

July 12, 2022
Sl. No. 8
Court No.1
PA - RB

WPA (P) 203 of 2022
with
CAN 1 of 2022

Tapas Ghosh
vs.
The State of West Bengal and others

Mr. Kumar Jyoti Tewari,
Mr. Tarunjyoti Tewari,
Mr. Aniruddha Tewari, Advocates

... for the petitioner

Mr. Phiroze Edulji, Advocate

... for the ED

Mr. S. N. Mookherjee, Id. AG
Mr. Anirban Ray, Id. GP
Mr. Md. Ghalib,
Mr. Sandip Dasgupta,
Mr. Abhishek Prasad
Mr. Saaqib Siddiqui,
Mr. Aviroop Mitra, Advocates

... for the State

Mr. Billwadal Bhattacharyya, Id. Asst. Solicitor General
... for the CBI

Mr. Jayanta Narayan Chatterjee,
Mr. Sirshendu Sinha Roy,
Ms. Jayashree Patra, Advocates

... for the applicant in CAN 1 of 2022

1. By way of this public interest petition, petitioner, a social worker and stated to be a public spirited person attached to several social organizations and a resident of West Bengal has made allegation of irregularities, illegalities and corruption in the recruitment of Assistant Teacher in Primary Schools of the State on the basis of Teacher Eligibility Test (TET), 2014

2. A preliminary objection has been raised by the learned Advocate General by filing affidavit on behalf of the respondent no. 1 questioning the maintainability of the writ petition.

3. Learned Advocate General, pressing the preliminary objection, has submitted that the matter relates to the recruitment process of 2016-17 and there is a delay of five years in filing the present PIL and that question of delay is relevant even in PIL, therefore, petition needs to be dismissed on this ground. In support of his submission, he has placed reliance upon judgment of the Hon'ble Supreme Court in the matter of **Bombay Dyeing & Mfg. Co. Ltd. vs Bombay Environmental Action Group and Others** reported in **(2006) 3 SCC 434** and judgment of the Bombay High Court in **Public Interest Litigation No. 68 of 2006** in the matter of **Breach Candy Residents Association and Others vs. Municipal Corporation of Greater Mumbai and Others**. He has further submitted that in WPA 265 of 2019, same issue was raised and the petition was dismissed, therefore, it cannot be reagitated again. He has also submitted that the petitioner has no interest in primary education, therefore, he has no locus. He has also submitted that the order passed by another Division Bench of this Court on 17th of January, 2022 in MAT 899 of 2021 does not suffer from any jurisdictional error because the matter was assigned to the concerned Bench.

He has also objected to filing the supplementary affidavit and has submitted that petitioner cannot be permitted to raise new plea in supplementary affidavit.

4. Learned counsel for the respondent no. 7 has also opposed the petition by submitting that the prayers made in the petitions do not survive.

5. Opposing the preliminary objection, learned Counsel for the petitioner has submitted that the appointment on the basis of TET, 2014 are still going on, therefore, there is no delay and that the learned Single Judge, finding the gross irregularities, had already entertained the writ petition and referred the matter to the Hon'ble Chief Justice treating it to be PIL, therefore, another Bench of this Court which had no roster to hear PIL could not have dismissed the petition which was treated as PIL. He has also submitted that the appointments made are non est and void ab initio, therefore, they have no right to continue and that it is a very big scam which needs to be enquired into by this Court. He has also referred to various documents enclosed with the petition and supplementary affidavit in support of his submission that the issue raised is a live issue and it is not a belated petition.

