

Calcutta High Court (Appellate Side)

Priyanka Naskar & Ors vs The Union Of India & Ors on 12 May, 2023

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

HON'BLE MR. JUSTICE ABHIJIT GANGOPADHYAY

WPA 21187 of 2022

Priyanka Naskar & Ors.
-Versus-
The Union of India & Ors.

For the petitioners	: Mr. Tarunjyoti Tewari : Mr. Bikramjit Dutta : Mr. Aniruddha Tewari
For the Union of India	: Mr. B. Bhattacharya, DSGI : Ms. Mary Datta
For the State	: Mr. Sirsanya Bandyopadhyay : Mr. Arka Kumar Nandy
For the WBBPE	: Mr. Kishore Datta, Sr. Adv. : Mr. Saikat Banerjee : Mr. Amitabh Chowdhury : Mr. Ratul Biswas : Mr. Kaushik Chowdhury : Ms. Deblina Chattaraj
Heard on	: 02.12.2022, 06.12.2022, 20.12.2022, 17.01.2023, 24.01.2023, 06.02.2023, 07.02.2023, 06.02.2023, 05.04.2023, 10.04.2023, 12.04.2023, 19.04.2023, 02.05.2023, 03.05.2023 & 11.05.2023

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Hearing concluded on : 11.05.2023

Judgment on : 12.05.2023

Abhijit Gangopadhyay, J .:

1.

This writ application has been filed by 140 writ petitioners who were qualified in Teacher Eligibility Test 2014 (TET 2014 in short) and participated in 2016 recruitment process, but did not get appointment. The recruitment process was held by the West Bengal Board of Primary Education which was to be held in accordance with West Bengal Board of Primary School Teachers Recruitment Rules 2016 (said Rules, in short) which came in to effect from 2nd March, 2016.

2. In Rule 6 Sub Rule 3 of the said Rules the following provision has been made:

"In the matter of appointment, priority shall be given to those eligible candidates who possess the minimum qualifications as specified by the National Council for Teacher Education and MHRD and thereafter, the eligible candidates with the relaxed qualification specified by the MHRD, may be considered and if candidates with relaxed qualifications are considered as teachers, such teachers under the relaxed qualification norms shall be appointed with an undertaking to acquire the minimum qualifications specified in the National Council for Teacher Education within a period of 2 years from the date of appointment."

3. Under the said sub Rule 3, 8 notes are there which would be taken in to consideration, if required.

4. When the petitioners filed the petition they wanted the authorities to file a report disclosing name, numbers, rank, category etc. of the non-trained candidates who have been recruited by the Board from TET 2014 including the date of recruitments and to treat the petitioners equally with the non trained candidates etc.

5. During the course of hearing the petitioners disclosed various particulars collected from the publication made by the Board in its website showing that there were serious illegalities in preparation of panel of 2016 recruitment process when viewed in respect of untrained candidates at the time of recruitment and while disclosing such particulars, they made it clear that all their allegations of illegalities in recruitment are in respect of untrained candidates at the time of recruitment who were given appointment against 2016 Recruitment process and at the same time it was made clear that they do not have any grievance in respect of the trained candidates who were (trained at the time of recruitment) and were given appointment in the 2016 Recruitment Process. Therefore, the candidates who were trained at the time of recruitment are outside the scope of this matter. The petitioners prayed for filing supplementary affidavit which was granted and from the supplementary affidavit to the writ application it became evident that all the petitioners had qualified TET 2014 and participated in the 2016 recruitment process and they were called in the interview but did not get the job.

6. This court directed the Board to file one report as to the petitioners breakup of total score sheet of TET-2014 along with the breakup score of the last empanelled candidates in their respective medium category and district, who participated in the recruitment process of 2016.

7. From the said breakup, the petitioners found and alleged that the particulars given therein are absolutely false as because the lowest number of empanelled candidates was shown in the report as 14.191 whereas throughout West Bengal 824 candidates who scored below 13 were appointed and the petitioners prepared a tabular sheet to that effect and enclosed it as annexure B to their exception to the report filed by the Board dated 11.01.2023. Such exception was filed in the form of an affidavit affirmed on 24th January, 2023. It was also stated in the said exception that list of last empanelled candidates of different categories namely General /SC/ST/OBC-A/OBC-B were not given. I have found that there was no reply of the Board in respect of the allegations as aforesaid in their affidavit in opposition filed dealing with all pleadings of the petitioners.

8. From the pleadings of the petitioners it is found that they wanted marks of last empanelled candidates of different categories like SC, ST, OBC etc. But no such particulars were supplied and produced by the Board despite direction given by this court. In the affidavit in opposition of the Board, Board maintained silence in this regard. This is nothing but suppression of facts from petitioners as well as from the court.

