



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1873 OF 2024

ALI HOSSAIN MANDAL & ORS.

APPELLANT(S)

VERSUS

WEST BENGAL BOARD OF PRIMARY
EDUCATION & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 1874 OF 2024

AND

CIVIL APPEAL NOS. 1875-1876 OF 2024

J U D G M E N T

Hrishikesh Roy, J.

1. Heard Mr. Jaideep Gupta and Ms. Meenakshi Arora, learned senior counsel appearing for the appellants. Also heard Mr.

Vinay Navare, Dr. Menaka Guruswamy, Mr. Salman Khurshid, Mr. Rauf Rahim and Mr. Dama Seshadri Naidu, learned senior counsel, Ms. Sumedha Halder and Ms. Madhumita Bhattacharjee, learned counsel appearing for the respondents & impleaders.

2. Relevant facts for the sake of convenience are taken from Civil Appeal Nos. 1875-1876 of 2024, filed by the West Bengal Board of Primary Education [hereinafter referred to as 'Board'].

FACTUAL MATRIX

3. The origin of the dispute lies in the Board's Notification dated 23.12.2020 for filling up 16,500 vacancies of primary school teachers with a qualification criterion of possessing the minimum NCTE-prescribed training qualification and having qualified the Teacher Eligibility Test 2014 [hereinafter referred to as 'TET-2014']. Thereafter, a Merit List for 15,284 candidates was notified on 15.02.2021. Subsequently, two more Merit Lists were published, covering all the 16,500 vacancies that were notified by the Board. As per the *West Bengal Primary School Teachers Recruitment*

Rules, 2016 [hereinafter referred to as 'Recruitment Rules, 2016'], the said panel of candidates was then sent across to the respective District Primary School Councils ('appointing authority' under *S. 5 of Recruitment Rules 2016*) to make appointments therefrom.

4. At that shape, a few candidates who had not yet been appointed approached the Calcutta High Court seeking directions that the Board fill up the remaining vacant seats by reducing cut-off marks in each category. After the unfilled vacancies were reconciled, the learned Single Judge vide order dated 26.09.2022 directed that the 252 Writ Petitioners be granted appointments against these unfilled 3929 vacancies. Subsequently, the Board notified the filling up of a fresh set of 11,765 vacancies for primary school teachers vide Notification dated 21.10.2022, considering the candidature from TET-2014 as well as TET-2017 candidates.
5. Immediately thereafter, the Board filed an appeal (MAT No. 1734/2022 & CAN 1/2022) challenging the Single Judge's order of 26.09.2022. In dismissing the Board's appeal, the Division Bench directed that the balance 3929 vacancies of

primary school teachers be treated exclusively as part of the 16,500 vacancies pertaining to TET-2014 candidates only, for which recruitment process had commenced vide Notification dated 23.12.2020.

6. The Division Bench concluded that the entire TET-2014 selection as well as the appointment process was fraught with irregularities. The Merit List contained only ranks of the candidates without offering their comparative marks. It was observed that not just the TET-2014 candidates or Writ Petitioners before the High Court but the Board itself was not aware of the cut-off mark at which appointments had ceased. Marks were not disclosed to the unsuccessful candidates and they were given only one-line intimation that they were 'not included in the present Merit List'. These features shrouded the entire selection process into deeper suspicion, thereby further vitiating the appointment process as opined by the Division Bench.
7. With this understanding, the Division Bench directed that the TET-2014 Eligibility List be treated as the Merit List to determine *inter-se* positions of the TET-2014 candidates,

including those 252 applicants who had filed Writ Petitions before the High Court. Consequently, the Single Bench order dated 26.09.2022 was modified to the effect that the 3929 left over vacancies were extended to all the remaining TET-2014 candidates, in descending order of their *inter-se* positions in the TET Eligibility List 2014, notwithstanding the fact that these vacancies were carried forward through a fresh recruitment Notification dated 29.09.2022.

