



2025:CHC-AS:2189-DB

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Reetobroto Kumar Mitra

MAT/873/2023

IA NO: CAN/9/2023, CAN/10/2023, CAN/11/2023, CAN/12/2023, CAN/13/2023,
CAN/14/2024, CAN/15/2024, CAN/16/2024, CAN/17/2024, CAN/18/2024,
CAN/19/2024, CAN/20/2024, CAN/21/2024, CAN/22/2024, CAN/23/2024,
CAN/24/2024, CAN/25/2024, CAN/26/2024, CAN/27/2024, CAN/28/2024,
CAN/29/2024, CAN/30/2024, CAN/31/2024, CAN/32/2024, CAN/33/2024,
CAN/34/2025, CAN/35/2025, CAN/36/2025, CAN/37/2025, CAN/38/2025,
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CAN/49/2025, CAN/50/2025, CAN/51/2025, CAN/52/2025, CAN/53/2025,
CAN/54/2025, CAN/55/2025, CAN/56/2025, CAN/57/2025, CAN/58/2025,
CAN/59/2025, CAN/60/2025, CAN/61/2025, CAN/62/2025, CAN/63/2025,
CAN/64/2025, CAN/65/2025, CAN/66/2025, CAN/67/2025, CAN/68/2025,
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CAN/94/2025, CAN/95/2025, CAN/96/2025, CAN/97/2025, CAN/98/2025,
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CAN/129/2025, CAN/130/2025, CAN/131/2025, CAN/132/2025, CAN/133/2025,
CAN/134/2025, CAN/135/2025, CAN/136/2025, CAN/137/2025, CAN/138/2025,
CAN/139/2025, CAN/140/2025, CAN/141/2025, CAN 142/2025.

THE WEST BENGAL BOARD OF PRIMARY EDUCATION AND ANR.

-Versus -

PRIYANKA NASKAR AND ORS.



With

MAT/1109/2023

DIPANKAR SINGHA AND ORS.

-Versus -

THE UNION OF INDIA AND ORS.

With

MAT/1173/2023

BANGIYA PRATHAMIK SHIKSHAK SAMITY (BPTA) AND ANR.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1322/2023

+

CAN 3/2025

CHANDAN DAS AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1352/2023

GOUTAM BOSE AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1356/2023

RIPON SAHA AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1357/2023



ARNAB PALIT AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1358/2023

+

IA. No. CAN/04/2025

+

IA. No. CAN/05/2025

+

IA. No. CAN/06/2025

+

IA. No. CAN/07/2025

+

IA. No. CAN/08/2025

+

IA. No. CAN/09/2025

+

IA. No. CAN/10/2025

+

IA. No. CAN/11/2025

+

IA. No. CAN/12/2025

PARTHAPRATIM BHATTACHARYA AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1368/2023

MADHVENDRA RANJAN AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1383/2023

ABHIJIT MANDAL AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.



With

MAT/1384/2023

SUMIT GHOSH AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1387/2023

AVISHEK THAKUR AND ORS.

-Versus -

UNION OF INDIA AND ORS.

With

MAT/1408/2023

SK. MAHAMMAD SAMIR AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1409/2023

RANADIP BOSE AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1430/2023

DIBYENDU PAUL AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1433/2023

SHYAMAL KUMAR BHOWMIK AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.



With

MAT/1462/2023

SAYANTA DAS AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1486/2023

SUSMITA BAURI AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1487/2023

DEBASISH SARKAR AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1509/2023

RAJAT JANA AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1511/2023

ANIMESH MANDAL AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1520/2023

INDRAJIT SAHA AND ORS.

-Versus -



PRIYANKA NASKAR AND ORS.

With

MAT/1540/2023

GOPAL BISWAS AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1542/2023

ARPITA ROY AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1545/2023

PRANABESH OJHA AND ANR.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1547/2023

ANIL SING AND ANR.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1615/2023

SAURABH BASAK AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With



MAT/1616/2023

SUDIP MALAKAR AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1618/2023

SOUMYA DEEP DEY AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1663/2023

+

IA NO: CAN/4/2024

DEO KUMAR VERMA AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1665/2023

+

IA NO: CAN/3/2024

SAMIRAN ESHORE AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1725/2023

ANUP KUMAR GHOSH AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.



With

MAT/1796/2023

AZAD RAHAMAN MALLICK AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1873/2023

GOPINATH HALDER AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1874/2023

SUNANDA DAS AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/1974/2023

ARINDAM NAYAK AND ORS.

-Versus -

PRIYANKIA NASKAR AND ORS.

With

MAT/2188/2023

+

IA No: CAN/3/2024

DIPANKAR DEY MONDAL AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With



MAT/874/2023

NABIN KUMAR JHA AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/890/2023

+

IA NO: CAN/8/2024

TUHIN KUMAR HALDI AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/910/2023

+

IA NO: CAN/3/2024

SK. NASIM ALI AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/911/2023

RAJA DAS AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/913/2023

ABDUL ALIM MOLLA AND ORS.

-Versus -



PRIYANKA NASKAR AND ORS.

With

MAT/934/2023

UJJAYINI SANTRA AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

With

MAT/966/2023

SUJOY SEN AND ORS.

-Versus -

PRIYANKA NASKAR AND ORS.

For the Appellants/ W.B.B.P.E. in MAT 873 of 2023 and For the W.B.B.P.E./ Respondent in all the matters except MAT 873 of 2023.	: Mr. Kishore Dutta, Ld. Sr. Adv., Mr. L.K. Gupta, Ld. Sr. Adv., Mr. Subir Sanyal, Ld. Sr. Adv., Mr. Dwarikanath Mukherjee, Mr. Ratul Biswas, Mr. Kaushik Chowdhury.
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For the Appellants in MAT 1547 of 2023.	: Mr. Subir Sanyal, Ld. Sr. Adv., Mr. K. M. Hossain, Mr. K. A. Ali.
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For the Appellants in MAT 1520, 1618, 1796, 890 & 910 of 2023.	: Mr. Kalyan Kumar Bandhopadhyay, Ld. Sr. Adv., Ms. Pramiti Bandhopadhyay, Mr. Rahul Kumar Singh.
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For the Appellants in MAT 1663 of 2023.	: Mr. Surajit Nath Mitra, Ld. Sr. Adv., Mr. Chittapriya Ghosh, Mr. Somesh Ghosh.
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For the Appellants in	: Mr. Joydip Kar, Ld. Sr. Adv.,
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MAT 874 of 2023.		Mr. Chittapriya Ghosh, Mr. Somesh Ghosh.
For the Appellants in MAT 1109 of 2023.	:	Mr. Saptansu Basu, Ld. Sr. Adv., Mr. Ayan Banerjee, Ms. Debasree Dhamali, Ms. Riya Ghosh.
For the Appellants in MAT 1322 of 2023.	:	Mr. Pratik Dhar, Ld. Sr. Adv., Md. M. Nazar Chowdhury.
For the Applicants in CAN 58/2025 in MAT 873 of 2023. and For the Applicants in CAN 3/2025 in MAT 1322 of 2023.	:	Mr. Pratik Dhar, Ld. Sr. Adv., Mr. Ritwik Pattanayak, Ms. Snehal Sinha.
For the Appellants in MAT 1352 of 2023.	:	Mr. Aninda Mitra, Ld. Sr. Adv., Mr. P.S. Deb Barman, Mr. Raja Adhikary, Mr. Amit Gupta, Mr. Anindya Bose, Mr. Shaharyar Alam, Md. M. Nazar Chowdhury, Mr. Marghoob A. Salik, Ms. Debangana Dey.
For the Appellants in MAT 1387 of 2023.	:	Mr. Sagar Bandyopadhyay, Ld. Sr. Adv., Mr. Pushpal Chakraborty, Mr. Subhamay Dewanji.
For the Appellants in MAT 1409 of 2023 & MAT 1383 of 2023.	:	Mr. Abhratosh Majumdar, Ld. Sr. Adv., Mr. Samrat Dey Paul, Mr. K. Ray, Mr. S. Alam.
For the Appellants in	:	Mr. Sakya Sen, Ld. Sr. Adv.,



MAT 1874 of 2023.		Mr. Samrat Dey Paul, Mr. Rishav Deb Barman.
For the Appellants in MAT 1462 of 2023.	:	Mr. Ashoke Banerjee, Ld. Sr. Adv., Mr. Subhamay Dewanji.
For the Appellants in MAT 1542 of 2023.	:	Mr. Partha Sarathi Bhattacharyya, Ld. Sr. Adv., Mr. Raju Bhattachayya.
For the Appellants in MAT 1873 of 2023.	:	Mr. Anindya Lahiri, Ld. Sr. Adv., Ms. Pranati Das, Mr. Subhomoy Paul, Mr. A. Chakraborty.
For the Appellants in MAT 1173 of 2023.	:	Mr. Kartik Kumar Ray, Mr. Devranjan Das, Mr. K.M. Hossain, Mr. Partha Mukherjee, Mr. A. Kaji.
For the Appellants in MAT 1974 of 2023.	:	Mr. Anant Kr. Shaw, Mr. Mainak Ganguly.
For the Appellants in MAT 1356, 1357, 1384, 1408, 1430, 1433,1486, 1487, 1509, 1511, 1540, 934 of 2023.	:	Mr. P.S. Deb Barman, Mr. Raja Adhikary, Mr. Amit Gupta, Mr. Anindya Bose, Mr. Shaharyuar Alam, Md. M. Nazar Chowdhury, Mr. Marghoob A. Salik, Ms. Debangana Dey.
For the Appellants in MAT 1615 of 2023.	:	Mr. Joydeep Mazumdar, Mr. Subhamay Dewanji.
For the Appellants in	:	Ms. Minakshi Arora, Ld. Sr. Adv., (through v/c)



MAT 1616 of 2023.		Mr. Joydeep Mazumdar, Mr. Subhamay Dewanji, Mr. Debajyoti Bhattacharya.
For the Appellants in MAT 1665 of 2023.	:	Mr. Subhamay Dewanji.
For the Appellants in MAT 1725, 911 of 2023.	:	Mr. Chittapriya Ghosh, Mr. Somesh Ghosh.
For the Appellants in MAT 1173 of 2023.	:	Mr. Kartik Kumar Ray, Mr. K.M. Hossain, Mr. Devranjan Das, Mr. Partha Mukherjee, Ms. Keya Sutradhar, Mr. Kazi Ardan Ali.
For the Appellants in MAT 966 of 2023.	:	Mr. Jayanta Kumar Mitra, Ld. Sr. Adv., Mr. K.M. Hossain, Ms. Keya Sutradhar, Mr. Kazi Ardan Ali.
For the Appellant in MAT 1545 of 2023.	:	Mr. K. M. Hossain, Sk. Jayed Hossain, Mr. Kazi Ardan Ali.
For the Appellants in MAT 2188 of 2023.	:	Mr. Chitta Ranjan Chakraborty, Mr. Dip Jyoti Chakraborty, Mr. Sumit Banerjee, Ms. Puspa Rani Jaiswar.
For the Appellants in MAT 1358 of 2023.	:	Mr. Biswaroop Bhattacharya, Mr. S. Alam, Md. M. Nazar Chowdhury.
For the Applicants in	:	Mr. Bikash Ranjan Bhattacharyya, Ld. Sr. Adv.,



[CAN 2 & 7/2023
&
CAN 22/2024
&
CAN, 48, 49, 53,
67, 70, 83, 99,
137 & 140 of 2025
in MAT 873 of 2023].

Mr. Firdous Samim,
Ms. Gopa Biswas,
Mr. Mainak Ghosal,
Mr. Hasanuz Zaman Molla,
Ms. Rajashree Saha,
Ms. Salini Bhattacharjee,
Mr. Hasibur Rahaman Jamadar,
Mr. Ayush Majumder,
Ms. Brinta Dutta,
Mr. Rajosik Dutta,
Mr. Naman Shah,
Ms. Ankita Ghosh,
Mr. Imzamamul Islam.

For the added
Respondents in
MAT 873 of 2023.

: Mr. Bikash Ranjan Bhattacharyya, Ld. Sr. Adv.,
Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Mr. Mainak Ghosal,
Mr. Hasanuz Zaman Molla,
Ms. Rajashree Saha,
Ms. Salini Bhattacharjee,
Mr. Hasibur Rahaman Jamadar,
Mr. Ayush Majumder,
Ms. Brinta Dutta,
Mr. Rajosik Dutta,
Mr. Naman Shah,
Ms. Ankita Ghosh,
Mr. Imzamamul Islam.

For the Respondents/
Writ petitioner in
CAN 5 & 9/2023,
CAN 17 & 19/2024
and CAN 35/2025
in MAT 873 of 2023

: Mr. Kumar Jyoti Tewari, Ld. Sr. Adv.,
Mr. Tarunjyoti Tewari,
Mr. Amrit Sinha,
Mr. Aniruddha Tewari,
Ms. Koushiki Bose,
Mr. Dipankar Bhakta,
Mr. Bikramjit Dutta.

For the Respondents
and
for the added Respondents
in CAN 5/2023 in MAT

: Mr. Soumya Majumder, Ld. Sr. Adv.,
Mr. Saikat Chatterjee,
Mr. Golam Mohiuddin,
Mr. Subhamay Das.