6. We have heard the learned counsel for the parties on the preliminary objection.

7. In the writ petition, a serious allegation has been made that in the Teacher Eligibility Test (TET), 2014

Examination, no merit list and list of empanelled candidates was published and those candidates who did not even participate or had not qualified TET, 2014 have been appointed as primary teacher and the qualified candidates have been left out. An incident has been mentioned wherein on 30th of April, 2022, one of the Member of Parliament had made statement before the media pointing out the irregularities in TET panel and also about the complaint alleged against one of the MLA of the ruling party for taking crores of rupees from job aspirants with the promise to give government jobs in schools and arrest of one of the person in that incident. It is further alleged that one of the leaders of the ruling party had stated in public meeting that only the members of the ruling party will get jobs. Further allegation on record is that in TET, 2014, 42,897 candidates were stated to have been selected till date but no merit list of 42,897 candidates was ever published by the Board by disclosing the numbers obtained in written, in interview nor any reserved category-wise list was published. It is alleged that candidates were informed through SMS without publishing the merit list. It is also alleged that, many of the candidates have not been issued TET, 2014 qualified certificates.

8. West Bengal Primary School Teachers Recruitment Rules, 2001 were framed exercising the powers under the West Bengal Primary Education Act, 1973 for

appointment as primary teacher. These Rules were amended vide notification published on 13th of August, 2012 and amended Rule provides that persons who will score 60 % or above in the TET Examination shall be considered as TET passed provided relaxation up to 5 % marks shall be allowed to the candidates belonging to the reserved categories such as SC/ST/PH/EC. The amended Rules further provides for the manner of awarding marks under different heads in TET. The amended Rules provided for TET qualified candidates to appear in viva-voce/interview and their overall assessment based upon the marks prescribed under different heads such as academic performance, training, TET, extra-curricular activities, viva-voce, interview, etc. and thereafter, Selection Committee is required to prepare a district-wise merit list of unreserved and reserved category candidates in the manner prescribed therein for appointment to the post of Primary School Teacher.

9. New Rules, namely, the West Bengal Primary School Teachers Recruitment Rules, 2016 were notified on 2nd of March, 2016. Under this new Rules also, passing of TET is one of the essential qualification and the procedure of selection also provides for taking into account the percentage of marks obtained by a candidate in the TET Examination. On the basis of TET, 2014 Examination, appointment notification for Primary Teachers inviting applications from TET, 2014 qualified

candidates was published on 26th of September, 2016. It is alleged that 42,897 candidates have been appointed as Assistant Teachers without publishing any transparent merit list.

10. Record reflects that **WPA 265 of 2019** in the matter of **Swadesh Das vs. State of West Bengal and Others** was filed earlier, wherein an issue was raised that 12 candidates were given appointment who were not having requisite documents relating to TET, 2014 qualification and participation in the recruitment process of TET. Learned Single Judge, taking note of this fact, by order dated 27th of August, 2021 had converted the Writ Petition No. 265 of 2019 into PIL and directed for placing the matter before the then Hon'ble Chief Justice (Acting). The Division Bench of then Hon'ble Chief Justice (Acting) had taken up the petition on 9th of September, 2021 in WPA 265 of 2019, had directed the learned counsel for the Board to produce the entire list of selected candidates as Assistant Teachers in the Primary School in the State of West Bengal.

11. On 22nd of September, 2021, the Board had produced 20 envelopes containing the record pertaining to selection of 42,000 candidates for the post of Assistant Teachers in Primary School in WPA 265 of 2019 and those envelopes were taken on record by the Division Bench headed by the then Hon'ble Chief Justice (Acting) and by order dated 15th of November, 2021, counsel for the

petitioner was permitted to inspect the record in terms of the earlier order by this Division Bench.

12. Meanwhile, the order of the learned Single Judge dated 27th of August, 2021 passed in WPA 265 of 2019 was challenged in appeal in MAT 899 of 2021. The Division Bench No. 4, by order dated 17th of January, 2022, not only disposed of the appeal setting aside the order dated 27th of August, 2021 but also dismissed WPA 265 of 2019 which was being regularly taken up by the DB No. 1, i.e., the Bench of the Hon'ble Chief Justice. The DB No. 4, while disposing of WPA 265 of 2019, held as under:

“Both the parties uniformly submitted before us that there is no purpose of keeping the Public Interest Litigation pending as the grievance of the petitioner is sufficiently been taken care of in terms of the order passed in the instant appeal and, therefore, this Court can dispose of the said writ-petition as well.