8. Appeals herein have been filed by the Board & others to challenge the Division Bench judgment dated 11.11.2022 of the Calcutta High Court in MAT 1734/2022 and I.A. No. CAN 1/2022.

SUBMISSIONS

9. The primary contention of Mr. Jaideep Gupta and Ms. Meenakshi Arora, learned senior counsel, is rooted in the provisions of the *Recruitment Rules, 2016*. They would refer to the procedure of selection specified in Rule 8 of the *Recruitment Rules, 2016* to contend that the Merit List is based on evaluation conducted on various parameters, following which marks are awarded to candidates.

Eventually, the Merit List is published and thereafter, appointments are to be made on the basis of marks secured by the candidates in the evaluation process specified in the provisions. However, the directions issued by the Division Bench in the impugned judgment provide for appointments to be made on the basis of candidates' *inter-se* positions in the TET Eligibility List 2014, which is in contravention to the procedure specified under the *Recruitment Rules, 2016*.

10. It is then argued that the life of the panel/Merit List remains valid for a period of one year from the date of approval by the Board. In this case, since the panel was notified on 15.02.2021, it naturally expired after one year on 15.02.2022. In this case, candidates filed their Writ Petitions only in May 2022 i.e., approximately three months after the panel had expired. Therefore, no individual could have claimed any right of appointment in reference to the particular recruitment process after the panel had expired.
11. Additionally, Mr. Gupta pointed out that the 3929 vacancies that remained unfilled due to various factors were then carried forward through a Notification dated 29.09.2022 as

part of the fresh recruitment cycle. Under the new process, 9500 appointments were already been made from the advertised 11,500 vacancies. It would therefore not be fair to dislodge the appointed candidates either from the previous or current recruitment cycle.

12. Appearing for those candidates who seek appointment to the 3929 left-over vacancies from the initial pool of 16,500 vacancies, Dr. Menaka Guruswamy, learned senior counsel contends that although the validity of the panel as per Rule 12 is one year, there is a provision to extend the validity of the same by six months at a time but the total period of such extension cannot exceed one year in any case.
13. It was argued that the learned Single Judge in WPA No. 8981 of 2022 gave sufficient opportunity to the Board to put forth the relevant information pertaining to the entire recruitment exercise in a transparent manner. Despite many such requests, directions and reminders by the Court, information was not forthcoming about the respective candidates' ranks, marks, category, cut-offs, etc. Even when the matter was posted for consideration on 26.09.2022,

these relevant information were not furnished by the Board.

14. Finding that the names of the 252 Writ Petitioners in WPA No. 8981/2022 are figuring in the particulars submitted by the Board in a tabular form, the learned Judge issued direction that the 252 Writ Petitioners should be granted appointments against the unfilled vacancies (3929). The Division Bench likewise noticed the inequities that the candidates had been put through along with the arduous nature of seeking employment as well as the lack of *bona fide* conduct on the Board's part. Therefore, left with no choice but to ignore the Merit List fraught with irregularities, the Division Bench directed that the appointments be made on the basis of the *inter-se* positions of candidates within the TET Eligibility List 2014.
15. Mr. Vinay Navare, learned senior counsel in his turn pointed out that the entire recruitment exercise had been done in a reckless manner with little to no information in the public domain. Although the Merit List had been notified by the Board, marks scored by candidates were not put forth as part of the same. Additionally, even the candidates were not

informed of their scores or the cut-off mark to be breached, to be included in the Merit List. In fact, the Board was not forthcoming on why 3929 vacancies had remained, why no written test was conducted and other relevant informations, pertaining to the recruitment process. In light of the same, the counsel contends that the panel, being full of such glaring lapses and errors, was not valid in law and therefore the panel can't possibly have an expiry date.