890 of 2023

and

For the added Respondents
in CAN 6/2023 in
MAT 890 of 2023
(except Respondent nos.
8, 16, 17, 20, 31, 40 & 74)

and

For the added Respondents
in CAN 7/2023 in MAT
890 of 2023
(except Respondent
nos. 1, 2, 10, 11, 19,
23, 27 & 40)

and

CAN 10 & 11 of 2023
in MAT 873 of 2023

For the Applicants in : Ms. Ruchira Chatterjee,
CAN 8/2023 in
MAT 873 of 2023.

For the Applicants : Mr. Soumya Majumder, Ld. Sr. Adv.,
in CAN 6/2023, Mr. Vishak Bhattacharya,
CAN 13/2023 Ms. Biyanka Bhattacharya.
&
CAN 126/2025
in MAT 873 of 2023.

For the Applicants in : Mr. Pratip Mukherjee,
CAN 34 & 73/2025 Ms. Soma Mal.
in MAT 873 of 2023.

For the Applicants in : Mr. Asif Iqbal.
CAN 30 & 33/2024
in MAT 873 of 2023.

For the Applicants : Mr. Bikash Ranjan Bhattacharyya, Ld. Sr. Adv.,
in CAN Nos.3, 4, 20, Mr. Dibyendu Chatterjee,
21, 23-25 & 28 of 2024 Mr. Pritam Majumdar,
and Ms. Reshmi Ghosh,
CAN Nos.40, 41, 46, 50, Mr. Rahul Deb Goenka,



52, 55, 64, 75, 80 – 82,
84, 85, 87, 98, 107, 117,
118, 122, 131, 133, 134,
138 & 141 of 2025
in MAT 873 of 2023.

Ms. Satabdi Das,
Mr. Mainak Singha Barma,
Ms. Ankita Banerjee,
Ms. Ananya Chakraborty,
Mr. Manish Singha Barman,
Ms. Sunanda Chatterjee.

For the Applicants in
CAN 62, 63, 66, 68,
90, 93, 110 & 130 of 2025
in MAT 873 of 2023.

: Mr. Avik Pramanik.

For the Applicants in
CAN Nos. 44, 47, 65,
89 & 108 of 2025
(in MAT 873 of 2023).

: Mr. Bikash Ranjan Bhattacharya, Ld. Sr. Adv.,
Mr. Sudipta Dasgupta,
Mrs. Dipa Acharyya.

For the Applicants in
CAN 62, 63, 66, 68
&
93 of 2025 in
MAT 873 of 2023

: Mr. Avik Pramanik.

For the Applicant in
CAN 12 of 2023,
14, 15, 16, 18, 27 of 2024,
CAN 113, 115, 123
& 124 of 2025 and
CAN 36, 38, 42, 45,
59-61 & 71-72, 86, 91,
95, 96, 97, 101, 103, 104,
116, 123, 128 & 132 of 2025
in MAT 873 of 2023.

: Mr. Ali Ahsan Alamgir,
Ms. Rabia Khatoon.

For the Applicants in
CAN 31 & 72/2024
in MAT 873 of 2023.

: Mr. Ekramul Bari,
Mr. Simanta Kabir.

For the Applicants in
CAN 31/2024,
CAN 111, 114, 120 & 125 of 2025
in MAT 873 of 2023.

: Mr. Simanta Kabir,
Mr. Asif Iqbal.

For the Applicants in

: Mr. Asif Iqbal.



CAN 30, 33/2024
& CAN 111/2025
in MAT 873 of 2023.

For the Applicants in : Ms. Soma Mal.
CAN 37, 39, 43,
51, 56 & 57/2025
in MAT 873 of 2023.

For the Applicants in : Mr. Gouranga Kr. Das,
CAN 29/2024 & Ms. Poulami Dutta,
CAN 54, 79 of 2025 Mr. Kingsuk Mondal,
in MAT 873 of 2023. Mr. Suman Das.

For the Applicants : Mr. Samim Ul Bari,
in CAN 32/2024 Ms. Rabia Khatoon.
in MAT 873 of 2023. Ms. June Modak.

For the Applicants : Mr. Sudipta Dasgupta,
in CAN 27/2024 Ms. Rabia Khatoon.
in MAT 873 of 2023.

For the added Respondents : Md. Sabir Ahmed,
in CAN 4/2023 Md. Abdur Rakib,
in MAT 890 of 2023 Mr. Mojahid Mehedi,
Added Respondent Nos.8, 17 Mr. Puranjan Pal.
& 40 in CAN 6/2023
& added Respondent Nos. 1, 2,
10, 11, 27 & 40
in CAN 7 & 8/2023
in MAT 890 of 2023

For the Applicants for : Mr. Ali Ahsan Alamgir,
CAN 12/2023 Mr. Gourab Kumar Nath.
in MAT 873 of 2023.

For the Applicants in : Mr. Nayan Chand Bihani, Ld. Sr. Adv.,
CAN 26/2024 Mr. Ashis Kumar Chowdhury,
in MAT 873 of 2023. Mr. Babhru Bahan Bera,
Mr. Avisek Chatterjee,
Mr. Sudip Jana,
Mr. Rohan Paul.

For the Appellants in : Mr. Golam Mahiuddin,



CAN Nos. 4-9 of 2025
in MAT 1358 of 2023

Mr. Santanu Maji.

For the added party
in CAN 69/2025
in MAT 873 of 2023

: Mr. Duke Banerjee,
Mr. Ranjit Kumar Barman.

For the Appellants
in MAT 1368, 913 of 2023.

: Mr. Siddhartha Banerjee,
Mr. Anjan Bhandari,
Mr. Binayak Gupta.

For the added parties
in CAN 3/2023 in
MAT 890 of 2023

: Mr. Devranjan Das,
Mr. Sharukh Zia
.

For the Appellant in
MAT 873 of 2023
in CAN 32/2024

: Mr. Shamim Ul Bari,
Ms. Rabia Khatoon,
Ms. Jhilik Singha,
Ms. Asmita Mitra.

For the Appellant in
MAT 873 of 2023
in CAN 77/2024

: Mr. Sanjib Das,
Mr. Pritom Banerjee,
Mr. Ujjwal Kumar Dinda.

For the Applicants
in CAN 76/2025 in

MAT 873 of 2023.

: Mr. Bikash Ranjan Bhattacharya, Ld. Sr. Adv.,
Mr. Anath Nath Naskar.

For the Applicants in
CAN 106/2025 in
MAT 873 of 2023.

: Mr. Souvik Nandy, Ld. Sr. Adv.,
Mr. Subrata Santra.

For the Applicants in
CAN 122/2025
in MAT 873 of 2023.

: Mr. Tamal Taru Panda.

For the Applicants in
CAN 109 & 121/2025
in MAT 873 of 2023.

: Mr. Shuvro Prokash Lahiri,
Mr. Ankan Mondal.



For the Applicants in CAN 4-12/2025 in MAT 1358/2023	:	Mr. T. M. Siddique, Ld. Sr. Adv., Mr. Subhayu Das, Mr. Golam Mahiuddin.
For the Union of India.	:	Ms. Mary Datta.
For the State/Respondents. (in MAT 890 of 2023)	:	Mr. Bhaskar Prasad Vaisya, Ld. AGP., Mr. Ranjan Saha.
For the NCTE in MAT 873, 1725, 1873 & 1874 of 2023	:	Ms. Asha G. Gutgutia.
For the Applicants in CAN Nos. 92, 119, 127, 136, 139 in MAT 873 of 2023.	:	Ms. Gopa Biswas, Mr. Mainak Ghosal, Mr. Hasanuz Zaman Molla, Ms. Rajashree Saha, Ms. Salini Bhattacharjee, Mr. Hasibur Rahaman Jamadar, Mr. Ayush Majumder, Ms. Brinta Dutta, Mr. Rajosik Dutta, Mr. Naman Shah, Ms. Ankita Ghosh, Mr. Imzamamul Islam.
For the Applicants in CAN 142/2025 in MAT 873 of 2023.	:	Mr. Pritam Chowdhury, Mr. Safik Dewan, Md. M. Nazar Chowdhury, Ms. Priyanka Saha, Ms. Farheen Rais.
For the appellants in MAT 1974 of 2023.	:	Mr. Anant Kumar Shaw.
Hearing is concluded on	:	12 th November, 2025.
Judgment on	:	3rd December, 2025.



Tapabrata Chakraborty, J.

1. It is a real conundrum; regard being had to the fact that we are dealing with a judgment dated 12.05.2023 passed by the learned single Judge (hereinafter referred to as the Court) in a writ petition being WPA 21187 of 2022 cancelling the appointment of 32,000 candidates, who were untrained at the time of selection, in the recruitment process conducted by the West Bengal Board of Primary Education (hereinafter referred to as the Board) and *inter alia* directing the Board to 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 three months from date only for the candidates who participated in 2016 recruitment process, in terms of the same Rules and legal procedures under which the 2016 recruitment process was conducted. The Court further directed that the primary teachers now employed shall be allowed to work for a period of four months at the remuneration equal to a para teacher of primary school and that if any of such teachers are recommended again by the Board in the recruitment exercise as directed, those candidates shall work in the schools where they are now working and shall get notional benefit of their seniority with no monetary benefit at all and their salary for the said period of four months shall not be given to them. It was further directed that the services of the currently employed candidates, who would not succeed in the fresh selection, shall be terminated.



2. The said directions were issued in the writ petition preferred in the month of September, 2022 by 140 unsuccessful participants in the said recruitment process without impleading the teachers who were appointed about five years prior to filing of the writ petition. Challenging the said judgment, the Board preferred an appeal being MAT 873 of 2023 and the same was initially heard along with four appeals registered after allowing the applications filed by sets of candidates, whose appointment had been cancelled by the judgment impugned, seeking leave to prefer appeal together with applications for addition of parties. In the said appeals an order was passed on 19.05.2023 directing that there shall be an interim stay on termination of jobs till the end of September, 2023 and the Board was directed to conduct the selection exercise, as directed by the Court within a period of three months. By the said order the applications for addition of parties were also allowed. Aggrieved by the said order dated 19.05.2023, the appointed candidates preferred Special Leave Petitions which were disposed of by the Hon'ble Supreme Court on 07.07.2023 setting aside the impugned interim order to the extent of issuance of the direction to conduct the selection afresh and directing the High Court to decide the appeals and any other case (if any) filed by the aggrieved persons assailing the order of the Court, as expeditiously as possible.

3. Subsequent thereto, further applications for leave to appeal including applications for addition of parties were filed. By an order dated 04.09.2023 a co-ordinate Bench of this Court directed that the interim order passed on 19.05.2023 insofar as it stayed the termination of jobs shall continue till the disposal of the appeals. By the said order the applications for leave to appeal



and the applications for addition of parties were also allowed. Thereafter a Special Leave Petition (hereinafter referred to as SLP) preferred by one Sujoy Sen and others was disposed of by the Hon'ble Supreme Court on 25.09.2023 observing that the High Court shall hear the appeal along with the other similar appeals, as expeditiously as possible.

4. Pursuant to such directions, a co-ordinate Bench of this Court took up the said appeal for hearing on 26.09.2023 along with the other similar appeals together with further applications for leave to appeal and applications for addition of parties and allowed the applications. Thereafter, the matters were released by a co-ordinate Bench of this Court on 07.04.2025 and were assigned to this Bench.

5. The matter involves cancellation of appointment of 32,000 primary teachers, who have rendered uninterrupted service till date in different primary schools all over the State. There is no accusation of any offence or wrongdoing against any individual teacher, however, it has been alleged *inter alia* that the Board committed fraud and the recruitment process was not conducted as per the West Bengal Primary School Teachers Recruitment Rules, 2016 (hereinafter referred to as the RR, 2016).

6. Whether such circumstances would warrant a zero-tolerance approach or as to whether it would be iniquitous to interfere with such appointments, had compelled us to pause, ponder and confer anxious consideration upon the same which would require untangling of a complicated mesh of competing rights.



7. Mr. Dutta, learned senior advocate appearing for the Board and its functionary/appellants in MAT 873 of 2023 argues that by the impugned judgment the Court had set aside the appointment of 32,000 assistant teachers in primary schools under different District Primary School Councils (hereinafter referred to as DPSCs) though in the writ petition no such relief was claimed. It is a trite law that a party is not entitled to seek relief which he has not prayed for. Though the Court enjoys a wide discretion in granting reliefs and in moulding reliefs, it cannot upon ignoring and keeping aside the norms, grant a relief not even prayed for by the writ petitioners. Such approach had been criticised by the Hon'ble Apex Court in the cases of *Bharat Amratlal Kothari and Anr. Vs. Dosukhan Samadkhan Sindhi and Anr.*, reported in (2010) 1 SCC 234 and *Rajasthan Art Emporium Vs. Kuwait Airways and Anr.*, reported in (2024) 2 SCC 570.