The office is directed to tag WPA 265 of 2019 with the instant appeal. We further finds that any alleged infraction does not invite the Public Interest Litigation to be instituted. There must be a fundamental element for maintaining the Public Interest Litigation.

Since we do not find any element of public interest, the order impugned dated **August 27, 2021** cannot be withstand. The same is hereby **set aside**. The instant appeal is accordingly **disposed of**.

In view of the findings recorded hereinabove, the writ-petition being **WPA 265 of 2021 is also disposed of**.

Office is directed to record disposal of the writ-petition being WPA 265 of 2021 as well in terms of this order.

(Harish Tandon, J.)

(Rabindranath Samanta, J)”

13. In view of the above development, when the WPA 265 of 2019 came up before the DB No. 1 on 15th of March, 2022, no one appeared for the petitioner and the petition was dismissed in default.

14. The learned counsel for the petitioner, placing reliance upon the judgments of the Hon'ble Supreme Court in the matter of **State of Rajasthan vs. Prakash Chand and Others** reported in **(1998) 1 SCC 1**, in the matter of **Union of India vs. Alapan Bandyopadhyay** reported in **(2022) 3 SCC 133**, in the matter of **Jagmittar Sain Bhagat and Others vs. Director, Health Services, Haryana and Others** reported in **(2013) 10 SCC 136** and in the matter of **Campaign For Judicial Accountability and Reforms vs. Union of India and Another** reported in **(2018) 1 SCC 196**, has submitted that the order passed by the Division Bench No. 4 of this Court dated 17th of January, 2022 in MAT 899 of 2021 is non est and void as the said Bench was not having the jurisdiction to hear the PIL and that WPA 265 of 2019 was not listed before that Bench but it was listed and being heard by the Division Bench No. 1 of the Hon'ble Chief Justice

(Acting) which had the roster to hear the public interest petition, therefore, another Division Bench could not have dismissed WPA 265 of 2019 even without having the record of the WPA and even without listing the WPA.

15. The record reflects that MAT 899 of 2021 was assigned as per roster to the Division Bench No. 4 but WPA 265 of 2019 was not assigned to that Bench. WPA 265 of 2019 was being listed and taken up regularly by the Bench of the Hon'ble Chief Justice (Acting) which had the roster to hear the public interest petition. Hence, submission of learned counsel for the petitioner is not sans substance. Hence, on the basis of dismissal of WPA 265 of 2019, present public interest petition cannot be held to be not maintainable.

16. It is also worth noting that the entire list of candidates pertaining to selection of about 42,000 candidates for the Assistant Teachers in Primary Schools produced as per the direction of the DB No.1 is already available in WPA 265 of 2019, the record of which has been attached to this petition.

17. It is also worth mentioning that meanwhile, another writ petition being WPA 7907 of 2019 in the matter of Ramesh Malik and Others vs. The State of West Bengal and Others was filed before the learned Single Bench raising the issue that some persons (whose names were disclosed before the learned Single Bench) were given appointment though they had not qualified TET,

2014. Learned Single Judge by the order dated 13th of June, 2022 in WPA 7907 of 2019 has found that 269 such candidates were given illegal appointment by a queer method unknown to law and has directed the CBI to start investigation by holding as under:

“8. In view of the illegality committed in respect of the second panel (termed as Additional Panel, by the Secretary of the Board), which is wholly illegal and giving illegal appointment to 269 candidates by a queer method unknown to law, I direct the Central Bureau of Investigation (‘CBI’, for short) to start investigation by registering a case immediately against the Board and start interrogating the President of the West Bengal Board of Primary Education, Dr. Manik Bhattacharya and the Secretary of the said Board Dr. Ratna Chakraborty Bagchi, which shall start from today itself. I direct the petitioners to add Dr. Manik Bhattacharya, the President of the West Bengal Board of Primary Education and Dr. Ratna Chakraborty Bagchi, the Secretary of the Board as party respondents and they are to go to the CBI office at Nizam Palace by 5:30 p.m. today to face interrogation.

