

Court No. 17

WPA 8059 of 2022

12.05.2022

(AD 1)

(S. Banerjee)

Soma Sinha

Vs.

The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Sr. Advocate
Mr. Sudipta Dasgupta
Mr. Bikram Banerjee
Ms. Dipa Acharya
Mr. Arka Nandi
Mr. Sutirtha Nayek

... for the petitioner

Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey

... for the State

Mr. Kishore Datta, Sr. Advocate
Dr. Sutanu Kumar Patra
Ms. Supriya Dubey

... for the WBCSSC

Ms. Koyeli Bhattacharya

... for the WBBSE

1. This writ application has been filed by one candidate of the First State Level Selection Test, 2016 of Teachers for classes IX and X (SLST in short). Her prayer is for publication of fair and transparent merit list including the waiting list disclosing the breakup and/or segregation of the marks obtained by the candidates in written examination, for academic and professional qualification and in the personality test. Her further prayer is for a direction by way of mandamus to the School Service Commission (commission in short) to

upload the online application forms of the candidates in respect of the said SLST.

- 2.** In support of the application the petitioner has submitted that there is no delay in making the application though the panel and the waiting list were published in the year 2017. As it is a matter relating to recruitment and her fundamental right under Article 16 of the Constitution of India and as several illegalities and irregularities have come to light regarding panel and waiting list and as there are serious allegations of illegalities, irregularities and corruption in the recruitment process of the said SLST the publication of marks along with the candidates' online applications form, will show the marks obtained by the petitioner is below the marks of which candidates and above the marks of which candidates. For non-publication of the marks she cannot compare her marks with others for coming to a conclusion that she has been deprived of the opportunity of getting a job correctly and legally. The petitioner is a candidate named in the waiting list. It has been pleaded in paragraph 5 that now no waiting list with regard to the said SLST is available in the website of the Commission.
- 3.** I wonder why the waiting list has been removed from the website of the Commission.

It has been submitted that the panel is also not there in the website.

In my view the Commission has made a very serious mistake by removing the panel and the waiting list from the website and this action of the Commission has created doubt as to the fairness of the Commission. Why the waitlist and the panel of a recruitment test would not be there in the website, which gives easy access to interested persons is not understood.

4. The petitioner has further submitted that unless the breakup of marks, i.e., marks obtained in the written test, obtained against academic score and professional qualification and obtained against personality test are known to her, she would never know whether she has been given any marks at all in respect of those heads.
5. There is some merit in the submission that unless a candidate knows her/his marks she/he would not be in a position to compare her/his marks with the other candidates in the panel or the waiting list and that while calculating and scrutinizing the academic score and score against professional qualification, unless such application forms, (as has been prayed in prayer (b) of the writ

application), are disclosed by the Commission by uploading the same in the Commission's website it would be impossible to check the academic score and the score against professional qualification.

- 6.** The Commission has resisted this application vehemently on several grounds to which I will come later but I do not understand who would be adversely affected under the sky if breakup of marks along with the application forms of the empanelled and waitlisted candidates are published by the Commission i.e. uploaded in its website along with the panel and the waiting list which was once published but now withdrawn as has been alleged.
- 7.** It is a question of transparency. Transparency is one antidote to corruption. If the authorities or any person remains transparent to others who are in touch with such authority or persons, the question of corruption or false statements and non-genuine actions would become less.
- 8.** I do not understand why the Commission has fought it with such vehemence for not publishing the breakup of marks and uploading of the online application forms. Instead of that the Commission has first raised a question of delay by submitting that the

panel has expired long back, the petitioner has come to the court with the prayer after expiry of the panel when nothing can be done in respect of the panel as the recruitment process is over and, therefore, on the ground of delay this writ application is not required to be entertained. The Commission has failed to show to this court in respect of questions put by this court as to whether accrued right of any person would be adversely affected if such breakup of marks and the online application forms are disclosed. It does not require the knowledge of rocket science to understand that except those persons, who have got the recommendation from the Commission and appointment letters from the West Bengal Board of Secondary Education illegally (instances are there is the application) no candidate who has been appointed in a fair way, i.e., really on the basis of the marks obtained by her/him in written examination, against academic score and professional qualification and against the interview would be affected. Transparency in this regard would go against corruption. In the meantime a large number of matters have come to the knowledge of this court through writ applications (of which this court is taking judicial note) wherefrom it has become

gradually clear that the tip of the iceberg of corruption in appointments by School Service Commission is being enlarged day by day for which not less than in five occasions this court had to pass orders for enquiry by CBI and other related orders.