8. He contends that as a rule, relief not founded on the pleadings, should not be granted. There was no pleading in the writ petition to the effect that the entire recruitment/selection process was sham or that the Board had acted *mala fide* or had proceeded in a biased manner. It had also not been pleaded that the Board had acted in a manner which would benefit a private party at the cost of the authorities or that its acts reflect any bias or favouritism. The writ petitioners have also not taken any steps to amend the writ petition to incorporate specific pleadings against the appointments sought to be cancelled though there is a procedure known to the law and long established by codified practice for seeking amendment of the pleadings. Reliance has been placed upon the judgment delivered in the case of *S.S. Sharma and others Versus Union of India and others*, reported in



(1981) 1 SCC 397. In the absence of appropriate pleadings, the Court had conducted an errant enquiry and that too at the instance of persons, who participated in the recruitment process and were unsuccessful. It is well settled that decision of a case cannot be based on grounds outside the pleadings of the parties. Such proposition has been detailed in the case of *Manohar Lal (Dead) by Lrs. Vs. Ugrasen (Dead) by Lrs. and Anr.*, reported in (2010) 11 SCC 557. The writ petitioners have in fact urged that they may be appointed in the existing vacancies but the Court had proceeded to cancel the appointment of teachers already appointed. Such relief, as granted, is inconsistent with the writ petitioners' claim. Reliance has been placed upon the judgment delivered in the case of *Sanat Kumar Mitra Vs. Hem Chandra Dey and Ors.*, reported in 1960 SCC OnLine Cal 55.

9. He contends that the Court ought not to have taken upon itself the responsibility to provide guidelines towards appointment of primary teachers. The Government is the competent authority to frame guidelines and to conduct a selection process on the basis of the same. The Court cannot rewrite, recast or reframe the guidelines and cannot add words to the statute. Even if there is a defect or an omission, the Court cannot correct the defect or supply omission inasmuch as such act would tantamount to judicial legislation, which is impermissible in law. No mandamus can be issued to amend or enact laws, is such a deeply entrenched constitutional aphorism, which need not be burdened with quotational jurisprudence.

10. Mr. Dutta contends that the Court had proceeded more on imagination than the reality. The selection could not have been found fault



with in a mechanical and mathematical manner. Instead of testing the matter on the basis of the ground realities, the Court proceeded in a mechanical manner. The alleged fact that the candidates who secured less marks in academics and scored high marks in interview/aptitude test could not have been a ground for setting aside the appointment of 32,000 teachers. The contents of the impugned judgment would reveal that the Court conducted a roving enquiry on the factual aspects and acted as a fact finding-commission at the instance of the candidates, who upon participation in the selection process could not emerge to be successful. The Court on its own sought to take upon itself the burden of establishing that the entire recruitment process was conducted in an arbitrary and biased manner though the party, who makes an allegation of bias and favouritism, is required to prove the same. A mere expression of doubt only on the ground of large number of candidates appearing and they are not being objectively and properly tested, cannot by itself render the whole recruitment process illegal. Reliance has been placed upon the judgment delivered in the case of *Sadananda Halo Vs. Momtaz Ali Sheikh*, reported in (2008) 4 SCC 619.

11. Mr. Dutta argues that acting on the basis of the allegations levelled by about 140 participants, the Court could not have set aside the appointment of 32,000 candidates and that too without granting an opportunity of hearing to the successful candidates. The power of judicial review does not extend to conducting a microscopic inquiry beyond the pleadings of the writ petition. In support of such contention reliance has been placed upon the judgments delivered in the cases of *State of W.B. Vs.*



Chandra Kanta Ganguli, reported in 2017 SCC OnLine Cal 3799 and *Tajvir Singh Sodhi and Ors. Vs. State of Jammu and Kashmir and Ors.*, reported in (2023) 17 SCC 147.

12. He contends that a mere assertion in the pleadings that corrupt practices were adopted in conducting the selection process would be insufficient to trigger a presumption to that effect unless the entire chain of events i.e., the demand, acceptance and recovery is established. The allegation of corruption, which has a wide connotation, has to be established beyond reasonable doubt and cannot be left only on the rider of preponderance of probabilities moreso when the setting aside of appointment would lead to severe civil consequences affecting fundamental right towards life and livelihood. The observation of the Court that '*jobs for primary school teachers were actually sold to some candidates who had the money to purchase the employment*' has no basis at all. The manner in which the recruitment process was conducted does not reflect that there was any deep-seated moral degradation or unsatiated greed for wealth. Reliance has been placed upon the definition of the word '*corrupt*' in *Black's Law Dictionary* and also upon the judgments delivered in the cases of *State of U.P. and Anr. Vs. Ved Pal Singh and Anr.*, reported in (1997) 3 SCC, *N.P. Jharia Vs. State of M.P.*, reported in (2007) SCC 358, *State of A.P. Vs. V. Vasudeva Rao.*, reported in (2024) 9 SCC 319, *Joint Action Committee of Bengal Taxi Association, etc. and Anr. Vs. State of West Bengal and Ors.*, reported in 1993 SCC OnLine Cal, *Neeraj Dutta Vs. State of (Government of NCT of Delhi)*, reported in (2023) 4 SCC 731, *Kim Wansoo Vs. State of Uttar Pradesh and Ors.*, reported in 2025 SCC OnLine SC 17 and *Dileepbhai*



Nanubhai Sanghani Vs. State of Gujrat and Anr., reported in 2025 SCC OnLine SC 441.

13. Referring to the averments made in paragraph 17, 18, and 19 of the impugned judgment, he argues that the Court had arrived at a finding that '*in the recruitment scam stinking rats are being smelt*' and on the rudiments of such finding the appointment of 32,000 candidates were directed to be cancelled. Such finding of corruption is not based on any evidence whatsoever and as such no inferential deduction could have been drawn. Proof of demand and acceptance of illegal gratification is a *sine qua non* in order to establish the guilt. No such guilt had been established in respect of any of the candidates, whose appointments have been directed to be cancelled.

14. Placing reliance upon the judgments of the Hon'ble Supreme Court delivered in the cases of *Markio Tado Versus Takam Sorang and others*, reported in (2012) 3 SCC 236 and *Dhampur Sugar (Kashipur) Ltd. Versus State of Uttaranchal and others*, reported in (2007) 8 SCC 418, he argues that discretionary jurisdiction cannot be applied by a writ Court in such a way so as to enable any roving enquiry with a view to fish materials. If sufficient averments of requisite materials are not recorded the writ Court cannot make '*fishing or roving enquiry*'.

15. As regards exercise of authority conferred by the provisions of Section 165 of the Indian Evidence Act, 1872 (hereinafter referred to as the IE Act), Mr. Dutta has placed reliance upon the judgments delivered in the cases of *Jamatraj Kewalji Govani Versus State of Maharashtra*, reported in



AIR 1968 SC 178, Zahira Habibulla H. Sheikh and another Versus State of Gujarat and others, reported in (2004) 4 SCC 158, *Ram Chander Versus State of Haryana*, reported in (1981) 3 SCC 191, *Nepal Chandra Roy Versus Netai Chandra Das and others*, reported in 1971 (3) SCC 303 (para 12), *Sunil Chandra Ray and another Versus The State*, reported in 1953 SCC OnLine Cal 181 and *Mukti Kumar Ghosh Versus State of West Bengal*, reported in 1974 SCC OnLine Cal 139 . The broad proposition of law that can be culled out from the above judgments is that the said provisions confer a wide discretion on the Court to act as the exigencies of the justice require. Such power is in a way complementary to its power under Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as CrPC). However, the Court cannot act as the prosecutor and its role needs to be of participatory nature in trial. By way of abundant caution, law has been laid down to the effect that citing the provisions of Section 165 of the IE Act, the Court must not assume the role of a prosecutor in putting questions and usurp the functions of the respective parties to the proceeding. The Court must not take sides and should not descend into the arena and forsake the judicial calm and his action should not have any intimidating or inflating effect. Such power is to be exercised in order to discover or obtain proper proof of relevant facts and to act in aid of justice. However, in the present case, the Court had exceeded its jurisdiction by taking up the charge of examining particular persons itself.

16. Drawing our attention to the contents of paragraph 9 of the judgment impugned, Mr. Dutta submits that the Court erroneously arrived at a specific finding that no aptitude test was taken. In the order passed on



21.02.2023, discrepancies were pointed out to the effect that all the interviewers were called over the phone to take interview and that there was no guideline for awarding marks for aptitude test. A composite reading of the said judgment would reveal that the contents are self-contradictory. The Court acting as a prosecutor recorded simpliciter that no aptitude test was taken and that all the interviewers were called over phone though there was no such allegation supported by appropriate pleadings in the writ petition itself to justify such the findings.

17. Referring to the documents annexed at pages 153 to 193 of the paper book, Mr. Dutta argues that after recording the academic score and score in TET, all the candidates were interviewed and an aptitude test, which stands defined under Rule 2(c) of RR, 2016, was also conducted and marks were allotted. The panels were published and the writ petitioners did not doubt such publication and no contemporaneous complaint was lodged to that effect. Being oblivious of such fact and without considering the judgments cited, the Court sought to wriggle out of the proposition of law laid down in the judgments cited on a purported plea that niceties of legal principles cannot be applied to the facts of the case '*in the face of the magnitude of stinking corruption*' though such allegation of corruption was neither pleaded nor established.

18. Placing reliance upon the judgments delivered in the cases of *Ali Hossain Mandal and others Versus West Bengal Board of Primary Education and other*, reported in 2024 SCC OnLine SC 1189 and the unreported order passed in SLP (C) No. 2434 of 2024, Mr. Dutta argues that while considering



the dispute pertaining to the selection of primary school teachers following the RR, 2016, the Court arrived at a finding that the panel having expired and not having been extended by the competent authority, no appointment was permissible after expiry of the said panel. It was also the mandate of the Hon'ble Supreme Court in the case of *Sumit Ghosh and others (supra)* that the judgment delivered in *Ali Hossain Mandal and others (supra)* needs to be followed.

19. Appointments made in the year 2017 were sought to be challenged by filing the writ petition in the year 2022 without any explanation of the delay. The judgments delivered in *Chennai Metropolitan Water Supply and Sewerage Board and others Versus T.T. Murali Babu*, reported in (2014) 4 SCC 108 and *State of M.P. and others (supra)*, upon which reliance has been placed by Mr. Dutta affirmed the proposition of law that the doctrine of delay and laches should not be brushed aside while exercising any extraordinary and equitable jurisdiction moreso when third party right stood vested in favour of the appointees in view of rendition of a substantial period of service.

20. On the issue of predisposition of the Court, Mr. Dutta pointed out as follows:

- (I) The sequence of facts would reveal that the Court decided the matter in hot haste and in a tearing hurry. Having heard the writ petition at least on fifteen occasions in between the months of December, 2022 and May, 2023, hearing was concluded on



11.05.2023 and the judgment was delivered on the very next date, i.e., on 12.05.2023;

- (II) The order dated 17.01.2023 would reveal that the learned advocate appearing for the Board was not allowed to point out that the aptitude test was duly held and only on the basis of answers put to seven writ petitioners from amongst the others present in Court, the Court arrived at a finding that *'there was no aptitude test for the said petitioners'*;
- (III) The said judgment would also reveal that the Court itself decided to exercise power under Section 165 of the IE Act and to put questions to some of the candidates and interviewers as a prosecutor;
- (IV) In the order dated 24.01.2023, the Court observed that *'I will not allow filing any affidavit-in-opposition in its matter by the Board'*. The Court started dictating the said order stating that *'I directed the petitioners that at least 2 candidates from each district are to be present before this Court....'* However, the records would reveal that no such direction was issued earlier by the Court;
- (V) The order dated 05.04.2023 would reveal that the Court *suo moto* issued a direction to the Superintendent of the Presidency Correctional home to produce one Mr. Manik Bhattacharjee before this Court on the self-same date at 3 p.m. though there was no prayer or pleading or allegation in respect of the said



person in the writ petition. The order does not disclose any reason why a *suo moto* direction was issued.

21. The appellants in MAT 890 of 2023, upon emerging to be successful in the recruitment process were appointed as primary teachers. Mr. Kalyan Bandopadhyay, learned senior advocate appearing on their behalf submits that bereft of foundational facts, the writ petition had been allowed, interfering with the appointment of about 32,000 primary teachers all over the State under different Councils at the instance of a few unsuccessful candidates in a recruitment process conducted about six years prior to filing of the writ petition. Prior to issuance of such a drastic order having repercussion all over the State of West Bengal, the Court ought to have directed the writ petitioners to intimate such preference and pendency of the writ petitions to the successful primary teachers, by way of an advertisement. No direction was also given to the State respondents to bring the fact of pendency of the writ petitions to the notice of the successful primary teachers. Without any notice and without granting an opportunity to defend themselves, the Court cancelled the appointment of the appellants by the impugned judgment and the same cannot even stand a moment's scrutiny being, *ex facie*, violative of the principles of natural justice. Placing reliance upon a judgment delivered in the case of *Institute of Chartered Accountants of India –vs- L.K. Ratna and others*, reported in (1986) 4 SCC 537, he submits that even grant of an opportunity of hearing to the appellants at this appellate stage would not cure the defect of natural justice which occasioned before writ Court. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Khetrabasi*



Biswal-vs- Ajaya Kumar Baral and Ors., reported in (2004) 1 SCC 317, *Baluram -vs- P. Chellathangam and Others*, reported in (2015) 13 SCC 579 and *Ranjan Kumar etc. etc. -vs- State of Bihar & Ors.*, reported in (2014) 16 SCC 187.

