The first issue, which hence needs to be considered is whether the impugned Notification creates any unnatural or unreasonable classification

between teachers who are eligible for being selected to the post of Headmaster/Headmistress and those who are already occupying the said post. The second related aspect is whether the impugned Notification makes an artificial distinction between the schools covered by the Notification namely, governed by the West Bengal Central School Service Commission and those coming under the Public Service Commission, West Bengal.

9. The first part of the first issue is being answered as follows. The petitioners cannot have any legitimate expectation for being recruited to the post of Headmaster/Headmistress in the concerned schools from the time of joining the said schools since the post of Headmaster/Headmistress is not a promotional post and the petitioners would hence be required not only to fulfil the eligibility criteria for being recruited to the post but also clear certain rounds of selection including written examination and/or interview. Thus, the ground taken in the writ petitions of the petitioners being deprived of an opportunity for being considered for the post of Headmaster/Headmistress is not found to be acceptable.

10. The related issue of whether the petitioners can invoke Articles 14 and 16 of the Constitution; the right to equality and equal opportunity in matters of public employment; should be weighed against the right of the State to amend the educational qualification for recruitment to the post of Headmaster/Headmistress.

11. The object of The National Council for Teachers Education Act, 1993 is the establishment of a National Council for Teacher Education with a view to

achieving a planned and co-ordinated development of the teacher education system throughout the country and for the regulation and proper maintenance of norms and standards in the teacher education system. Section 1(4)(c) of the NCTE Act makes it clear that the provisions of the Act shall apply to all schools imparting pre-primary, primary, upper primary, secondary or senior secondary education as well as colleges providing senior secondary or intermediate education. Section 12A gives the power to the 'Council', as defined under Section 2(c), to maintain a standard of education in schools by way of regulations which also includes the power to determine the qualification of persons for being recruited as teachers.

12. Although the Public Service Commission appears to continue with its benchmark requirement of 45% - an assumption brought about by the requirement of a second class Master's degree with Honours of an Indian University or equivalent qualifications - the contention of inequality is considerably watered down by the stand of the State. The learned Government pleader submits that all recruitments made by the Public Service Commission on the basis of 45% educational qualification requirement have been put on hold and that the State will soon bring about a similar amendment to the relevant Act/Rules. Even if the stand of the State is discounted, the argument of the petitioners of the impugned Notification creating an artificial distinction between teachers of schools governed by the School Service Commission and those by the Public Service Commission fails to satisfy the tests for such argument. The reasons are as follows.

13. An argument of an unnatural or artificial distinction is based upon equals being treated as unequals. It emanates from the concept of equality before the law and equal opportunities for persons who are equals and expect to be treated as such in all respects. Whether the State, by legislation or by executive action, can treat such persons as falling under different categories, is to be determined on the twin plank of the categorization being based on clear and explainable criteria and the categorization having an understandable nexus with the object sought to be achieved by the creation of the classes. This is the fundamental rule of a reasonable (or an unreasonable) classification. If Articles 14 and 16 of the Constitution are given a meaningful and mutually-purposive interpretation, the object would be to uphold and preserve equitable distribution of opportunities within a class of persons marked by well-defined characteristics. The object cannot be to treat persons across all spectrums as equals but to first segregate the spectrums according to the special features of each and ensure that persons within these individual groups are not treated discriminated against. A complaint of violation of the guarantee of equality can be taken to its equitable conclusion provided there is iniquitous treatment of persons falling within the same bracket despite their homogeneous characteristics. A classification based on grouping of persons based on similar and identifiable markers will withstand judicial scrutiny if the class of persons are distinct and different from those excluded from the class. The differential attributes of those within and those outside must be clear so as to demolish any charge of unequal treatment of persons within and outside the group.

14. The safeguard in Article 14 of the Constitution is to prevent discriminatory treatment of persons who claim to be equals; the right does not mean giving equal treatment or equal protection of the law to persons who are unequals and would hence require differential treatment for preserving their unique and individual characteristics. The image which comes to mind is of 3 persons of unequal height being given 3 ladders to see beyond a wall; the idea is not to give 3 equal-sized ladders to the 3 persons but giving the tallest ladder to the shortest person and the shortest ladder to the tallest person so that all 3 can look beyond the wall (wishfully at a brighter and more equal future).

15. In the present case, the complaint is of the petitioners, who are Assistant Teachers being put in a separate class from the Headmasters/Headmistresses. The reason for the complaint is that the Headmasters/Headmistresses are not being subjected to the qualifying percentage of 50% which has been brought about by the impugned Notification. This argument is fallacious. As stated above, there is no natural or automatic progression/promotion from the post of Assistant Teachers to Headmasters through intermediate stages. An Assistant Teacher would have to put himself/herself through a selection process for qualifying to the post of Headmaster/Headmistress. The two positions namely, of an Assistant Teacher and a Headmaster/Headmistress are therefore conceptually and functionally different. Moreover, since the impugned Notification is prospective in nature, there can be no scope of a person who is presently holding the post of a Headmaster/Headmistress being subjected to the eligibility criterion of

50% marks in Master's Degree from a recognized University at the post-graduate level. The proviso to serial no. 1 (i) under Schedule I of the Selection Rules, 2016, carving out an exception to Headmaster/Headmistress already appointed in the concerned schools, therefore, does not offend Article 14 of the Constitution in the manner complained of or otherwise.

