

20. 06.
2022

SA/GB
Sl. 3
Court No. 17

WPA 7907 of 2019

Ramesh Malik & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Sudipta Dasgupta
Mr. Bikram Banerjee
Mr. Arka Nandi
Ms. Dipa Acharya
Mr. Sutirtha Nayek
..for the petitioners.

Mr. L.K. Gupta, Sr. Advocate
Mr. Ratul Biswas
..for the Board.

Mr. Arka Kumar Nag
..for the State.

Mr. Billwadal Bhattacharyya, Ld. ASG
Mr. Arijit Majumdar
..for CBI.

1. On 17.06.2022 I directed the West Bengal Board of Primary Education to produce

The applications made by 2787 candidates who wanted their OMR sheets are to be reviewed/ re-examined as they alleged that there had been one question which was wrong for which they should be given full marks:-

Today no such application, not even a single one, has been produced before this court. I ask the counsel for the Board as to whether these applications have been seized by CBI in course of its investigation

and I am told that perhaps CBI has not seized these documents. That CBI has or has not seized such documents is not known to be the Board? Such submission is nothing but a last ditch effort to suppress fact which, if comes to light, will go against the Board. Thus it is ruled out that there was any such application by any person for review/re-examination of the OMR answer sheet.

I hold that the Board's report in this regard and the submissions made earlier as to receiving applications are wholly untrue and baseless to say the least.

2. On that day I also directed the Board to produce

The second panel of 273 candidates spread over the State under different district primary school councils as has been stated in paragraph 13 of the report filed before this court on 15.06.2022:-

No second panel of 273 candidates spread over the State under different district primary school councils (as has been stated in paragraph 13 of the report of the Board filed before this court on 15.06.2022) has been produced before this court despite specific direction of the this Court. What has been produced is one letter signed by one R. C. Bagchi, Secretary of the Board dated 04.12.2017 with

a computer generated list containing names and roll numbers of persons as a panel. I wholly disbelieve that this is a panel. Therefore, there is no existence of the said second panel. A panel in original without the signature of authorized person is not a panel. In such a case nobody takes the responsibility of the names of empanelled persons and several such lists of names can be shown as a panel. This is absurd.

3. In this regard learned advocate for one of the petitioners Mr. Dasgupta has drawn my attention to some Rules of West Bengal Primary School Teachers' Recruitment Rules, 2016 ('Recruitment Rules' in short). Under Rule 7 of the said Rules, he has submitted, there should be a selection committee for the purpose of selection of eligible candidates and the preparation of panel. In such produced documents stating that it is a panel, there is no whisper of such selection committee or panel prepared by the Committee. Mr. Dasgupta also submitted from Rule 8 of Recruitment Rules that the selection committee makes the prima facie scrutiny of the duly filled application forms submitted by the candidates having qualifications which has not been done for preparation of the second panels; as it could not be done also because preparation of second panel was

not at all permitted under the Recruitment Rules.

4. In this regard Mr. Gupta, learned senior counsel for Board has submitted that Board not only has the power but also has the duty to publish more than one panel if Board finds that for doing justice to the candidates who have not been given appointment, such publication is required. However, from Rule 2 (f) which defines panel it is found that “panel means a list of names of the eligible and selected candidates for appointment as teacher in primary school, published by the Board, according to Rules”. Mr. Gupta has submitted that though expression is ‘a list’ in the definition clause, under the General Clauses Act singular includes plural and this ‘a list’ means several lists and more than one list.
5. I am not ready to accept such submission because applying the golden Rule of interpretation of statute, which is also applicable for interpretation of Statutory Rules, there is no doubt that a list of names of the eligible and selected candidates for appointment would be published by the Board. There is no scope for holding that ‘a list’ in this Rule means more than one panel. Had that been so there was no impediment for the Rule makers to make such clarification. ‘A list’ is not an expression which can be interchangeably

used with 'list'. 'A list' means one list and only one list. From the Recruitment Rules no other meaning can be given to the expression 'A list'.

6. On that day (17.06.2022) I also directed the Board to produce the Board's resolution to send the question and the answer key to the expert committee of School Education Department, Government of West Bengal to whom it was sent to ascertain whether the question / answer key provided in TET 2014 in respect of one question was correct or not.

Some papers terming it as the Board's Resolution have been produced before this court from which it appears that the documents prepared on those papers if at all created in the year 2017 would not have been so bright and also the hand writing of so-called experts including the Board's proceedings would not have been so clean without any dust or sign of any dusting in last 5 (five) years. I direct CBI to take original of these papers as has been produced for sending it to Central Forensic Science Laboratory to know whether the page numbers one to forty were actually prepared in the year 2017 (i.e. if those were five years old) or new.

(I have given direction to learned advocate Mr. Biswas for the Board to paginate those papers by ink

and to hand it over to this court again after pagination, which has been done.)