22. He argues that applicability of the doctrine of delay and laches should not be lightly brushed aside. A writ Court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional Court it has a duty to protect the rights of the citizens and simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the *lis* at a belated stage should be entertained or not. Delay comes in the way of equity and that in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. It is also a matter of great significance that at one point of time, equity that existed in favour of one, melts into total insignificance and paves the path of extinction with the passage of time. Reliance has been placed upon the judgments delivered in the cases of *Printers (Mysore) Ltd. -vs- M.A. Rasheed & Ors.*, reported in (2004) 4 SCC 460, *Chennai Metropolitan Water Supply and Sewerage Board and Others -vs- T.T. Murali Babu*, reported in (2014) 4 SCC 108, *Collector of Central Excise, Cochin -vs- Western India Plywood*, reported in (1998) 1 SCC 316 and *Sunny Abraham VS Union of India*, reported in 2022 1 Supreme 351.



23. He submits that in the writ petitions there is no averment to the effect that the selection was conducted through a sham process. The sole intent and purpose of the writ petitioners towards preference of the writ petition was to pressurise the Government and to avail appointment as primary teachers. Such intent would be explicit from the fact that the petitioners made only one written representation and that too after more than three years with a statement that still there are certain vacancies and as such they can be engaged in the same. The Court did not consider the issue that unsuccessful candidates having participated in a selection process cannot turn back and challenge the same. The Court had committed an error in cancelling the appointment of 32,000 primary teachers even when the writ petitioners had not made any prayer to that effect. In support of the arguments advanced reliance has been placed upon the judgments delivered in the cases of *Narmada Bachao Andolan –vs- State of Madhya Pradesh and Anr.*, reported in (2011) 7 SCC 639, *K.A. Nagamani–vs- Indian Airlines*, reported in (2009) 5 SCC 515 and *K.H. Siraj –vs- High Court of Kerala & Ors.*, reported in (2006) 6 SCC 395. While delivering the judgment, the Court did not take into consideration the other two co-ordinate Bench decisions in *Monika Das Vs. State of West Bengal*, reported in (2019) SCC OnLine Cal 4324 and *Md. Rabiul Sk. and Others Vs. State of West Bengal and Others*, reported in 2023 SCC OnLine Cal 710 on identical facts and failure to do so infracts judicial propriety and discipline. Reliance has been placed upon the judgments delivered in the cases of *Renuka versus State of Karnataka and another*, reported in 2025 SCC Online SC 970, *Maharashtra University of Health Sciences represented by Deputy Registrar VS Paryani*



Mukesh Jawaharlal, reported in *AIR 2007 SC 2264* and in the case of *S. Kuldeep Singh and another versus S. Prithpal Singh*, reported in *(2023) SCC 609*.

24. He further submits that no *mala fide* has been alleged against the successful candidates and the Court erred in law in interfering with the decisions of professionally qualified authorities. The Court has conducted a roving enquiry on the factual aspect which is not permissible. While testing the fairness of the selection process wherein thousands of candidates were involved, the Court should have been slow in forming an opinion moreso when the appointed teachers were not parties to the proceeding. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Sadananda Halo & Others -vs- Momtaz Ali Sheikh & Others*, reported in *(2008) 4 SCC 619*, *Union of India -vs- Dr. Kushala Shetty and others*, reported in *(2011) 12 SCC 69*.

25. According to Mr. Bandopadhyay, a writ of mandamus can be issued only when there is a clear violation of an enforceable right and non-discharge of a co-related duty on the part of the respondents. In the instant case only by participating in an interview the petitioners did not secure any indefeasible right to be engaged as primary teachers. Furthermore, the recruitment process was conducted in the year 2016 and no complaint was lodged contemporaneously. The writ petitioners themselves were aware that they would not be able to disturb a recruitment process which stood concluded six years ago and they took a calculated chance to avail



appointment by preferring the writ petitions with a statement that there are certain existing vacancies in which they can be accommodated.

26. He argues that the period prescribed under Rule 6(3) of the RR, 2016 for the untrained candidates to acquire training qualification had expired prior to filing of the writ petition. In view thereof, the writ petition itself was not maintainable inasmuch as there had been no infringement of any legal right of the petitioners. The appointees had earned a confirmed status after completing training as directed in the RR, 2016 prior to filing of the writ petition and such finality as attained could not have been interfered with. Life cannot be breathed into a recruitment process which stands concluded.

27. Mr. Anindhya Mitra, learned senior advocate appearing for the appellants in the appeal being MAT 1352 of 2023 submits that the judgment impugned does not reflect any ground whatsoever towards cancellation of the appointment of 32,000 primary teachers. Such direction towards cancellation of appointment contained in paragraph 21 of the impugned judgment is preceded by the word '*in such circumstances*'. A perusal of the contents of paragraph 7 of the impugned judgment would reveal that one such circumstance was that '*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 who scored below 13 were appointed*'. Such observation was made placing reliance upon a tabular sheet enclosed by the petitioners as annexure 'B' to their exception to the report filed by the Board dated 11.01.2023. Such reasoning is, however, absolutely unfounded



inasmuch as 14.191 marks was obtained by a SC candidate in the district of Birbhum. Amongst the petitioners, the petitioner no.53, namely, Sofiquil and the petitioner no. 132, namely, Nur Huda were from the district of Birbhum and they scored only 11.442 marks and 12.644 marks respectively. The petitioners did not cite any candidate under SC category in the district of Birbhum who had been granted appointment having obtained more than 14.19 marks. The Court erroneously proceeded on the basis that in the State of West Bengal the marks obtained by the lowest empanelled candidate was 14.19. The selection was conducted district wise and the number of such empanelled candidates in the respective categories were different in different districts.

28. Referring to the observations made by the Court in paragraph 8 of the impugned judgment, Mr. Mitra submits that it is not a case in the writ petition being *WPA 21187 of 2022* that the writ petitioners being *Priyanka Naskar and Ors.* ‘*wanted the marks of last empanelled candidates of different categories like SC, ST, OBC etc.*’. No direction was issued by the Court to furnish particulars of the marks obtained by the last empanelled candidates of different categories like SC, ST, OBC etc. In view thereof, there was no suppression of any particulars by the Board. The Board had filed an affidavit-in-opposition controverting the allegation of the petitioners.

29. Mr. Mitra further argues that a perusal of the order dated 17th January, 2023 would reveal that the Court took a decision to exercise power under section 165 of the IE Act upon putting some questions to only 7 candidates being the petitioner nos. 1, 4, 7, 19, 50, 90 and 94 from amongst



the total 140 petitioners. No reason is forthcoming in the said order as to why only 7 candidates were picked up and questioned when the said 7 candidates obtained meagre marks in the interview and aptitude test. The Court cannot assume the role of a prosecutor and call a witness whom he thinks might throw some light on the facts. The answers given by the said candidates ought not to have weighed with the Court in arriving at the findings moreso when the answers given lacked relevancy. It is also not a case that the Board had declined cross-examination. Reliance has been placed upon the judgments delivered in the cases of *Jones versus National Coal Board*, reported in (1957) 2 All. E.R 155.

30. He argues that it would be surprising to note from the contents of the subsequent order dated 6th February, 2023 that though sealed envelopes containing list of persons who took interview in twenty districts were filed, the sealed envelopes only in respect of five districts were opened. No reason is forthcoming as to why the other envelopes pertaining to fifteen districts were not taken into consideration. Considering the version of the said interviewers, the Court arrived at an abrupt finding that no aptitude was taken, as referred to in paragraph 9 of the impugned judgment. There is also no reason behind the finding of the Court in paragraph 10 of the impugned judgment that the marks given to the candidates against the aptitude test is wholly illegal and false and was an '*exercise to hoodwink all concerned including the court*'.

31. He further contends that the definition of the word '*aptitude*' in Rule 2(c) of RR, 2016 is '*a test to assist natural teaching ability of a candidate*'



and as such no reason is forthcoming as to why the Court directed the Board to file an affidavit upon consultation with experts.

32. He argues that the primary teachers whose appointments have been cancelled were not parties to the proceeding and that as such they had no opportunity to cross-examine the witnesses. Thus, blatant violation of the principles of natural justice cannot be ruled out. The interviewers were also not parties to the proceeding and that as such the Court could not have questioned them in exercise of the powers under section 165 of the IE Act. Such act also suffers from a jurisdictional error. Right to cross examination is an indefeasible right and denial of cross examination of the witnesses whose statements are the basis of the decision, is a serious flaw which renders the order to be a nullity. No oral testimony can be considered satisfactory unless it is tested by cross-examination. In support of such argument reliance has been placed upon the judgments delivered in the cases of *New India Assurance Company Limited versus Nusli Neville Wadia & Another*, reported in (2008) 3 SCC 279, *Andaman Timber Industries versus Commissioner of Central Excise*, reported in (2016) 15 2181 and *Modula India versus Kamakshya Singh Deo*, reported in (1988) 3 SCC 619.

33. Drawing our attention to the judgment impugned, Mr. Mitra submits the said judgment had been delivered placing reliance upon a spiral binding of documents which had not been brought on record through proper affirmation and that as such no reliance ought to have been placed upon the said documents. There is no averment in the writ petition as regards corruption. Corruption was not a ground in the writ petition and the



direction towards cancellation of appointment of such huge number of candidates is also not supported with appropriate reasons. The selected candidates upon appointment in the year 2017 completed the training and were thereafter confirmed in such service and such vested right accrued in their favour could not have been interfered with by the learned Judge *moreso* at the instance of unsuccessful candidates and when there was no prayer in the writ petition towards the cancellation of appointment. Reliance has been placed upon the judgment delivered in the case of *Madan Lal & Others versus State of Jammu and Kashmir & Others*, reported in (1995) 3 SCC 486.

34. Mr. Mitra argues that the observations made in the impugned judgment that the Board and its officials including its President were involved in transaction of huge money and that they had conducted such recruitment like the affairs of a local club and that the jobs for primary school teachers were actually sold to some candidates who had the money to purchase such employment were not based on appropriate pleadings in the writ petition. Neither in the writ petition nor in the impugned judgment it has been pointed out that any appointed candidate was involved in any money trail. Not a single document could be produced to establish that any one of the appointed candidates had influenced any person upon payment of money. Any writing recorded on any issue *dehors* the pleading is without jurisdiction. Reliance has been placed upon the judgments delivered in the cases of *Shivaji Balaram Haibatti versus Avinash Maruthi Pawar*, reported in (2018) 11 SCC 652, *Bharat Singh & Others versus State of Haryana & Others*, reported in AIR 1988 SC 2181 and *Bachhaj Nahar versus Nilima*



Mondal & Another, reported in (2008) SCC 491. Mere pendency of an investigation pertaining to a recruitment process cannot be a ground of abrupt termination of appointment of teachers on the basis of a writ petition preferred about five years after such appointment and that too without impleading the candidates, who were terminated, as parties to the writ petition.

35. Mr. Mitra contends that the Court had even refused to consider the judgments upon which reliance was placed by the Board. The proposition of law laid down in the judgments was not even considered observing that *‘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 conducting by the Board’*.

36. He further submits that it would be shocking to note that the judgment was delivered on 12th of May, 2023 and the matter again appeared in the list on 16th May 2023 and on the basis of the submissions of the learned advocate appearing for the writ petitioners, the marks recorded in paragraph 7 of the impugned judgment was altered from 14.191 to 13.796 and the number of candidates mentioned in paragraph 21 of the impugned judgment was altered from 36,000 to 32,000. Such alteration of marks and number of candidates cannot be construed to be mere typographical errors. No documents were produced to establish such alteration.

37. He further argues that *‘knowledge’* and *‘aptitude’* are distinct and different. A candidate may be having a brilliant academic record but that cannot lead to a conclusion that he would also be getting high marks in



aptitude. The art of transmitting knowledge is a factor to be taken into consideration towards grant of marks in aptitude. As such, the Court erroneously proceeded on the basis of a perception that the difference of marks in aptitude with the marks in knowledge should be proportional.

38. He contends that the observations made in paragraph 16 of the impugned judgment are erroneous in as much as Court did not take into consideration the amendment of Rule 7 of RR, 2016 effected on 23rd September, 2016. The Court erroneously proceeded construing the alleged infirmities pertaining to TET 2014 are inextricably bound with the recruitment process of 2016. The allegations levelled in the writ petition were pertaining to TET 2014 and on the basis of illegalities alleged in TET 2014, the Court could not have directed cancellation of appointment of 32,000 successful candidates. Reliance has been placed upon a judgment delivered in *Bapi Kandar and Others versus State of West Bengal and Others*, reported in *2018 SCC Online Cal 10874*. The learned Judge was a member of the Division Bench in the said case where TET, 2012 was in question. The Court arrived at a finding that there were serious irregularities in the said examination but the appointments made were not disturbed.