9. In respect of in holding of aptitude test the chairman of Board in his report said that aptitude tests were taken but from the evidence adduced by the interviewers and the candidates it has been proved before this court that no aptitude test was taken. In this regard the order passed by this court in this matter on 06.02.2023 (not challenged till now) is required to be quoted:

"Pursuant to the order passed on 06.02.2023 evidence of the following named Teachers who took interview of some candidates in 2016 recruitment process for Teachers of Primary Schools (conducted by West Bengal Board of Primary Teachers) of different districts namely Hooghly, Uttar Dinajpur, Coochbehar and Murshidabad were taken up. The real question was whether aptitude test of the candidates were taken or not. From the table below the reply to the real question would be found.

SL NO	NAME	NAME OF THE DISTRICTS	Evidence on real question
1.	Mr. Rabindranath Bhattacharya	Hooghly	No Aptitude Test
2.	Md. Rafique Alam	Uttar Dinajpur	Aptitude test was taken
3.	Sri Provat Kumar Roy	Cooch Behar	No Aptitude Test
4.	Mr. Ratan Bala	Murshidabad	Aptitude Test was taken but no separate question for interview or Aptitude Test
5.	Mr. Arun Kanti Neogy	Hooghly	No Aptitude Test
6.	Abdul Khalique	Uttar Dinajpur	Aptitude Test was

Ansari			taken
7.	Sri Raja Das	Cooch Behar	No Aptitude Test. Viva for 10 marks
8.	Mr. Nibir Kr Som	Murshidabad	No Aptitude Test. Viva for 10 marks
9.	Mr. Nanda Dulal Biswas	Hooghly	No Aptitude Test
10.	Md. Javid Alam	Uttar Dinajpur	Aptitude Test was taken but no guideline was there.
11.	Sri Bhupal Chandra Roy	Cooch Behar	Total 10 marks for interview including aptitude test. No separate direction for aptitude test.
12.	Golam Sabir	Murshidabad	Interview was for 10 marks but said aptitude test was taken.
13.	Mr. Tarun Kr. Chatterjee	Hooghly	Total mark was 10. Aptitude test was taken. No guideline for aptitude test was given.
14.	Md. Izhar Anwar	Uttar Dinajpur	Aptitude Test was taken. No guidelines were given.
15.	Sri Gurudas Mandal	Cooch Behar	No Aptitude Test
16.	Mr. Tushar Kanti Das	Murshidabad	Evidence on the real question was not taken for special reason.
17.	Mr. Prithish Kr. Dey	Hooghly	No Aptitude Test. We were never told about aptitude test. We were told for taking viva voice of 10 marks.
18.	Md. Maruf Alam	Uttar Dinajpur	Aptitude test was taken and guide lines were given. Aptitude test means confidence and body language of the teacher.
19.	Sri Sankar Das	Cooch Behar	No Aptitude Test.

20.	Mr. Bikash Mondal	Murshidabad	No aptitude test. Only oral test for 10 marks was taken.
21.	Mr. Sisir Majhi	Hooghly	No instruction for taking aptitude test. Total marks for interview were
22.	Uma Shankar Bhakta	Uttar Dinajpur	Aptitude Test was there but no guidelines were given.
23.	Sri Anup Acharjee	Cooch Behar	No instruction was there for taking aptitude test.
24.	Mr. Ashoke Kr. Majhi	Hooghly	Total marks for interview were 10. No separate instruction for aptitude test.
25.	Nakul KiskuN	Uttar Dinajpur	Does not know what is aptitude test.
26.	o Sri Tapan Kumar Das	Cooch Behar	We were not told to take aptitude test. Only told to take interview.
27.	Mr. Sandip N Chakraborty	Hooghly	No instruction was there for taking aptitude test.
28.	Sri Jayanta Kumar Pal	Cooch Behar	No direction to take any aptitude test.
29.	Mohanlal Singh w	Uttar Dinajpur	Aptitude test was taken.

30. Sri Dwipendra Cooch Behar Only told to take
a
Sangma interview. No
s separate marks for
apptitude test.

No question asked by the appearing parties to the above interviewers. The evidence recorded are kept on record.

It is to be noted that:

a) There was no formal engagement letters for acting as an interviewer. All of the interviewers were called over phone to take interview.

b) There was no guideline for awarding marks for aptitude tests.

A large number of interviewers
were not intimated by the
Board/DPSC's that there is one
apptitude test a different test

altogether, also beside interview.

c) One interviewer (Md. Maruf Alam) said that he took aptitude test but when asked what was an aptitude test his reply was, aptitude test mean confidence and body language of a candidate."

10. Therefore the marks given to the candidates against aptitude test is a wholly illegal and false exercise to hoodwink all concerned including the court.