- 9.** In such view of the matter when nobody except a person who has got appointment in the post of a school teacher illegally and in an irregular manner, would be affected and his accrued right as a result of such irregularity and illegality and corruption, if any, would be affected the question of delay cannot stand in the way of entertaining this writ application.
- 10.** Therefore, I do not accept the objection of the Commission for not entertaining this application on the ground of delay.
- 11.** The petitioner has placed the Recruitment Rules framed by the Government of West Bengal by referring to Rule 2(1)(f), which defines merit list; Rule 7(1), which speaks about manner of selection; Rule 12(6), which speaks about selection of candidates and preparation of panel. Rules 2(1)(f), 7(1) and 12(6) are set out herein below:

“2(1)(f) – “merit list” means a list of candidates prepared category-wise on the basis of marks obtained by a

candidate in written test, in academic and professional qualification and in the personality test;”

(Emphasis mine)

“7(1) – Selection to the post of the Teacher for Classes IX and X shall be made on the basis of the results of the State Level Selection Test (SLST) comprising written examination conducted by the Central Commission, evaluation of academic and professional qualification and personality test of the candidates in the manner as specified in Schedule II.”

(Emphasis mine)

“12(6) – After the evaluation of the OMR Sheet or answer-sheet of the written examination, the Central Commission shall prepare and publish in their website with all details of the candidates to be called for personality test (Interview List) category-wise on the basis of merit (marks of written test, academic and professional qualification as mentioned in Part B of Schedule II) in the ratio of 1:1.4 of final vacancies.”

(Emphasis mine)

12. From the definition of merit list, it is found that it is a list prepared on the basis of marks obtained in written test, in academic and

professional qualification and in the personality test. In the 'manner of selection' also it is stated that selection shall be made on the basis of the results of SLST comprising written examination conducted by the Central Commission, evaluation of academic and professional qualification and personality test of candidates. Regarding selection of candidates and preparation of panel in Rule 12(6) it has been stated inter alia that all details of the candidates to be called for personality test (interview list) category-wise on the basis of merit (marks of written test, academic and professional qualification as mentioned in part B of Schedule II) in the ratio of 1:1.4 of final vacancies.

13. Mr. Bhattacharya, learned senior advocate appearing for the petitioner, has submitted that here all details of the candidates includes the marks obtained by the candidates. He has submitted that by knowing the names, addresses, and role numbers of a candidate the other candidate, who is a competitor of the said candidate, would not come to know any material thing in a recruitment process, i.e., the marks obtained by the other candidates, therefore, the expression "all details of candidates" means beside other details of names addresses etc., the marks of written

test, academic and professional qualification and thereafter the marks of personality test while preparing the panel and the waitlist.

- 14.** The Commission in their submission has stated that this expression of “all details of candidates” has nothing to do with marks and the Commission is not mandated by the provision of law to publish the breakup of marks of the candidates and there is no question of publishing the online application forms of the candidates. Therefore, the Commission has not committed any wrong by not publishing the marks of the candidates and publishing the online application is out of question.

Mr. Dutta, learned senior advocate appearing for the Commission, has also drawn my attention to Rule 12(7) and Rules 17 and 18 to say that it is the validity period of the panel within which such challenges are to be made for publication of the marks and in no way ‘all details’ means the marks obtained by the candidates in the related recruitment test.

- 15.** But delving deeper into the issue, I fail to understand how a person will calculate his own marks and the marks of others in respect of written test, academic and professional qualification and personality test and how the

candidate would know whether any such marks have been awarded to her/him by the Commission in the recruitment test at all. If the marks are not published, what a candidate gets only the name, role number and his panel position or waitlisted position. I also do not understand why the material thing, i.e., the marks (to be precise – the breakup of marks), was not published by the Commission for the sake of transparency.