39. Mr. Jayanta Mitra, learned advocate appearing for the appellants in MAT 966 of 2023 submits that the total vacancy was 42,949. Note 7 of Rule 6 (3) of RR, 2016 provides that 10 % of the total posts would be earmarked for para teachers. 10 % of such vacancies being 4,295 vacancies were earmarked for para teachers in which 3,205 vacancies were filled up by 239 trained candidates and 2966 untrained candidates. The appellants herein



belong to the group of untrained candidates, who upon appointment had already completed training in terms of Rule 6 (3) of RR, 2016. As per the said provisions, the appellants upon appointment as para teachers have acquired the minimum qualification within a period of two years from the date of appointment. Rule 8 (3) read with the amendment incorporated *vide* Memo No.656-SE (EE/10M-6/09(PT-5) and memo No.657-SE (EE/10M-6/09(PT-5) both dated 23.09.2016 provides that in respect of para teachers the eligibility criteria would be '*academic qualifications, training, performance training, extracurricular activities, viva voci or interview and teaching experience*'. Thus, in respect of para teacher there was no provision for aptitude test. Rule 8(5), however, makes provision for grant of marks towards teaching experience. These provisions of the Rules were neither cited nor taken into consideration by the Court. Furthermore, none of the writ petitioners except one are para teachers. The Court was not even apprised of such fact and that as such all the teachers who participated in the recruitment process including teachers and para teachers were erroneously construed to be a composite class and alleging that there had been a widespread corruption, the appointment of 32,000 primary teachers was cancelled. Such direction had caused extreme prejudice to the appellants. Their sole source of livelihood had been atrociously snatched away. In the writ petition no allegation was levelled as regards appointment of para teachers and no prayer was also made to terminate the appointment of para teachers and none of the appointed para teachers were impleaded in the writ petition. In their absence, the Court ought not to have terminated their appointment on the rudiments of the observation that the '*jobs for*



primary school teacher were actually sold to some candidates who had money to purchase the employment’.

40. He argues that the Court acted as the prosecutor and chose to question some candidates and interviewers and proceeded with a perception that there had been a scam and that as such all the appointments made through the said recruitment process need to be cancelled. Justice is best done by a Judge who holds the balance between the contending parties without himself taking part in their disputations. In the case of *Jones versus National Coal Board*, reported in 1952 (2) All.E.R, 55, the Court observed that ‘*in every pursuit of justice our keenness may outrun our success and we may trip and fall*’. In the present case, in the admitted absence of appropriate pleadings, the Court has proceeded as a ‘*knight-errant*’.

41. Mr. Subir Sanyal, learned senior advocate appearing for the appellants in MAT 1547 of 2023 submits that the appellants are all para teachers and are within the 32,000 candidates whose appointment were cancelled on the basis of the observations that ‘*the Former Education Minister, Former President of the Board and a number of middlemen through whom the jobs were sold like a commodity*’ and that in the ‘*recruitment process scam stinking rats are being smelt*’. There was no prayer in the writ petition as regards cancellation of appointment of para teachers, no pleading that any para teacher was illegally appointed and the affected para teachers were also not impleaded in the writ petition and as such it does not require a moment’s scrutiny to arrive at the conclusion that the judgment had been delivered without following the basic principles of law.



42. He argues that the selection procedure for para teachers was distinct and different from the teachers. In respect of para teacher under RR, 2016 there was no provision to conduct any aptitude test and in place and stead of aptitude test, 5 marks were provided for teaching experience. In view thereof, the allegation that no aptitude test was properly held has no bearing with the appointment of the appellants herein. The findings of the Court that 9.5/9 marks as against 10 marks for interview was awarded to candidates, who had lesser academic qualifications, is also not applicable to the appellants since, in case of the para teachers, interview was of 5 marks and 5 marks was allotted for teaching experience.

43. Mr. A. Majumder, learned advocate appearing for the some of the appellants in MAT 913 of 2023 have adopted the arguments of Mr. Mitra.

44. Mr. Ashok Banerjee, learned senior advocate appearing for the appellants in MAT 1462 of 2023 argues that by preferring the writ petition, the petitioners had taken a calculated chance to obtain appointment to the post of primary school teachers, upon misleading the Court. They themselves did not contemplate that the Court on the basis of the averments made in the writ petition would cancel the appointment of 32,000 teachers moreso when some of the petitioners were parties to an earlier writ petition preferred challenging the same recruitment process and the same were dismissed. A perusal of the averments made in the writ petition would clearly reveal that no appointment of any teacher was under challenge and there was also no allegation of any corruption or scam. In the writ petition no prayer was made towards cancellation of appointment of any teacher.



The sole allegation in the writ petition was that they have not been equally treated with the other untrained appointed candidates and as there are existing vacancies, they may be appointed in the said vacancies. Such allegation of discrimination was also not fortified through proper evidence. The Court in an erroneous manner acted as a prosecutor and upon examining a few petitioners and some interviewers arrived at a finding that there was widespread corruption in the recruitment process. Such procedure as adopted is alien to service jurisprudence and is unsustainable in law. By the impugned order, appointment of teachers who were not impleaded, had been drastically cancelled and such act smacks of blatant violation of the principles of natural justice. In support of his argument, Mr. Banerjee has placed reliance upon the judgment delivered in the case of *D. Sarojakumari versus R.Helen Thilakom and Others*, reported in (2017) 9 SCC 498, (1996) 3 SCC 587, (2003) 8 SCC 40 and (1988) 4 SCC 534.

45. According to Mr. Banerjee, the appellants were appointed in 2017 and such appointment was interfered with by the impugned judgment about six years after such appointment. In view of the confirmation and service already rendered, the appellants had earned vested right to the concerned posts. The earning from such appointment is the sole source of livelihood of the appellants and the direction towards cancellation of their appointment affects their fundamental right to life and livelihood. The impugned judgment does not reflect consideration of the consequences that would befall upon the appellants and their family members. A job taken away after five years of service would cause insurmountable inconvenience to the appellants and their survival along with their family members would be at



stake. The Court has not considered the matter in its proper perspective. Indisputably, corruption and scam are severe allegations but the same needs to be established on the rudiments of proper documents and evidence. Nothing has been produced by the petitioners to establish the involvement of any single appellant in such alleged scam. For the alleged involvement of the functionaries of the State in any illegality, the appellants cannot be made to suffer and a fresh recruitment could not have been directed upon cancellation of appointment of 32,000 teachers.

46. Mr. Saptangsu Basu, learned senior advocate appearing for the appellants in MAT 1109 of 2023 submits that all the appellants are from the districts of Malda and Murshidabad and they participated in the recruitment process under exempted categories. The number of vacancies existing in the respective districts under exempted category were much more than the teachers appointed under the said category. In view of such difference between the declared vacancies and the number of posts filled up, the appellants in fact had no contenders/competitors and it cannot be argued that any discrimination had been practised.

47. He argues that in the RR, 2016 there is no provision of any cut-off marks to be scored by a candidate for coming within the zone of consideration. In the absence thereof, even if the marks towards aptitude test are not taken into consideration, the appellants would become entitled to appointment. The judgment impugned had been delivered being oblivious of such factual issues. Had the appellants been impleaded and the Court



been apprised of such factual details, the judgment would have been otherwise.

48. Mr. Pratik Dhar, learned senior advocate appearing for the appellants in MAT 1322 of 2023 submits that the original rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the litigant entered the portal of the Court and he may be denied relief in equity because of subsequent intervening events that is the events between the commencement of litigation and the date of decision. Ordinarily the right to relief relates back to the date of institution of the proceedings and may be declined if during the pendency of the proceeding there is a change of law. As per the provisions of Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the 2009 Act) and the extension of relaxation granted by the Central Government in terms of section 23(2) of the Act of 2009, the teachers, who were in service as on 10th August, 2017 and had acquired the minimum qualification prior to 1st April, 2019 would be treated as trained and that no other candidate, who was not in service as on 10th August, 2017, can be considered to be at par with the said candidates. The one-time window provided to that effect expired prior to filing of the writ petition. In the present case the writ petition was affirmed on 12.09.2022 and was disposed of by the judgment dated 12.05.2023, however, the untrained teachers appointed with direction to complete training within a period of two years from the date of appointment in terms of Rule 6(3) of RR, 2016 have acquired the status of trained teachers having complied with such provision of Rule 6(3) proviso.



As such, their appointment cannot be cancelled at the instance of the writ petitioners who are untrained teachers. The ratio of the judgment delivered in the case of *Kousik Das and Others vs. State of West Bengal and Others*, reported in (2025) SCC OnLine Supreme Court 722 Das is squarely applicable to the facts of this case coupled with the principle of law laid down in the judgments delivered in *Beg Raj Singh vs. State of U.P. and Others*, reported in (2003) 1 SCC 726, *Vineeta Sharma vs. Rakesh Sharma and Others*, reported in (2020) 9 SCC 1 and *Abdul Alim vs. State of West Bengal and Others*, reported in 2018 SCC OnLine Cal 12185.

49. Drawing our attention to the provisions of Rule 2(c) of RR, 2016, Mr. Dhar argues that aptitude test is an assessment of natural teaching ability of a candidate. The word '*natural*' as defined in Black's Law Dictionary means '*in accord with the regular course of things in the universe and without accidental or purposeful interference*'. Such assessment of natural ability has been erroneously construed by the Court to be distinct from interview. However, interview and aptitude test are inextricably bound together. A candidate is assessed under the said two categories.

50. He argues that the Court erroneously arrived at a finding that no aptitude test was held banking on the statement of a minority group of interviewers amongst seven hundred interviewers. Only 13 interviewers, out of 30 interviewers, who had been examined by the Court, stated that no aptitude test was held. It would further be surprising to note that by putting questions to one of the interviewers, the Court whimsically directed the Board to terminate the job of the said interviewer, as according to the Court,



the said interviewer '*does not know English*'. Such act demonstrates the gross incorrectness in the procedure as adopted in deciding the writ petition.

51. Drawing our attention to the contents of the impugned judgment, Mr. Dhar argues the Court directed cancellation of 32,000 teachers in the recruitment process, in which more than a lakh candidates participated, by citing as a sample that 53 participating candidates obtained more marks in academics than the persons selected and they were ousted having scored lesser marks in interview and aptitude test. 53 candidates constitute only 0.12 % of the total number of candidates appointed. The assessment was distorted by personal thoughts and feelings of the Court and it does not have any element of objectivity.

52. He contends that a written test cannot capture the full spectrum of an individual's potential. An interview unveils the essence of a candidate – his/her personality, passion and potentiality whereas a written examination measures knowledge and testifies the candidate's academic knowledge. The oral test alone cannot bring out or disclose his overall intellectual and personal qualities. Thus, neither the written examination nor the interview is solely complete in itself. The worth of a candidate can only be purposefully examined on the rudiments of written test and interview. In support of such contention reliance has been placed upon the judgments delivered in the cases *Abhimeet Sinha and Others vs. High Court of Judicature at Patna and Others*, reported in (2024) 7 SCC 262 and *K.H. Siraj vs. High Court of Kerala and Others*, reported in (2006) 6 SCC 395.



53. Referring to the contents of paragraph 7 of the impugned judgment, Mr. Dhar argues that the Court has proceeded on the rudiments of erroneous data in as much as in the district being Code 19 marks obtained by a para teacher had been compared with that of a candidate, who does not belong to the said category. Our attention has been drawn to the marks obtained by candidates, namely, Tapas Sutradhar, Tamalika Kundu, Kazi Abu Khalid and Riya Das, all belonging to the category para teacher vis-à-vis marks obtained by the candidates, namely, one Dipak Choudhury, Nimai Ghosh and Shyam Sundar Das, who belong to OBC-B and OBC-A category.

54. He reiterates the proposition of law that having participated in a selection process, the writ petitioners could not have turned back and challenged the same since the result was not palatable. Conscious participation of the petitioners without raising objection do not entitle them to challenge the recruitment process. In support of such contention reliance has been placed upon judgment delivered in *Ramesh Chandra Shah and Others vs. Anil Joshi and Others*, reported in (2013) 11 SCC 309, *D. Sarojakumari vs. R. Helen Thilakom & Ors.*, reported in (2017) 9 SCC 478, and *Mohd. Mustafa vs. Union of India and Others*, reported in (2022) 1 SCC 294.

55. According to Mr. Dhar, the Court itself acted as a prosecutor upon questioning some writ petitioners and some interviewers. Such procedure, as adopted, is alien to the provisions of the IE Act. Section 165 of the IE Act cannot be used in contravention of section 137 of the CrPC. Upon recording the answers to the questions, the Court arrived at a conclusion. Such



procedure is fallacious. There was none on the part of the appellants to rebut the answers given in as much as the appellants were not even made parties to the writ petition. There was no effective cross-examination. The authorities of the Board were also not allowed to cross-examine the said petitioners and interviewers. Not only should the opportunity of cross-examination be made available but it should be one of effective cross-examination to meet the requirement of the principles of natural justice. Questions may be asked by the Court but that does not mean that it can receive illegal evidence. There was no sufficient or adequate evidence on record to justify the conclusion, as arrived at by the Court. Reliance has been placed upon judgments delivered in the cases of *Union of India vs. T.R. Varma*, reported in 1957 SCC Online SC 30, *Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and Others*, reported in (2013) 4 SCC 456, *State of Andhra Pradesh vs. Chitra Venkata Rao*, reported in (1975) 2 SCC 557 and *State Bank of India vs. Ram Lal Bhaskar and Another*, reported in (2011) 10 SCC 249.