7. Apart from the above it is found that there was existence of no such expert committee for examining the questions and its answers to opine whether it was wrong or right. One expert committee was constituted in the year 2011 consisting of 21 persons for the purpose of syllabus and curriculum etc. tenure of which committee was extended from time to time but this committee never was given any power or authority to examine the questions and answers of any examination to opine whether the question and answer was correct or not. Therefore, the story built up by the Board as to sending the question and answer to an expert committee is wholly fabricated. There was no such committee at all. From the Gazette Notification dated 3rd August, 2011 it is found in another set of documents which have been handed over in respect of other requisition of documents made by this court in paragraph no. (iv) of order dated 17.06.2022. Apart from the above, it is found from the Board's so-called proceedings that except the President of the Board none of the members present in the said meeting dated 20.11.2017 has signed in the resolution taken. It is not understood why a

proceeding of the Board will not be signed by the members present as members of the Board.

- 8.** The names of the members of the Board present apart from the President are (i) Sister Emilia of Loreto RC, PTTI (ii) Sri Panchanan Roy, Sidhabari New Primary School, Jalpaiguri (iii) Sri Debojyoti Ghosh, Nilima Prathamik Vidyamandir, New Dum Dum Circle.

I direct the above named three persons to be added as party respondents in this matter is the address of the West Bengal Board of Primary Education. The above three persons are directed to file separate affidavits stating why they did not sign the proceedings of the emergent meeting held on 20.11.2017. The petitioners are directed to add these three persons as party respondents in the address as has been stated above immediately and after receiving their residential addresses from the Board the residential address would be put by way of amendment of cause title by the petitioners for which liberty is granted.

- 9.** In my order dated 17.06.2022 I gave direction to produce the names of the members of the expert committee and the date of constitution of the said expert committee by the School Education Department, Government of West Bengal:-

10. In this regard I have found the names of only two persons: one is Mr. Abhik Majumder and the other is Ritwik Mallick. In the bunch of papers where the proceedings of the emergent meeting of the Board has been attached at the first page (pagination whereof has been done till page 40) I find that there is a date of 16.11.2017 signed by those two experts of the so-called expert committee but the said proceedings say that on 20.11.2017 a meeting was held in the chamber of the President (of the Board) and there is no reference that on 16.11.2017 some opinion was given by the said so-called expert-committee. However, one expert Mr. Ritwik Mallick has signed on a white paper without any date giving his opinion and another expert Mr. Abhik Majumder has signed on two papers (his Letterheads) giving date as 23.11.2017. But these papers show that all those papers used by Mr. Ritwik Mallick and Mr. Abhik Majumder are very fresh and clean and without any sign of any dusting which raises a serious doubt in my mind as to whether these documents were signed contemporaneously in the month of November, 2017. There is no sign of natural aging of those papers for last 5 years or so.

I also direct the CBI to send these bunch of papers to Central Forensic Science Laboratory to obtain

a report as to the age of the papers and the ink and signature thereon. In any event the expert committee was constituted on 3rd August, 2011 by 21 persons. Thereafter the constitution of the committee was changed from time to time and extension was given on several times but this court and this matter do not have any relationship with such expert committee of 21 members or so and their functions as to curriculum, syllabus and text books for primary, secondary and higher secondary courses formulated by the respective Boards and Councils as appears from the said Gazette Notification dated 3rd August, 2011. Therefore, the so-called expert committee for giving an opinion or correctness of a question of question and answers is a big hoax given to this court by the Board for clearly misleading the court which has not been possible as the fully untrue statement are fully exposed from produced documents. The said expert committee was constituted with 21 members for seeing syllabus etc. but the Board's story only speaks about the above named 2 (two) persons out of 21 persons and these two persons was not at all a two-persons-committee. The President of the Board is not only making those misleading and untrue statements but also there are a conscious effort on the part of the Board's President to

hoodwink this Court-if possible.

This Court has taken very serious exception to this dishonest and sharp practice on the part of the Chairman of the Board.

11. On 17.06.2022 I directed the West Bengal Board of Primary Education to produce the resolution of the Board in the meeting dated 20.11.2017 to award one mark to the unsuccessful candidates who submitted their representations along with testimonials:-

In this regard I have already expressed my doubts as to the meeting where the members of the Board other than the President did not sign in the resolution and, therefore, I have called for affidavits from the three members who attended the said meeting and as of now this court is not ready to believe that any such proceeding was at all held because of the prima facie observation that such resolution was not signed by the other members present as aforesaid and some documents have been shown which are fresh, clean and without any sign of dust. A document or some documents of nearly five years old are so clean and so dustless that it is difficult to believe that it was created contemporaneously i.e. in the month of November, 2017. Those papers/documents are to be sent to CFSL for a report as indicated above.

12. By my order dated 17.06.2022 I directed also to intimate the view of the department of School Education, Government of West Bengal, accepting the recommendation of awarding one mark as has been stated in the report filed by the Board.