- 16.** From a conjoint reading of Sections 2(f), 7(1) and 12(6) of the aforesaid rules it is clear that all details of candidates includes break up of marks. Otherwise the reference of marks obtained in written test, academic qualification and professional qualification and personal details becomes meaningless. If the marks are not published and it is not known to the candidates the candidates will be kept in the dark and they will remain totally blind as to the inter-se performance. In this age of information and transparency no statutory authority can keep or allowed to keep the most important material of a selection procedure in respect of candidate i.e. her/his marks obtained in the selection test. It is clear from the above mentioned Rules that marks of the candidates are to be published and it is found that the intention of the Rule-

markers is publication of marks. There is no provision in the said Rules which forbids publication of marks along with panel and waiting list. Had it been the intention of the Rule makers to put a negative provision as to publication of marks they had no constraint at all in making such a provision. And after all it is to be kept in mind that it is the marks obtained by the candidates against their performance which they are entitled to know. Marks of the candidates are not properties of the commission which they can keep under cover. It is their duty to disclose the marks of the candidates.

17. On behalf of the commission it has been submitted that as the petitioner has approached the court after expiry of the panel and its validity period of panel within which such claims were to be made, the petitioner has actually abandoned her known right. In reply to such submission, it has been submitted on behalf of the petitioner that the matter relates to his fundamental rights under Article 16 of the constitution of India and actually it is her fundamental rights to know her marks and marks of others for knowing whether she has been illegally excluded from the selection process for getting an employment. There cannot be any question of

waiver as waiver or abandonment of a known right cannot act in respect of fundamental rights.

18. In paragraph 15 of the writ application the petitioner has given examples of 17 candidates wherefrom it comes to light that the candidates in the waitlist who are below the rank of other candidates got recommendation and appointment but the candidates above the said below-ranking candidate has not been recommended. **In the said list also there are names of some non-listed candidates, i.e., candidates who were neither in the waitlist nor in the panel. There is utterly surprising.**

19. While dealing with the same list of names in another matter, being WPA 13700 of 2021 (Setab Uddin & Ors. -Vs.- State of West Bengal & Ors.), judgement and order whereof has been produced today by the petitioner, I held that those allegations in respect of those individuals were not denied by the Commission. Therefore, such allegations in respect of those 17 candidates are considered as correct and this court is taking judicial note of the proceeding (in WPA 13700 of 2021) which has become a record of this court of record.

20. In this view of the matter, as I am satisfied that without publishing the breakup of marks of the empanelled candidates and the waitlisted candidates and without uploading their online application forms in the website of the Commission along with the alleged disappeared panel and the waiting list of all empanelled and waitlisted candidates in the said SLST it is not at all possible to know by a candidate whether her/his position in the panel is a correct position.

21. Therefore, I direct the West Bengal Central School Service Commission to publish the breakup of marks of the empanelled and waitlisted candidates against written test, academic and professional score and personality test by 20th May, 2022 and to upload the online application forms of the empanelled and waitlisted candidates and to come up with such a list with breakup of marks and to come up with preparation to demonstrate that online application forms of the empanelled and waitlisted candidates in respect of 1st State Level Selection Test, 2016 (Classes IX and X) has been uploaded.

22. The Commission is further directed not to take any further step for initiation of recruitment or selection process of State Level Selection Test for Assistant Teachers for the

Classes IX and X till 17th June, 2022 as after publication of the marks it has to be checked and verified by the petitioner and all other concerned persons to see whether the panel and the waitlist is to be completely recast or not. If a recruitment process is initiated in the meantime before doing that, a further complicated situation will arise in the future recruitment process as vacancies are to be published and Rule 18 of the said Rules provide for carry forward of vacancy.

23. Dr. Patra, learned advocate for the Commission, has reminded this court that the Commission's Senior Counsel, Mr. Datta, wanted to file one affidavit on the question of transparency which I did not allow as I do not understand how, in respect of transparency, which is a subjective and abstract concept and an idea and not involved with any facts, an affidavit can be filed. Learned advocates appearing in this court know that facts, only can be dealt with in an affidavit and not ideas or subjective matters. Therefore I did not allow filing of the affidavit on the question of transparency.

Further, Section 5 of the Evidence Act clearly states that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and all such

other facts as are hereinafter declared to be relevant and of no others.

Therefore, the question of transparency which is neither involved with a fact or a relevant fact but only an idea and are some principles on the basis of the idea, there cannot be any evidence which can be dealt with in an affidavit.

24. This matter will appear in the list for further hearing on 20th May, 2022 at 10:30 a.m. under the heading 'Specially fixed matter'.

25. Nobody has prayed for stay of the operation of this judgment and order despite query by the court.

The matter is marked as 'heard in part'.

(Abhijit Gangopadhyay, J.)