56. Mr. Dhar reiterates the arguments as advanced by the learned advocates appearing for the other appellants that in the absence of the appellants, whose interests are directly affected, the Court ought not to have been exercised jurisdiction and directed cancellation of appointment of 32,000 teachers. The appellants were necessary parties and they ought to have been heard by the Court. It is well settled in law that no adverse order can be passed against the persons who were not made parties to the litigation. Reliance has been placed upon the judgments delivered in the cases of *Udit Narain Singh Malpaharia vs. Additional Member board of*



Revenue, Bihar and Another, reported in AIR 1963 SC 786, *Ranjan Kumar & Ors. vs. State of Bihar & Ors.* (2014) 16 SCC 187 and *Moreskar Yadaorao Mahajan vs. Vyankatesh Sitaram Bhedi (D) thr. Lrs. And Others*, reported in (2022) SCC OnLine SC 1307.

57. Placing reliance upon Rule 12 of the RR, 2016, he submits that the validity of an approved panel is of one year from the date approval of the same by the Board and such validity may be extended by six months at a time but the total period of such extension shall not exceed for a period of one year. Indisputably, the validity of the panel pertaining to the recruitment process conducted as per RR, 2016 had expired much prior to the filing of the writ petition in the month of September, 2022. A select list cannot be treated as a reservoir and vacancies cannot be filled up taking the names from the said list as and when required. It is a settled proposition of law that no relief can be granted to a candidate if he approaches the Court after the expiry of the select list. In support of such contention reliance has been placed upon the judgment delivered in the cases of *State of U.P. and Others vs. Harish Chandra and Others*, reported in (1996) 9 SCC 309 and *State of Orissa and Another vs. Rajkishore Nanda and Others*, reported in 2010 (6) SCC 777.

58. He argues that the relief granted directing cancellation of appointment of 32,000 teachers is not supported by the pleadings. No direction was also sought for towards cancellation of appointment of any teacher and in the absence thereof, the direction contained in the impugned judgment is simply unsustainable in law. The Court over stepped its



jurisdiction in issuing directions beyond the pleadings and the points raised by the parties in course their argument. In the event additional points are to be raised then the affected parties should be put to notice and the said parties cannot be taken by surprise. Reliance has been placed upon the judgments delivered in the cases of *V.K. Majotra vs. Union of India and Others*, reported in (2003) 8 SCC 40 and *State of Jammu and Kashmir and Others vs. Ajay Dogra*, reported in (2011) 14 SCC 243. Even information furnished under the provisions of the Right to Information Act cannot be deemed to be sacrosanct and its applicability has to be tested on the rudiments of the facts and circumstances of the case. Reliance has been placed upon the judgment delivered in the case *State of Odisha and Others vs. Arati Mohapatra*, reported in (2021) 19 SCC 396.

59. He concludes upon arguing that an interim order does not decide the fate of the parties to the litigation finally. It is always subject to and merges with the final order passed in the proceedings. The non-filing of the appeal is of no consequence. As such, non-filing of any appeal against the order passed by the Court, at an interim stage, does not take away the right of the appellants to challenge the final direction towards cancellation of appointments of teachers. In support of such contention reliance has been placed upon the judgment delivered in the case of *State of West Bengal and Others vs. Banibrata Ghosh and Others*, reported in (2009) 3 SCC 250.

60. Mr. Partha Sarathi Bhattacharya, learned senior advocate appearing for the appellants in MAT 1542 of 2023, who are similarly situated with the appellants in MAT 890 of 2023, submits that all the appellants hail from the



district of Uttar Dinajpur and in respect of the said district a panel was prepared and approved by the competent authority in terms of the provisions of Rule 9 of the RR, 2016. The appellants emerged to be successful and were accordingly appointed as primary teachers. Upon such appointment they all completed training within the period as prescribed in the proviso to Rule 6(3) of the RR, 2016.

61. According to him there is no averment in the writ petition nor any material has been brought on record by the writ petitioners for establishment of any nexus of the appellants with the alleged corruption. The entire recruitment process had been conducted strictly in terms of the RR, 2016 and the amendments thereto. On the notified date, the interview and aptitude test had been conducted. In paragraph 9 of the impugned judgment the learned Judge arrived at a finding that *‘in respect of 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’* upon examining thirty candidates, eight of whom were from the district of Uttar Dinajpur, who answered stating that aptitude test was taken. On the rudiments of such statement of thirty persons in a recruitment process involving lakhs of candidates, it was an impossibility to come to a finding that no aptitude test was taken. One candidate, namely Sankar Thapa, from the district of Uttar Dinajpur did not depose.

62. He further argues that the writ petition was preferred by candidates belonging to different districts, however, as per the recruitment rules,



selection was conducted separately in each district, separate panel was prepared for each district and candidates were appointed from such panel. Thus, for all the respective districts independent selection was conducted. In view thereof, candidates belonging to all districts could not have joined together to file the writ petition alleging that the recruitment process had not been conducted in any of the districts in terms of the RR, 2016. In the said conspectus, the Court ought not to have been entertained the writ petition itself inasmuch as on the basis of general allegations pertaining to selection, appointment of candidates from all the districts could not have been cancelled.

63. Mr. Bhattacharya argues that from the RR, 2016, particularly Rule 2 (1) and Rule 8(5), 8(6), it cannot be ruled out that there was no requirement to disseminate information as regards panel. However, the rules are silent about the mode of such dissemination or declaration. For lack of such provision, the successful candidates cannot be made to suffer since the responsibility towards framing of rules was upon the State. Reliance has been placed upon the judgment delivered in the case of *State of Mizoram and Another vs. Mizoram Engineering Service Association and Another*, reported in (2004) 6 SCC 218.

64. He contends that application of the provisions of section 165 of the IE Act is dependent upon the facts and circumstances of the case. The Court made a serious observation that the recruitment process smacks of ‘*stinking corruption*’ though there was no existence of appropriate materials from which it could have been precisely identified as to whether there was any



scam. It is not a case that corruption has accorded the undeserved with an unfair advantage over the deserved and deepened the societal chasm between haves and have-nots. In the admitted absence of such materials on record, the Court adopted a unique procedure of picking up some petitioners and interviewers for examination and on the rudiments of the answers given by the said persons, 32,000 teachers were directed to be removed from service. The application of the provisions of section 165 of the IE Act was thus fallacious.

65. He submits that the examination was conducted, interview and aptitude test were held, panels were prepared in respect of each of the districts and the same were approved by the competent authority. The panels were also brought within the public domain upon pasting the panels in the office of the respective councils. Such procedure, as adopted, cannot be sufficient to brand the entire process to be corrupt moreso when no nexus of the teachers, who had been appointed, with the authorities could be established through any money trail or prospects of monetary gains. Reliance has been placed upon the judgment delivered in the cases of *N.P. Jharia vs. State of M.P.*, reported in (2007) 7 SCC 358 and *Tridip Kumar Dingal and Others vs. State of West Bengal and Others*, reported in (2009) 1 SCC 768.

66. Mr. Bhattacharya argues that the word '*corruption*' embraces almost all the spheres of our day-to-day life. In a limited sense it is the action of a person upon being influenced not by rights or wrongs of a cause but by monetary gain or other self-consideration. The materials brought on record



do not reveal that any of the selected candidates had tendered any money to any person or to any of the interviewers for appointment. The question which arises for consideration is thus as to whether in the absence of such material on record and at the instance of some unsuccessful candidates, the Court could have issued a direction of cancellation of appointment of 32,000 teachers. In the entire sequence of facts, it is for this Court to determine as to whether the order should be upheld or as to whether the jobs of the said teachers should be protected in the backdrop of the circumstances which includes belated approach to the Court by unsuccessful candidates and the right acquired by the teachers upon rendering service for more than five years. The disturbance of such appointment of 32,000 teachers at this stage, even if it is held that they have not been appointed strictly in accordance with law, would lead to anomalous results which would have a rippling effect upon the society at large. Reliance has been placed upon the judgments delivered in the case of *Buddhi Nath Chaudhary and Others vs. Abahi Kumar and Others*, reported in (2001) 3 SCC 328 and *Roshni Devi vs. State of Haryana*, reported in AIR 1998 SC 3268.

67. Mr. Abhratosh Majumder, learned senior advocate appearing on behalf of the appellants in MAT 1383 of 2023 and MAT 1409 of 2023, who are also similarly situated with the appellants in MAT 890 of 2023, argues that the judgment impugned is a sequel to the inconsistent and contradictory findings arrived at by the Court in the previous orders, particularly the orders dated 20.12.2023 and 17.01.2023. The Court went in to an inquisitorial investigation as a prosecutor upon examining a group of writ petitioners and interviewers and cancelled the appointment of 32,000



teachers on the rudiments of the statements made by the candidates examined.

68. He contends that about 1,25,000 candidates appeared in the recruitment process including the trained and untrained candidates. Over and above the trained candidates about 32,000 untrained candidates were appointed. By the impugned judgment, the appointment of all the untrained teachers had been cancelled upon examining about 26 candidates which constitutes only 0.028 % of the total untrained teachers. It is explicit that the Court had practiced cherry picking upon examining 30 interviewers from certain districts excluding the interviewers in the districts of Howrah, Purba Bardhaman, Purba Medinipur, North 24 Parganas, Bankura, Malda, Paschim Medinipur, Kolkata, Purulia, Nadia, Dakshin Dinajpur, Birbhum and South 24 Parganas and struck down the recruitment process pertaining to the untrained candidates and cancelled the appointment of untrained teachers without any evidence on record that no aptitude test was held in the above districts.

69. It would also be surprising to note that the writ petitioners, namely, Hem Chandra Naskar, Ali Hassan Siddique, Selim Ali, Sabina Yesmin, Shyam Sundar Das and Nur Huda Khan 132 also approached the writ Court earlier along with others challenging the said recruitment process in *Re-Rabiul Sk., inter alia*, on the ground that the authorities did not follow the reservation rules. Amongst them, Selim Ali did not even qualify upon verification and could not participate in the aptitude test. Had such facts been appreciated, the judgment would have been otherwise.



70. According to Mr. Majumder, the sequence of facts would thus reveal that the Court had proceeded in pre-determined manner to cancel the appointment of the selected candidates. The ultimate conclusion was pre-set and to reach such conclusion the Court proceeded by examining only some of the petitioners and about 30 interviewers in the entire State of West Bengal.

71. Drawing our attention to the averments made in the writ petition, he contends that the petitioners could not have urged the issue of reservation when such issue was urged and turned down by the Court in the earlier two writ petitions considered by the Hon'ble Justice Arijit Banerjee and by the Hon'ble Justice Hiranmay Bhattacharyya *moreso* when one of the petitioners herein was party to the writ petition considered by Arijit Banerjee, J. and 25 petitioners were parties in the writ petition decided by Hiranmay Bhattacharyya, J. From the averments made in the writ petition it would also be explicit that the writ petitioners challenged the TET 2014 in which they themselves participated and qualified. Noting that their challenge may fail, they made some stray allegations that corruption had kept in the recruitment process.

72. He argues that the word '*published*' as incorporated in the definition of '*panel*' in Rule 2 (l) stands complied since the panels in the respective districts upon approval by the Board [Section 60(1) (k)] were pasted in the respective Council offices and was accordingly brought within the public domain. It is not a case that in an arbitrary manner only some candidates have been picked up and given appointment. Furthermore, the writ



petitioners themselves have admitted in the writ petition being WPA 21187 of 2022, particularly in paragraph 10 that '*on 4th February, 2017, list of untrained candidates other than Bengali was published and on 08.02.2017, list of non trained candidates and candidates from Bengali Medium were published*'. The petitioners initially did not take the point that aptitude tests were not held. Then question arises as to how the said issue was taken up for consideration by the Court or in other words what prompted the writ petitioners to urge the said issue. It would be evident that there is no averment in the writ petition that no aptitude test was taken. It is only after the break up score of individual candidates was disclosed on 28th November, 2022, the petitioners sought to make out a case that there had been no proper marking by the interviewers while conducting the aptitude tests. To buttress such contention, Mr. Majumder has placed reliance upon a comparative chart of the marks obtained by several writ petitioners and the marks obtained by the last empanelled candidate in the respective panels, submitting that the chart would clearly reveal that several candidates obtained either higher or same marks in aptitude test as obtained by the last empanelled candidate. In view thereof, the marks given in the aptitude test could not have a ground for cancelling the appointments of 32,000 candidates.

73. He argues that in exercise of the powers of judicial review and on the rudiments of the facts averred in the writ petition, the learned Judge could not have converted the judicial proceeding into an inquisitorial one. The Court was virtually making an enquiry into the conduct of the authorities



though it ought to have scrutinised only the decision-making process as to whether the same suffered from any vice of illegality or unconstitutionality.

74. He argues that the power under section 165 of the IE Act can be applied to stem the flow of frivolous litigation and not to convert the judicial proceeding into an inquisitorial one. The Court cannot substitute its views for the views of the decision-maker who alone is charged and authorised by law to exercise discretion. Reliance has been placed upon the judgments delivered in the cases of *Krishna Lal Chawla & Ors. vs State of Uttar Pradesh & Ors.*, reported in (2021) 5 SCC 435 and *Meerut Development Authority vs. Association of Management Studies & Anr.*, reported in (2009) 6 SCC 171.