16. The second level of discrimination, as alleged, is between the teachers appointed by the School Service Commission and those by the Public Service Commission. The two classes of teachers are distinct and disparate from each other since the mode and manner of selection as well as appointing authorities are wholly different. The petitioners hence cannot complain of unequal treatment between these two groups of teachers since the two classes are based on well-defined characteristics and are distinct from each other.

17. *State of A.P vs Nallmilli Rami Reddi; (2001) 7 SCC 708* explained the concept of a reasonable classification and the tests for holding such classification to be patently arbitrary. The Supreme Court held that as long as there is equality and uniformity in each group, the law will not become discriminatory. In *Balco Employees' Union (Regd.) vs Union of India; (2002) 2 SCC 333* and *Satyadev Bhagaur vs The State of Rajasthan in Civil Appeal No. 1422 of 2022*, (pronounced on 17.2.2022), the Supreme Court enunciated the legal position that the policies of the Government should not remain static. This was also reiterated in *Independent Thought vs Union of India; (2017) 10 SCC 800*, where the efficacy of evolution of the laws in line with the needs of the society was recognized by the Supreme Court in the specific area of the Parliament increasing the minimum age for marriage. In *Satyadev Bhagaur*

the Supreme Court cautioned that unless the policy decision is demonstratively capricious or arbitrary or suffers from the vice of discrimination the policy decision cannot be struck down. *State of Uttar Pradesh vs Shiv Kumar Pathak; (2018) 8 SCC 595* is for the proposition that the State Government is under an obligation to act as per the notifications issued by the NCTE. In *Subhash Chandra vs Delhi Subordinate Services Selection Board; (2009) 15 SCC 458*, the Supreme Court noted that the State's action must be supported by compelling reasons before a person's constitutional rights are impinged upon. In *Independent Thought* the Supreme Court noted that courts are reluctant to strike down laws as unconstitutional unless it is shown that the law clearly violates the constitutional provisions or the fundamental rights of the citizens. In *The State of Jammu and Kashmir vs Shri Triloki Nath Khosa; (1974) 1 SCC 19* a 5-Judge Bench of the Supreme Court rejected the contention of the respondents that the classification of Assistant Engineers into degree-holders and diploma-holders rests on any unreal or unreasonable basis. *V. Lavanya vs State of Tamil Nadu; (2017) 1 SCC 322* was concerned with enabling the provisions for empowering the State to promote reservations and special provisions for socially and economically backward classes. *State of Punjab vs Brijeshwar Singh Chahal; (2016) 6 SCC 1* recognises the expanding horizon in the interpretation of Article 14 of the Constitution and the Court's willingness to entertain pleas for judicial review in this field. The Supreme Court in *Binoy Viswam vs Union of India; (2017) 7 SCC 59* in fact spoke for reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. In

Navtej Singh Johar vs Union of India; (2018) 10 SCC 1 a 5-Judge Bench of the Supreme Court brought to the fore the risk of a formulaic classification without due importance to the safeguards against arbitrary State action. The decisions shown on behalf of the petitioners do not assist their cause or support the contention that the impugned Notification enhancing the benchmark classification from 45% to 50% for recruitment to the post of Headmaster/Headmistress violates the constitutional safeguard to equality before the law and equal opportunities in matters of public employment.

18. The reasonableness of the classification of treating the School Service Commission and Public Service Commission teachers as two separate groups and the teachers and Headmasters as two separate classes have already been discussed above. The Notification has a rationale and a most credible nexus with the object of upgrading the standard of teachers who are to be recruited as Headmasters/Headmistresses. Requiring a higher academic classification for the post of Headmaster/Headmistress cannot be said to be violative either in logic or in practice. The Supreme Court recognized the importance of excellence in academic standards brought about by the excellence of teachers and staff in *State of Orissa vs Mamata Mohanty; (2011) 3 SCC 436*. It was specifically held in this decision that the quality of teaching staff cannot be compromised and that the selection of the most suitable persons is essential for maintaining excellence in the standard of teaching in the institution. It was further held that Article 21-A has been added to the Constitution for facilitating proper and good quality education for children. It should also be recognized that the benchmark required for recruitment to certain posts,

particularly of teachers including Headmasters, has to be raised from time to time in sync with the evolving academic performance indicators in the State. Eligibility criteria cannot remain frozen or static for all times to come. A timely step for an upward revision can never be taken if a spanner is thrown every time the State seeks to change the benchmark eligibility criteria for recruitment to certain posts, particularly in schools and colleges.

19. The above reasons persuade this Court to sustain the impugned Notification dated 24.03.2017 and hold that the writ petitions do not have any factual or legal basis for seeking cancellation of the Notification. All interim orders are vacated.

20. WPA 21174 of 2017, WPA 17688 of 2017, WPA 21173 of 2017, WPA 21322 of 2017, WPA 23699 of 2017, WPA 24431 of 2017 and WPA 24438 of 2017 are accordingly dismissed without any order as to costs. Connected applications, if any, are also disposed of.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of the requisite formalities.

(Moushumi Bhattacharya, J.)