11. The Board has not given any reply in respect of awarding 9.5/10 marks to a large number of candidates, which is absurd and an impossibility, specially to those whose academic score and TET score were very low. The table given below substantiate this allegation apart from the 121 pages booklet (spiral binding) which is on record.

12. In support of their allegations as to corruption in awarding marks in the interview the petitioners has filed a booklet (Spiral Binding) of 121 pages on the basis of which it has been alleged that candidates whose marks were very poor in Secondary, in Higher Secondary and in TET, have been given 9.50 and 10 marks i.e. full marks out of the full marks 10 (i.e. the perfect ten) in the interview and aptitude test (no aptitude test was taken at all) and the allegation that there was no aptitude test

which have been proved before me from evidence of the candidates and from the interviewers which are kept on record. Here to elicit the truth I had to exercise my power under Section 165 of the Evidence Act.

13. For example, some particulars as has been given in the said 121 pages booklet (Spiral Binding) which has been prepared from the particulars published in the web portal of the Board, by the Board some candidate's marks are reproduced hereinbelow which shows that the marks awarded to such candidates whose results are very poor in Secondary and in Higher Secondary examinations and also in TET are wholly absurd assessment in interview and unless some extraneous factors (which includes corruption) as has been alleged by the petitioners and now has come to light from the investigation by CBI & ED, such absurd marking could not have been made by the Interview Boards in different districts. While looking to the following particulars it has been noted by me that in academic assessment and TET:

(i) The maximum marks that could be given against Secondary Examination score of a candidate was 5.

(ii) The maximum marks that could be given to a candidate against Higher Secondary Examination score of a candidate was

10.

(iii) The maximum marks that could be given to a candidate against TET was 5.

Therefore, the maximum marks that a candidates can get against the above three heads is (5+10+5) =20

14. Now I give example of a candidate before giving a table prepared from the document on record i.e. the 121 page booklet. This candidate has got 2.866 in TET (out of 5) 1.462 in Secondary (out of 5) and 3.050 in Higher Secondary (out of 10) totalling to 7.378 but has been awarded 9.50 marks in interview and aptitude test (Aptitude Test was not taken) out of 10. Whose total score became 16.878 and thus he became eligible for appointment as a Primary School Teacher. Huge number of such absurd awarding of marks has come to light though the said booklet prepared from particulars published by the Board.

Name	TET+MP+HS (Total Marks)	Interview Marks
PUTUL BARMAN SINGHA	7.378	9.50
MONIMALA BARMAN	7.687	9.50
MD ALIUL ISLAM LASKER	7.743	9.66
TRIPTI BARMAN	7.827	9.50
KAMALESH DEBSARMA	7.869	9.50

POLY GHOSH	7.876	9.50
SANAT BARMAN	7.882	9.50
SUJATA ROY	7.921	9.50
MAJOJ BARMAN	7.946	9.50
DILIP TIRKI	7.983	10.00
MANOJ SINHA	8.013	9.50
DIPAK PAUL	8.029	9.50
DEBASISH	8.029	9.50
BHOWMICK		
NAZIR HOSSAIN	8.036	9.50
MOLLAH		
GOLSENA PARVIN	8.058	9.50
PRODHAN		
SONATAN GHOSH	8.073	9.50
SIRAZUS SALEKIN	8.074	9.50
SUBHASH SARKAR	8.095	9.50
JANU SARKAR	8.106	9.50
HARADEV BARMAN	8.112	9.50
GOUTAM MONDAL	8.119	9.50
TUMPA DAS	8.133	9.50
AMARESH CHANDRA	8.141	9.50
ROY		
ABDUL BARI	8.142	9.50
PRABIN SARKAR	8.147	9.50
ASOK CHANDRA	8.147	9.50
BARMAN		
LABANYA RAY BAKSHI	8.148	9.50
SHEPHALI ROY	8.151	9.50
KRISHNA CHARAN	8.406	10.00
SARDAR		
SALMA KHATOON	8.421	10.00
MORJINA KHATUN	8.455	10.00
NASHIR AKHTAR	8.570	10.00
SUSMITA PAUL	8.633	10.00
DHIMAN MONDAL	8.668	10.00
CHANDRA PRASAD	8.675	10.00
SHARMA		
PURUSHOTTAM	8.757	10.00
KUMAR		
SIMA CHOWDHURY	8.811	10.00
SONALI MALLICK	10.26	10.00
SWAPAN	10.026	10.00
CHAKRABORTY		
SURAJIT PRAMANIK	10.026	9.50
APARNA DAS	10.026	8.50
SAMIRAN KIRTANIA	10.027	9.66
CHANDAN GANGULY	10.028	9.50
KABIRUL BISWAS	10.031	9.50
GOUROV PAL	10.031	9.50
PRANAB DAS	10.032	10.00

DIPTEDU DAS	10.032	9.50
SUJAN KUMAR BISWAS	10.033	9.50
BAPI GHOSH	10.034	9.50
TAPAN KUMAR HALDER	10.035	10.00
TARUN KANTI BISWAS	10.036	10.00
UMA DAS	10.036	9.50
PINTU MONDAL	10.037	9.50

15. The Board has not given any reply in respect of the allegation of the petitioners in the pleadings as to non empanelment of reserved category candidates in the panel for general category candidates of those reserved category candidates who got better marks than the general category candidates in open competition. Thus the Board has violated the law declared by the Supreme Court and has committed extreme illegality.