75. He further argues that the Court was dealing with a writ petition between warring litigants and it is undoubtedly an adversarial litigation. Such a proceeding is different and distinct from public interest litigation where the Court can undertake inquisitorial processes. The petitioners were also aware of this proposition of law and urged that the writ petition be treated as a Public Interest Litigation upon averring in paragraph 18 of the writ petition that '*there is no delay in filing the Public Interest litigation as the corruption is still continuing and the Hon'ble Single Bench of this Hon'ble High Court also passed several orders regarding TET 2024 even in September, 2022*'. In aid of such argument reliance has been placed upon the judgment delivered in the case of *Manohar Joshi vs State of Maharashtra & Ors.*, reported in (2012) 3 SCC 619.



76. Placing reliance upon the judgment delivered in the case of *Jones vs National Coal Board*, reported in (1957) 2 WLR 760, he urges that the Court's interventions taken together were excessive and ill-timed. In *Jones (supra)* it was observed *inter alia* that '*Judge's part when evidence is being given is to hearken to it, asking questions of witnesses only when it is necessary to clear up a point*' and that if the Judge goes beyond that '*he drops the mantle of a Judge and assumes the robe of an advocate*'. Such proposition has also been followed in the case of *Mohammed Abdul Wahid vs Nilofer & Anr.*, reported in (2024) 2 SCC 144.

77. Drawing our attention to the definition of aptitude test in Rule 2 (c) and the National Education Policy, 2020, Mr. Majumder argues that '*to gauge passion and motivation for teaching, a classroom demonstration or interview will become an integral part of teacher hiring at schools and school complexes*'. Thus, according to him, the concept of classroom demonstration cannot be brought within the purview of aptitude test. It is well settled that when the language of a statutory provision is plain and unambiguous, it is not permissible for the Court to add or subtract word to a statute or to read something into it which is not there. The Court cannot rewrite or recast legislation and has no power to legislate. Reliance has been placed upon the judgments delivered in the cases of *Kotak Mahindra Bank Limited vs A Balakrishnan & Anr.*, reported in (2022) 9 SCC 186 and *Union of India & Anr. vs Deoki Nandan Aggarwal*, reported in (1992) Supp (1) SCC 323. A judgment may have rhetoric but such rhetoric has to be dressed with reason and must be in accord with the legal principle. The impugned judgment clearly depicts perversity and the inference has not been arrived at on the rudiments of



proper evidence. The judicial process demands that the Court should move within the framework of the rules and not beyond. Reliance has been placed upon the judgments delivered in the cases of *Om Prakash Chautala vs. Kanwar Bhan & Ors.*, reported in (2014) 5 SCC 417 (para 19), *Public Utilities Commission of District of Columbia vs Pollak*, reported in, 1952 SCC Online US SC 69, *Ranjit Thakur vs Union of India & Ors.*, reported in (1987) 4 SCC 611 and *Ratanlal Banshilal & Ors. vs Kishorilal Goenka & Ors.*, reported in AIR 1993 Cal 144.

78. According to Mr. Majumder, there is not even a single line in the writ petition drawing any nexus of any of the untrained teachers, whose appointment have been cancelled, with any corrupt practices. Some allegation is not enough, the party making such allegation is under a legal obligation to place specific materials before the Court to substantiate the allegations. The presumption under law is in favour of the *bona fides* unless contradicted with by acceptable material. Reliance has been placed upon the judgments delivered in the cases of *Dhampur Sugar (Kashipur) Limited vs State of Uttaranchal & Ors.* reported in (2007) 8 SCC 418 and *Chandra Prakash Singh & Ors. vs Chairman, Purbanchal Gramin Bank & Ors.* reported in (2008) 12 SCC 292.

79. Concluding his arguments, Mr. Majumder submits that in the writ petition the panels prepared in the respective districts had admittedly not been challenged and in view thereof, by cancelling the appointment of 32,000 untrained teacher, the Court had transgressed the limits of challenge in the writ petition. Mere surmises and conjectures cannot be the



basis of a judgment. Reliance has been placed upon the judgments delivered in the cases of *Srinivas K. Gouda vs Karnataka Institute of Medical Sciences & Ors.* reported in (2022) 1 SCC 49 and *Navanath & Ors. vs State of Maharashtra*, reported in (2009) 14 SCC 480.

80. Mr. Sagar Bandyopadhyay, learned advocate appearing on behalf of the appellants in MAT 1387 of 2023, who are also similarly situated with the appellants in MAT 890 of 2023, argues that the judgment impugned delivered on 12.05.2023 is clearly contradictory to the order passed by the Court in another writ petition being *WPA 22228 of 2022* on 3rd April, 2023 refusing to entertain the writ petition and dismissing the same specifically on the ground that the application has been filed after seven years from the date of interview.

81. He contends that the writ petition has been filed in the year 2022 when admittedly the period specified for acquiring training had expired in the month of August, 2017. After expiry of the extended period for acquiring training qualification, the writ petition could not have been preferred claiming appointment since in the year 2022 no legal right of the petitioners stood infringed. Reliance has been placed upon the judgment delivered by the Hon'ble Supreme Court in the case of *Tilokchand and Motichand & Ors. vs. H.B. Munshi & Anr.*, reported in (1969) SCC 110.

82. Drawing our attention to the averments made in the writ petition, Mr. Bandyopadhyay argues that in paragraph 10 the petition, the petitioners had themselves admitted about publication of panel and that as such the Court *suo moto* could not have been arrived at the finding that there was no



proper publication of the panel. In paragraph 13, the TET 2014 examination was branded to be an illegal one but the petitioner themselves appeared in the said TET examination and qualified to participated in the recruitment process. In the wake of such inconsistent and contradictory statements, the Court could not have cancelled the appointment of the 32,000 teachers moreso when their appointments were given in the year 2017 and the judgment was delivered about six years thereafter and when in the midst thereof, a right stood vested upon those teachers appointed in the year 2017 having rendered uninterrupted service for about five years.

83. According to him the averments made in paragraphs 15, 16 and 17 of the writ petition do not stand supported with any material whatsoever. In view thereof, the Court could not have interfered with the recruitment process merely on the rudiments of surmises and conjectures. Prior to filing of the writ petition, not even a single notice of demand was issued by the writ petitioners and the recruitment process was sought to be challenged merely on the rudiments of some representations, the first of which appears to have been submitted about three years after grant of appointment. The delay is totally attributable to the writ petitioners and in view of such remissness and slackness, the writ petition ought to have been dismissed. Neither the panels nor the appointments were challenged and the appointees were also not impleaded. Even no case of infringement of any legal or constitutional right was made out, warranting interference of the Court. In support of the arguments advanced reliance has been placed upon the judgments delivered in the cases of *Jones (supra)*, *Mohammed Abdul Wahid (supra)*, *Meerut Development Authority supra*, *Dhampur Sugar*



(Kashipur) Limited (supra) and *Srinivas K. Gouda (supra)*, *Sadananda Halo & Ors. (supra)* and *Delhi Development Authority vs. Hello Home Education Society*, reported in (2024) 3 SCC 148.

84. Reiterating the arguments advanced in the other appeals, Mr. Sakhya Sen, learned advocate appearing for the appellants in MAT 1874 of 2023, who are similarly situated with the appellants in MAT 890 of 2023, submits that in an adversarial litigation it is for the parties to produce materials in support of their respective claim. The services of the appointees who had put in few years of service cannot be interfered with without recording satisfaction in regard to sufficiency of materials and without coming to any finding that the illegalities committed goes to the root of the matter and a majority of officers conducting the process are found to be a part of fraudulent purpose. Reliance has been placed upon the judgments delivered in the cases of *Bihar State Electricity Board vs. Pulak Enterprises & Ors.*, reported in (2009) 5 SCC 641 and *Inderpreet Singh Kahlon & Ors.*, reported in (2006) 11 SCC 356.

85. He contends that the Court refused to consider the proposition of law in the judgments cited on behalf of the appellants on a plea that the niceties of legal principles are not applicable and that the said judgments are not required to be mentioned at all in the factual situation of the case. The Court ought to have set forth the reasons, howsoever brief, in support of such observations. The '*inscrutable face of a sphinx*' is ordinarily incongruous with a judicial or quasi-judicial performance.



86. According to Mr. Sen, the Court had proceeded on the basis of a perception that the jobs were sold like commodities and there was widespread corruption in the entire recruitment process in which the officials of the Board itself were involved including the then Minister of Education of this State and according to the learned Judge in the *'recruitment scam stinking rats are being smelt'*. A composite perusal of the contents of the judgment would reveal that the formation of opinion was on the rudiments of mere allegations to the effect that there had been a scam and that the recruitment process stood maligned by corrupt practice.

87. Mr. Sen contends that the allegation of scam or corrupt practice cannot be attributed to the appellants being the successful candidates in the recruitment process. All the appellants are untainted teachers and they have applied for participation in the selection process responding to a notification dated 26.09.2016. The contents of the said notification would reveal that the same was issued inviting *online* applications from TET 2014 qualified candidates of West Bengal seeking appointment as primary teachers under different Councils to fill up 42,949 vacancies. For qualifying, a candidate has to complete the age of 18 years *'as an age of first day of January of the year of advertisement and has not completed the age of 40 years on the first day of January of the year of the advertisement'*. All the said candidates have to be TET qualified and the candidates who do not have two years diploma in elementary education in accordance with the National Council for Teacher Education (Recognition Norms and Procedure) would also be eligible to apply subject to the condition that *'those who will*



be appointed without professional qualification shall acquire the professional qualification within a period of two years from the year of appointment’.

88. The perception of scam and corruption of the Court, according to Mr. Sen, had originated from several orders passed in different proceedings. In paragraph 12 of the writ petition itself the writ petitioners stated that *‘recently the TET 2014 scam busted in West Bengal and from several cases lodged by CBI and from several orders passed by this Hon’ble Court, the petitioners came to know that several illegal appointments have been given by depriving the petitioners’.* The several orders are the orders passed in two writ petitions being WPA 9979 of 2022 (*Soumen Nandy vs The State of West Bengal & Ors.*) and WPA 7907 of 2019 (*Ramesh Malik & Ors. vs The State of West Bengal & Ors.*). However, in the said writ petitions the Court directed cancellation of 269 and 94 candidates. All the said candidates were trained candidates and the allegation against them was that though they were unsuccessful in the TET 2014 examination, they were illegally granted grace marks and were empanelled in the purported second panel published on the basis of a purported resolution of the Board dated 30.11.2017. The petitioners therein also alleged that upon granting additional marks, unsuccessful candidates were directly appointed to the post of assistant teacher for primary school without even going through the selection procedure towards interview/aptitude test. The said 269+94 candidates, whose appointment were ultimately cancelled by the Court in those writ petitions, did not apply for participation in the recruitment process initiated *vide* notification dated 26.09.2016. In support of such contention Mr. Sen has placed strong reliance upon the contents of the order dated 23.12.2022



particularly paragraphs 4 to 13 wherein it was *inter alia* stated that the Board had miserably failed to explain the actions of its official including its President. In paragraph 7 it was recorded that ‘*Mr. Dasgupta has demonstrated from a laptop computer the names of all 42,949 candidates who qualified in TET 2014 (published by the Board) and the respondent was directed to find out his name from those 42,949 candidates and after checking from the computer using search button the respondent has stated that his client’s name is not there out of those 42,949 candidates*’. In the said conspectus, Mr. Sen argues that the corruption or scam, if any had been pertaining to the selection of the candidates (269+94), who were not the applicants in the selection process in which the appellants were the participants. The said candidates emerged to be successful in TET 2014 upon grant of grace marks and were consequently empanelled in an additional panel. Subsequent thereto, the candidates were directly appointed to the post of assistant teacher in different primary schools. It is in the backdrop of such circumstances, the Court was of the opinion that fraud had been practised in the selection process in which the appellants were the participants. Thus, the appellants can be easily segregated as untainted candidates and their appointment cannot be cancelled. The scam, if any, was sought to be linked up with the recruitment process pertaining to the appellants. The Court made sweeping observations attributing *mala fides*, corruption and under hand dealing but the same were not at all justified by the records. Even a point which is ostensibly a point of law is required to be substantiated by facts. The allegations of *mala fides* are more easily made than proved. The law casts a heavy burden on the persons



alleging *mala fides* to prove the same on the basis of facts. Reliance has been placed upon the judgments delivered in the cases of *State of M.P and Others vs Nandalal Jaiswal and Others*, reported in (1986) 4 SCC 566, *Bharat Singh and Others vs State of Haryana and Others*, reported in (1988) 4 SCC 534 and *Ratnagiri Gas and Power Private Limited vs RDS Project Limited and Others*, reported in (2013) 1 SCC 524.