In this regard one note sheet has been produced before me with prominent signature of the President and the two identical signatures of one person and it is not understood who is he and one signature of J. S. (E.E.) dated 22.11.2017. Though the learned senior counsel for the Board has submitted that this is the signature of the then Education Minister of West Bengal and thus the Board wants to show that the Department of School Education expressed its view in favour of giving one mark to the candidates in respect of whom the second panel (which is quite illegal) was published.

In this respect I am of the view that in the Government's note sheets of government departments if something is approved, the word "approved" is prominently written and thereunder the authorized officer including, where necessary, the Minister-in-charge puts his signature. In this note sheet there is no such approval. I am not ready to believe that such an endeavor to give one mark to the 273 persons were

at all approved by the Department of School Education, Government of West Bengal. The Board has clearly made one untrue statement as to government's approval for giving one mark to some candidates.

13. I directed the Board to produce all documents in original and only two documents purported to be original have been produced but I disbelieve it for the reasons stated. In respect of other four documents, two were not produced at all and in respect of other documents what has been produced are not original documents but the Board tried to pass them off as the original documents and the panel which has been shown as the second panel is not a panel at all, first for the reason that there is no power of the Board to publish a second panel and secondly a panel is prepared by a selection committee of the Board and not by the Board.

14. Learned advocate Mr. Firdous Samim has submitted that the marks obtained in TET by the candidates does not have a direct relationship with their selection because on the basis of the marks of TET only a percentage of marks is given and the 273 persons were unsuccessful candidates of TET and under no circumstances and under no law they were required to be given one mark for declaring them as successful

and, therefore, appointment in different vacancies is wholly illegal.

15. In this regard though I invited the Board to make submissions, Mr. Gupta has submitted that in this regard Board would not make any submission. Mr. Gupta wanted to file one affidavit and in my view no affidavit is required in respect of failure to produce the original documents as the documents produced speak for themselves and some statements have already been filed as a report and today on the basis of the report some documents were to be produced as was directed by Court. This court does not require any further affidavit on the same facts and issues.

16. In the facts and circumstances as aforesaid I find that the President of the West Bengal Board of Primary Education is responsible for filing the documents most of which are purportedly not original and those which are original are seriously doubtful and some documents are fully incoherent in the back drop of the direction given by this Court to the Board on 17.06.2022.

I hold the President of the West Bengal Board of Primary Education is fully responsible for misleading the Court and making a dishonest and unscrupulous attempt in producing documents most of which were

not original and some which are highly questionable and there is blatant lie in respect of the expert committee as no such committee was constituted at all for giving opinion as to a question and answer whether it was right or wrong. There was no approval of the government in respect of awarding one mark to some candidates-this is another false statement by the President of the Board.

17. Section 20 of West Bengal Primary Education Act (the Act, in short) shows the power and duties of the Board. Sections 23,24,25,26 26A and 26B shows that in all of the committees named in those sections of the Act the President of the Board is the first number. Therefore I hold that the President of the Board responsible for such dishonest Act and without the President's instruction the Secretary cannot work. The Secretary is fully controlled by the President. Therefore, I hold that the President of the Board is responsible for producing misleading statements, committed conspicuous illegality in preparing the illegal second panel and giving appointment, creating a hoax about the expert committee- which are all unscrupulous acts committed by the President of the Board. Such a person cannot remain the President of a statutory authority. He is wholly unfit for the post of President of the Board.

Therefore, this court removes Mr. Manik Bhattacharya from the post of President of the West Bengal Board of Primary Education forthwith and I direct the Government to appoint any other fit person as President of the Board and till the new President is appointed, the Secretary of the Board namely, Ratna Chakraborty Bagchi will perform the function of the President of the Board.

18. This Court shall not tolerate such an unscrupulous person as President of West Bengal Board of Primary Education.

19. I also direct said Manik Bhattacharya to appear before this court personally tomorrow (21.06.2022) at 2 p.m. for facing some questions from this court.

20. Learned advocate for the petitioners has prayed for copies of the documents which have been produced today which will be given to them later and all the documents handed over to this court today will be handed over to CBI for taking further steps by Central Forensic Science Laboratory and for other purposes.

21. Learned advocate Mr. Gupta has submitted for the Board that when CBI is enquiring into the matter, the court should not enquire further in the some matter which, in my view, is wholly baseless submission because the aspect which is being seen by the court in

respect of the documents were directed to be produced after going through the report filed by the Board and such action of production of original of same documents are not interfering with the investigation by CBI.

22. The matter will be heard further tomorrow at 2 p.m. and I direct the learned advocate for the Board to intimate Mr. Manik Bhattacharya to appear personally before this court tomorrow.

List this matter tomorrow at 2 p.m.

(Abhijit Gangopadhyay, J.)