DISCUSSION

16. As earlier noted, the recruitment for primary school teachers is governed by the *Recruitment Rules, 2016*. The Rule 8 provides for the procedure for selection of candidates. After a *prima facie* scrutiny of application forms by the Selection Committee, candidates are made to undergo a round of interview(s) and aptitude test(s).
17. Thereafter, an evaluation is done on the basis of marks that are awarded or computed as per the criteria. These are extracted here for easy reference:

“8. Procedures of selection: (3) Academic qualifications, training, performance in the TET, Extra Curricular activities and performance in viva-voce or interview and Aptitude test, shall be computed in the manner as mentioned in Table A below:-

Sl. No.	Item for Evaluation	Max. Marks
(i)	Madhyamik pass under the West Bengal Board of Secondary Education or its equivalent	05
(ii)	Higher Secondary pass under the West Bengal Council of Higher Secondary Education or its equivalent	10
(iii)	Training as specified by NCTE	15
(iv)	Teacher Eligibility Test (TET)	05
(v)	Extra-Curricular Activities	05
(vi)	Viva-Voce or Interview	05
(vii)	Aptitude Test	05
	Total	50

Note 1.- The percentage of marks obtained by the candidate in the Madhyamik Examination or its equivalent excluding additional marks, if any, shall be reduced proportionately to marks obtained out of 5.

Note 2.- The percentage of marks obtained by the candidate in the Higher Secondary, Madhyamik Examination or its equivalent excluding additional marks, if any, shall be reduced proportionately to marks obtained out of 10.

Note 3.- The percentage of marks obtained by the candidate in the relevant Teacher Training shall be reduced proportionately to marks obtained out of 15.

Note 4.- The percentage of marks obtained by the candidate in the TET Examination shall be reduced proportionately to marks obtained out of 5.

Note 5.- Marks out of maximum five (5) Marks as mentioned in Sl. No. (v) of Table A of this rule shall be awarded to the candidates, including para teacher, in the following manner:-

Sl. No.	Extra Curricular Activities	Marks
1	Games and Sports	1
2	National Cadet Corps (NCC)	1
3	Arts and Literature	1
4	Performing Art (Drama)	1
5	Music	1

	<i>Total:</i>	5
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18. The evaluation criteria envisages marks to be awarded on relevant academic qualifications, NCTE-mandated training, performance in TET, extra-curricular activities, performance in the viva-voce and aptitude test to the aspirants. Even within the criteria, extra-curricular activities are to be awarded as per the candidate's experience in music, arts, drama, literature, etc.

19. As specified under the *Recruitment Rules, 2016*, the panel under Rule 2(l) of eligible/selected candidates is to be prepared bearing in mind the aggregate of marks provided in Rule 8(3) and Table A appended thereto. It is clear that the evaluation criteria to be taken into account as per Table A and Rule 8(3) is a far more comprehensive method of evaluating a candidate's suitability for the post than the performance in TET i.e., a qualifying examination for teaching eligibility. The impugned judgment however directed that appointments against the remaining 3929 vacancies shall be made in a descending order of candidates'

respective *inter-se* positions in TET Eligibility List 2014.

20. Therefore, the manner of shortlisting candidates for appointment as directed by the Division Bench is at loggerheads with and in departure from the procedure envisaged under Rule 8. Being inconsistent with the *Recruitment Rules, 2016*, such a direction cannot be sustained.
21. The next issue is whether the remaining 3929 vacancies are to be treated exclusively as part of 16,500 vacancies for which the recruitment process commenced via a Notification dated 23.12.2020, or whether such vacancies can be carried forward to the next recruitment cycle that commenced via a Notification dated 29.09.2022 instead.
22. Although the first advertisement reflected a total of 16,500 vacancies, the Merit List (notified on 15.02.2021) was only for 15,284 candidates. Thereafter, two additional Merit Lists with 478 and 738 candidates respectively were notified thereby taking the total count to 16,500. During the proceedings before the High Court, the learned Single Judge on 22.02.2021 passed an interim order staying

appointments from the Merit List notified on 15.02.2021. However, the Division Bench by its order on 04.03.2021 declared that the Board is bound by the said Merit List dated 15.02.2021 and permitted appointments to be made to the 15,284 posts. Thereafter, regular appointments came to be made.