16. Though the relevant Rule 7 of recruitment rules of 2016 mandates constitution of selection committee, no selection committee was constituted for the purpose of selection of eligible candidates and preparation of panel of such candidates for appointment of teachers. It was done by one outside agency, a third party which was not at all a part of the Board and this third party was named as 'confidential section' of the Board. This is clear violation of Recruitment Rules. The Board has maintained total silence in this regard.

17. From the gross illegality in the selection procedure in the recruitment exercise of 2016 conducted by the Board it is clear that the Board and its officials including its former President (who is now in custody after arrest by Enforcement Directorate for transaction of huge money in the recruitment procedure) conducted the whole affair like affair of a local club and now it is gradually coming to light by investigation of Enforcement Directorate that jobs for primary school teachers were actually sold to some candidates who had the money to purchase the employment. A corruption of this magnitude was never known in the State of West Bengal. The former Education Minister, the former President of the Board and a number of middleman through whom the jobs were sold like a commodity are now behind the bars and the CBI and ED investigation is being continued now in full seeing.

18. It is a matter to be noted that board in its affidavit in opposition while dealing with all pleadings of the petitioners instead of addressing the allegation of corruption and illegalities in the recruitment process raised some niceties of law and some principles of law but however nice or however laudable those principles may be this court as a court of justice will fail to deliver justice, knowing fully well that sense of justice is much above sense of law, if the writ application is thrown out on such niceties of law as this will mean that in the name of preserving the law the corruption would be protected which a constitutional court can never do keeping in mind the soul of our constitution and the constitutional conscience, I must say that in this recruitment scam stinking rats

are being smelt.

19. The board placed some judgment before me in support of the niceties of legal principles which I do not find have any applicability in the face of the magnitude of stinking corruption in the recruitment exercise of 2016 conducted by the Board. Those judgments are not required to be mentioned at all in the factual situation of the case as those are bright stars of the space much much above the ground realities in which the unemployed youths live with tears in their eyes because this recruitment scam is a crime against the society and also a fraud where the Board and its former Chairman was well aware of the rules of recruitment but cared a fig and started a play to hoodwink all concerned. I will only say that fraud unravels everything.

20. The affidavit in opposition of the board was filed when all pleadings of petitioners including the particulars placed in the court and were served and kept on record and Board did not deal with those allegations and those material facts and necessary particulars.

21. In such circumstances I allow the writ petition. The appointment of all 36,000 (thirty six thousand) (more or less) candidates who were untrained at the time of recruitment in 2016 recruitment process conducted by the Board in the post of primary teachers are cancelled for various reasons as have been elaborated above.

22. The Board shall immediately arrange for a recruitment exercise for candidates who were untrained at the time of recruitment (including candidates who have obtained training qualification in the meantime) within a period of 3 (three) months from date only for the candidates who participated in 2016 recruitment process where both interview and aptitude test of all examinees shall be taken and the whole interview process has to be videographed carefully and preserved. It will be a recruitment process under the same Rules and legal procedures under which 2016 recruitment process was conducted. No new or any other candidate shall be allowed to take part in such recruitment test.

23. The primary teachers who are employed now in Primary Schools against the recommendation of the Board in respect of 2016 selection process shall be allowed to work in the respective primary schools where they are working now for a period of 4 (four) months from date at the remuneration equal to a Para Teacher of Primary School and if any of such teachers are recommended again by the Board after the selection process as has been directed above, those candidates shall work in the Schools where they are working now and they shall get notional benefit of their seniority with no monetary benefit at all but the salary of primary teachers for the coming 4 (four) months shall not be given to them if they are employed again. The present employed candidates who will not succeed in the above mentioned selection process, their services shall be terminated.

24. If any candidate who appeared in 2016 recruitment process has crossed the age bar in the mean time or will cross the age bar within 3 (three) months from date they shall be allowed to take part in the recruitment exercise. Crossing the age bar now will not create any impediment for them to participate and get selected in the recruitment process.

25. This whole imbroglio including corruption involved in the matter has taken place due to the former President of the Board who knew the Rules of recruitment but violated the rules and therefore, if the Government thinks the entire expense for holding the new recruitment exercise can be realised from the estate of the former President of the Board.

No costs.

(Abhijit Gangopadhyay, J.)