9. It is made clear that if they do not co-operate with CBI, CBI shall have every liberty to interrogate them after taking them into custody.

10. CBI shall contact NIC immediately to seize the database of the TET, 2014 candidates published by the West Bengal Board of Primary Education by tomorrow (14.06.2022) and to submit a short report in this court about the registration of the case, initiation of the interrogation of the two persons added today in this proceeding (named above) and taking into custody of the database of the TET, 2014 candidates day after tomorrow at 2 p.m.

11. If CBI feels that in respect of this mater an independent case is not required to be registered apart from the other case involving the Board which

has already been registered, as has been told by the petitioners, CBI need not register a new case.”

18. The above order of the learned Single Judge is the subject matter of challenge in appeal before the Division Bench.

19. The writ petitions have been filed by individual candidates highlighting the malpractices in appointment whereas in the present PIL, entire process has been questioned.

20. It is also worth noting that the supplementary affidavit filed by the petitioner indicates that the appointments are being made on the basis of the TET, 2014 results even in the year 2021 and 2022.

21. In the above background, if the petitioner's allegation is found to be correct and if it is established that the Primary School Teachers have been appointed without having the requisite eligibility qualification, then there will be a serious question-mark on their appointment and on the issue of continuance in service. Hon'ble Supreme Court in the matter of **Pramod Kumar vs. U.P. Secondary Education Services Commission and Others** reported in **(2008) 7 SCC 153** has held that illegality of lack of essential qualification is incurable and for want of it, initial appointment itself would be a nullity. Any appointment in violation of the qualification prescribed in the statute would be a nullity. Hon'ble

Supreme Court in the matter of **National Fertilizers Ltd. and Others vs. Somvir Singh** reported in **(2006) 5 SCC 493** by taking note of the earlier judgment on the point has held that if the appointment is made without following the rules, the same being a nullity, the question of confirming the employees would not arise. In the matter of **State of Bihar and Others vs. Kirti Narayan Prasad** reported in **2018 SCC OnLine SC 2615**, in a case where the petitioners were appointed by illegal order made by the Civil Surgeon-cum-Chief Medical Officer, the Hon'ble Court had agreed with the finding of the State Committee holding the appointment to be illegal and void ab initio and had further opined that since the appointments were ab initio void, they cannot be said to be civil servants of the State. Thus, if it is found that on the basis of TET, 2014, the appointments have been made contrary to rules and without fulfilling the minimum eligibility condition, then those candidates may not have any right to continue their appointments being void ab initio.

22. That apart, it is also worth noting that the matter relates to the appointment of Primary Teachers and if persons without minimum prescribed eligibility conditions and lacking merit are appointed, then the interest of the primary school students, who are future of the nation, will suffer. Hence, the allegation made by the

petitioner in the writ petition cannot be taken lightly and ignored on the technical plea.

23. So far as the objection of the petitioner about the impermissibility to raise new plea by way of supplementary affidavit is concerned, we find that it is a public interest petition and the materials placed on record by way of supplementary affidavit is relevant to the issue raised in the petition, therefore, the said supplementary affidavit filed by the petitioner cannot be rejected.

24. Having regard to the above circumstances, the plea raised by the State for rejection of petition on the ground of delay on the basis of the judgments in the case of **Bombay Dyeing & Mfg. Co. Ltd. (supra)** and **Breach Candy Residents Association and Others (supra)** cannot be accepted, hence, hereby rejected.

25. We also find that the petitioner, being a public spirited person and resident of the State, has locus to raise the issue involved in the petition.

26. Thus, in the aforesaid circumstances, the preliminary objection raised by the State is rejected and the writ petition filed in public interest is held to be maintainable.

27. Learned counsel for the State is granted four weeks time to file affidavit-in-opposition on merit.

28. List on 16th of August, 2022.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]