23. Since the panel expired after one year under Rule 12 of the *Recruitment Rules, 2016*, the Board issued a fresh advertisement to fill up 11,765 vacancies. It was argued that the unfilled vacancies should be treated exclusively as a part of the recruitment process initiated through Notification dated 23.12.2020 and the Court may modify the Division Bench direction to the extent that the 3929 vacancies are filled up on the basis of merit determined in consonance with *Rule 8 of the Recruitment Rules, 2016*. The aforementioned argument can be accepted only if a legal justification is found for the Writ Petitioner's appointment to the 16,500 posts.
24. To better understand whether such a panel can be utilised for appointment after its expiry and if there exists a legal

right to be considered for appointments to the notified 16,500 vacancies, it is relevant to take note of the ratio in the following judgments:

i. *State of Orissa & Anr. v. Raj Kishore Nanda & Ors.*¹:
“16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage.”

ii. *Union of India v. B. Valluwan*²:

“17. The life of a panel ordinarily is one year. The same can be extended only by the State and that too if the statutory rule permits it to do so. The High Court ordinarily would not extend the life of a panel. Once a panel stands exhausted upon filling up of all the posts, the question of enforcing a future panel would not arise. It was for the State to accept the said recommendations of the Selection Committee or reject the same. As has been noticed hereinbefore, all notified vacancies as also the vacancy which arose in 2000 had also been filled up. As the future vacancy had already been filled up in the year 2000, the question of referring back to the panel prepared in the year 1999 did not arise. The impugned judgment, therefore, cannot be sustained.”

iii. *Girdhar Kumar Dadhich v. State of Rajasthan*³:

“16. Furthermore, the select list would ordinarily remain valid for one year. We fail to understand on what basis

¹ (2010) 6 SCC 777 at 783, Para 16.

² (2006) 8 SCC 686, Para 17.

³ (2009) 2 SCC 706 at 709, Para 16.

appointments were made in 2003 or subsequently. Whether the validity of the said select list was extended or not is not known. Extension of select list must be done in accordance with law. Apart from a bald statement made in the list of dates that the validity of the said select list had been extended, no document in support thereof has been placed before us.”

iv. *State of Bihar v. Mohd. Kalimuddin*⁴:

“8. As held in the case of Shankarsan Dash [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95 : (1991) 2 SCR 567] even if vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed, unless the relevant rules indicate to the contrary. It is indeed expected of the State to act bona fide and for valid reasons in refusing to make the appointments after the selection process has been gone through.....

Without knowing the nature of change it was not open to the High Court to anticipate the policy and brand it as unreasonable.

9. For the above reasons, we are of the opinion that even if it is assumed that the panel or select list had not expired at the date of filing of the writ petition, the refusal on the part of the Government to make appointments from the panel or select list, vide letter dated 27-5-1993, could not be condemned as arbitrary, irrational and or mala fide. We, therefore, reverse the view taken by the High Court, set it aside and hold that the original writ petition was liable to be dismissed and we hereby dismiss the same. No order as to costs.”

25. The opinion expressed in the above judgments makes it

⁴ (1996) 2 SCC 7 at 12. Paras 8 & 9.

clear that a panel or a Merit List cannot be treated as if it exists in perpetuity, which will facilitate making appointments as and when required. When the panel expires or after the selection process is over with most posts being filled, the benefit of appointments cannot be given unless the panel's validity is legally extended. However, no such extension of the panel's validity was granted. In fact, in conclusion of the earlier process, a fresh recruitment process was undertaken vide Notification dated 29.09.2022, through which, 9500 candidates have already been appointed.

26. That apart even when vacancies are notified and an adequate number of candidates are shortlisted, these candidates do not acquire an indefeasible right to be appointed against those vacancies. Multiple factors are to be taken into account by the Board, including suitability as per district, age, language, etc. before appointments are made. For such reasons 3929 vacancies remained unfilled by the time the panel's validity expired. Before that, 12,571 appointments were made.

27. As earlier noted, the selection process for appointment to the posts of primary teacher is to be made by assessment of merit by the Selection Committee as notified under Rule 8 of the *Recruitment Rules, 2016*. The recruitment process initiated on 23.12.2020 cannot continue indefinitely. The 2020 recruitment process had concluded and the fresh recruitment process commenced thereafter vide notification dated 29.09.2022. It would therefore not be appropriate for this Court to direct appointments to be made against the remaining 3929 vacancies, from the already-expired Merit List.

28. Dr. Menaka Guruswamy, learned senior counsel, placed heavy reliance on the ratio in *Dinesh Kumar Kashyap & Ors. v. South East Central Railway & Ors.*⁵ to contend that although the selected candidate may not have any vested right to be appointed against the available vacancies but when the employer decides not to fill up the posts, the discretion is to be exercised judiciously. On this aspect, suffice it would be to say that the Rules provided for shelf

⁵ (2019) 12 SCC 798.

life of one year for the panel list. Admittedly, extension of the said list (notified on 15.02.2021) was not granted by any authority. As the decision to not act upon the expired select list is based upon the provisions of the Rules, we are disinclined to accept the argument advanced by the learned senior counsel based on the ratio in *Dinesh Kumar Kashyap*. It may also be noted that the candidates in *Dinesh Kumar Kashyap* (supra) had approached the Court during the validity of the select list unlike in these matters where the first batch of Writ Petitions came to be filed in May 2022, i.e., roughly three months after the expiry of the said Merit List in February 2022.

29. In light of the above discussion, the following conclusions are reached:
 - i. The manner of shortlisting candidates for appointment as suggested by the Division Bench in the impugned judgments is inconsistent with the procedure laid down under Rule 8 of the *Recruitment Rules, 2016*, and those, cannot be sustained.
 - ii. The Panel or Merit List as notified on 15.02.2021 stood

extinguished after expiry of one year i.e., on 15.02.2022, as per Rule 12 of the *Recruitment Rules, 2016*.

- iii. No extension by any competent authority was granted to the 15.02.2021 Panel and therefore no relief can be granted to candidates who approached the court in May 2022, i.e., long after the panel stood extinguished.
- iv. No further appointments is permissible from the recruitment process initiated on 23.12.2020 when a fresh recruitment process has commenced.

30. The impugned judgment rendered by the Division Bench on 11.11.2022 and the earlier direction given by the learned Single Judge on 26.09.2022 are accordingly set aside. The concerned 252 Writ Petitioners and others who are sailing with this group, do not have any legitimate claim for appointments, to the remaining vacancies in the form of the 23.12.2020 recruitment process. The appeals stand allowed accordingly.

31. The IA No. 28252 of 2024 and IA No. 28255 of 2024 are allowed to the extent of the prayers made by the

applicant(s). All pending application(s), if any, including impleadment or intervention application(s), shall stand disposed of.

CIVIL APPEAL NO. 1873 OF 2024

32. In view of the order passed in Civil Appeal Nos. 1875-1876 of 2024, this appeal stands disposed of.
33. All pending application(s), if any, including impleadment/ intervention application(s) shall stand disposed of.

CIVIL APPEAL NO. 1874 OF 2024

34. In view of the order passed in Civil Appeal Nos. 1875-1876 of 2024, this appeal stands disposed of.
35. All pending application(s), if any, including impleadment/ intervention application(s) shall stand disposed of.

.....J.
(HRISHIKESH ROY)

.....J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
MAY 09, 2024.