89. Mr. Sen contends that in paragraph 12 of the present writ petition it was alleged by the writ petitioners that a person named Mr. 'Y' having Roll No.070064796 was empanelled by the Board and '*it also proves that huge corruption took place*'. Such averment is absolutely incorrect in as much as a perusal of the judgment delivered in the case of *Monika Das & Ors. vs State of West Bengal & Ors.* being WP 6894 (W) of 2017 would reveal that 'Y', as referred to, is actually Rohan Singha and that he was empanelled and duly appointed on the basis of said roll number under the name 'Y' since his name was initially unavailable. Thus, the averments made in paragraph 12 do not reflect the correct state of affairs and the Court has been misled through suppression of material facts.

90. Mr. Sen argues that in paragraph 13 of the writ petition it has been alleged that candidates, namely, Proloy Sarkar, Dhiraj Bandopadhyay, Biswajit Barman and Sujay Sarkar were not empanelled but they were called by the department for verification of documents. Such averment is absolutely incorrect in as much as all the said persons were trained candidates, as would be explicit from the notification dated 28.11.2022. As regards the notices referred to in paragraph 11 of the writ petitions, Mr. Sen



submits that all the said notices were pertaining to trained candidates and the same have no manner of application in respect of the appellants since the said notices are pertaining to a subsequent selection process.

91. Mr. Sen contends that the issue of aptitude test was argued by the writ petitioners only after the breakup of marks was disclosed by the Board in terms of the order passed in the writ petition. After such publication, the writ petitioners sought to argue that persons who scored more marks in academic qualifications were given less marks in interview and aptitude test with the intent to exclude them from the zone of appointment. However, such contention is also fallacious in as much as the participation was from an age group of 18 years to 40 years. All were clubbed together in a single selection process and as a natural consequence thereof it cannot be ruled out that there would be high difference of marks in the academic qualifications of the candidates.

92. Placing reliance upon the judgment delivered in the case of *Benny T.D and Others vs Registrar of Cooperative Societies* reported in (1998) 5 SCC 269, he argues that compliance of the principles of natural justice cannot be dispensed with in any manner more so when the vested right of an individual is attempted to be interfered with and that too on the basis of vague assertions which do not stand supported with detailed particulars. Referring to the judgment delivered in the case of *State of Rajasthan vs Ucchab Lal Chhanwal*, reported in (2014) 1 SCC 144, Mr. Sen asserts that the appellants cannot knuckle under the directions in the impugned judgment when it has been delivered behind their back adversely affecting them.



93. He further submits that the point as regards non-publication of panel, as urged by the writ petitioners, is not acceptable inasmuch as Rule 8(5) stipulates that panel is prepared Council-wise and is affixed at every office of the Council office simultaneously with the publication of the result and such procedure was duly followed. Such fact also stands admitted in the pleadings in the case of *Md. Rabiul Sheikh & others*. The Court cannot find fault with such procedure upon adding any further criterion in the Rules. The statute needs to be read in its totality and no part of a statute and word of a statute can be construed in isolation and words can neither be added nor substituted in the statute. Reliance has been placed upon the judgment delivered in *Allahabad University etc vs Geetanjali Tiwary (Pandey) and Ors.*, reported in 2024 SCC OnLine SC 3776. The decision rendered on grounds not contended by the parties and the relief not claimed, is not sustainable. Reliance has been placed upon the judgment delivered in the case of *Trojan and Company vs RM.N.N Nagappa Chettiar* reported in (1953) 1 SCC 456.

94. Mr. Anindya Lahiri, learned senior advocate appearing for the appellants in MAT 1873 of 2023, who are similarly situated with the appellants in MAT 890 of 2023, submits that all the appellants upon emerging to be successful in TET, 2014 examination participated in the selection process initiated in the year 2016 as untrained candidates. They emerged to be successful and were appointed to the post of assistant teachers in primary schools under different district primary school Councils. Upon such appointment, the appellants completed their training as per the provisions of Rule 6 (3) within a period of two years from their respective



dates of appointment. The notification dated 26.05.2015 also provided that the candidates who had emerged to be successful in the earlier TET of 2012 would also be permitted to apply for participation in the recruitment process of 2016 upon updating their training qualification in the OMR sheet in the examination halls. The appellants herein were, however, TET, 2014 qualified like the writ petitioners. It is a well settled proposition of law that a person cannot approbate and reprobate. Having emerged to be successful in TET, 2014 the writ petitioners are thus estopped from challenging the said examination.

95. Mr. Lahiri submits that in the said judgment at paragraph 14, the Court observed that *'the propriety of the TET, 2014 examination would still require enquiry in these writ petitions, irrespective of the proceedings before the Division Bench'*. From such observations it is thus explicit that the alleged malpractices in the said TET, 2014 examination is still under consideration in several pending writ petitions. The subject matter of challenge in the said writ petition (*In Re-Santanu Sit & Ors.*) is similar to the writ petitions preferred by *Soumen Nandi* and *Ramesh Malik*. The judgment impugned had been delivered being oblivious of such facts.

96. Mr. Lahiri had also referred to an order dated 7th July, 2023 passed by the Hon'ble Supreme Court in the case of *Tuhin Kumar Haldi & Ors. vs Priyanka Naskar & Ors.*, as annexed at page 54 of the judgment compilation. By the said order the Hon'ble Supreme Court had set aside the impugned interim order of the Division Bench to the extent of issuance of the direction to conduct the selection afresh. By the said order it was also directed that



all the similar writ petitions be expeditiously decided by the High Court being MAT 899 of 2023, MAT 874 of 2023, MAT 873 of 2023 and MAT 890 of 2023 or, any other case (if any) filed by the aggrieved persons assailing the order of the learned Judge, as expeditiously as possible. Subsequent thereto, in the cases of *Soumen Nandi* and *Ramesh Malik*, the Hon'ble Supreme Court had also stayed the said writ proceedings.

97. He further submits that in the present appeals though several applications for addition of party had been filed only 8 (eight) applications have been allowed by orders dated 19.05.2023, 04.09.2023 and 26.09.2023. In the said applications, facts have been distorted with an intent to mislead the Court. Marks obtained by several candidates appearing in a particular medium have been compared with candidates belonging to different medium.

98. Mr. Lahiri further argues that in the writ petitions the petitioners had not challenged the recruitment process of 2016. Some averments have, however, been made to the effect that the TET, 2014 examination was not conducted in consonance with the statute. However, the writ petitioners are estopped from challenging the said TET, 2014 examination since they have all qualified in the same. A composite perusal of the averments would reveal that the writ petitioners had primarily contended that they have not been extended the benefits as made available to untrained candidates, who are similarly situated with them. Such allegation of discrimination is not fortified with appropriate materials on records. In the recruitment process of 2016, about 1,25,000 applications were submitted for participation in



respect of 42,949 vacancies. No material was forthcoming even to arrive at a *prima facie* satisfaction that the Board and its functionaries have adopted corrupt practices, however, the Court decided to be the prosecutor and to examine some of the writ petitioners and interviewers appointed by the Board. In the said conspectus, the learned Court erred in taking an extreme decision of cancelling the entire process. Such direction is absolutely unwarranted and unnecessary and is based on no evidence. The decision arrived at is absolutely irrational and unsustainable in law. In support of the arguments advanced, reliance has been placed upon the judgment delivered in the case of *Union of India and Others vs Rajesh P.U. Puthuvalnikathu and Another*, reported in (2003) 7 SCC 285.

99. Mr. Majumder, learned advocate appearing for the appellants in MAT 1615 of 2023, who are similarly situated with the appellants in MAT 890 of 2023, submits that all the appellants are from district of Jalpaiguri. None of the writ petitioners nor the interviewers who were questioned by the learned Court are from the district of Jalpaiguri. The appellants upon emerging to be successful in TET, 2014 examination participated in the selection process as untrained candidates and were appointed in the month of April, 2017 and thereafter in strict consonance of provisions of Rule 6(3) they had all completed their training qualifications by 30th March, 2019. The writ petitioners, however, have approached this Court in the year 2022 and at that juncture the writ petitioners could not have claimed themselves to be eligible to even participate in the selection process.



100. He further argues that the writ petition was a chance litigation since having failed to be successful in the selection process after participation, the writ petitioners sought to challenge the same after about five years. The orders passed directing CBI enquiry and Enforcement Directorate enquiry were in respect of certain appointments made directly and the same could not have been cited as a ground of challenge since the petitioners therein did not even face the selection procedure prescribed under the recruitment rules. Such orders directing investigation raised a severe hue and cry and parallel media trial proceeded. The media reportage weighed with the Court while issuing direction towards cancellation of appointment of about 26,000 appointments of teachers in the selection process pertaining to assistant teachers in secondary schools. In the said conspectus, media also raised a question as to whether appointment of 32,000 primary teachers was justified. By media reports, a subjective opinion was highlighted, doubting the assessment made while appointing primary teachers. Such media reportage was the cause for derailment of justice. In similar facts and circumstances the Hon'ble Supreme Court had deprecated such media trial as would be explicit from the judgments delivered in the cases of *People's Union for Civil Liberties and Another vs State of Maharashtra and Others*, reported in (2023) 9 SCC 186 and *R. K. Anand vs Registrar, Delhi High Court*, reported in (2009) 8 SCC 106 observing *inter alia* that the media reports often create an atmosphere of public hysteria akin to a lynch which not only makes a fair trial nearly impossible but also generates a public perception that appointments have been provided on the rudiments of corrupt practices. In the present case, no material was brought on record to



establish any nexus of the appellants with any money trade or corrupt practices. However, the Court itself acted as a prosecutor and called for witnesses and on the basis of the answers to the questions put by the Court, appointment of 32,000 teachers was cancelled in an arbitrary manner. Reliance has been placed upon the judgment delivered in the case of *Krishna Datt Awasthy vs State of MP*, reported in (2025) SCC OnLine Supreme Court 179 in support of the proposition of law that Court in its writ jurisdiction do not interfere with the selection made by expert bodies upon assessing the comparative merits of the candidates.

101. Mr. Siddhartha Banerjee, learned advocate appearing for the appellants in MAT 1368 of 2023 and MAT 913 of 2023, who are similarly situated with the appellants in MAT 890 of 2023 submits that in the first appeal the appellants are mostly teachers and in the second appeal the appellants are para teachers. The notified number of vacancies were 42,949 and the recruitment rules provides that 10 % of the total vacancies as prescribed under the recruitment rules is for para teachers. Thus, the number of vacancies for para teachers was 4294 and actually only 2770 para teachers were appointed. In view of such ratio of actual vacancies and appointment made it would be explicit that the appellants in MAT 913 of 2023 were without any contenders.

102. Drawing our attention to Notes 7 and 8 of Rule 6, Mr. Banerjee submits that at the very inception the State Government is required to earmark up to 10 % of the total posts for the candidates belonging to para teachers and that in respect of the para teachers there is no aptitude test.



However, for teaching experience 5 marks were allotted. In the backdrop of such statutory provisions, the finding of the Court that no aptitude test was held would have no effect as regards of selection of para teachers.

103. Drawing our attention to the judgment impugned, Mr. Banerjee argues that there was no finding as regards appointment of para teachers. The Court also made it clear that the writ petitioners have no grievance in respect of the candidates, who were trained at the time of recruitment and were given appointment in the 2016 recruitment process. The fact that the appointment of para teachers was not challenged in the writ petition was argued at the interim stage before the co-ordinate Bench of this Court and in the order dated 19.05.2023 it was directed that the Board should be given an opportunity to clarify its stand as to whether the para teachers come within the ambit of the judgment impugned.

104. Mr. Banerjee further contends that a composite perusal of the RR, 2016 would reveal that at the very inception, the authorities were required to segregate 10 % of the notified vacancies for para teachers as a separate class. The para teachers were called for verification and thereafter for viva voce and interview. In view of such segregation, it cannot be contended that the para teachers would also come within the selection process prescribed for the untrained candidates, who had applied for the remaining 90 % of the vacancies and for the said category, the rules provided for an aptitude test. The Court delved into the facts to ascertain as to whether any aptitude test was held appropriately. Even if such challenge succeeds, the para teachers



would not be affected in any manner since for them there was no provision for aptitude test.

105. Mr. Banerjee, reiterated the arguments, as advanced, earlier that the Court cannot act as a prosecutor and in exercise of the powers under section 165 of IE Act, the Court could not have picked up candidates selectively from amongst the writ petitioners. It is well settled that in adversarial litigation, the learned presiding Judge cannot assume the role of a referee or an umpire. In support of such contention reliance has been placed upon the judgment delivered in the case of *Jones (supra)* which was subsequently followed by a co-ordinate Bench of this Court in the case of *West Bengal Board of Primary Education and Others vs Ramesh Malik and Others*, reported in 2022 SCC OnLine Cal. 3991.

106. Mr. Banerjee further argues that in any selection process the examining authority cannot proceed on the basis that persons who secure higher marks in academic qualification would also secure high marks in viva voce/interview. The marks in *viva voce* cannot be construed to be proportional to the academic marks. The Court had expressed doubt and went to the extent of cancelling appointment of 32,000 teachers primarily on the rudiments of an erroneous perception that candidates who secure more marks in academics can never get less marks in viva voce. Thus, on the basis of mere surmises and conjectures, the writ Court had conducted a roving enquiry and had struck down the appointment of 32,000 teachers in a most arbitrary and illegal manner without even following the principles of natural justice.



107. Mr. Chakraborty, learned advocate appearing for the appellants in MAT 2188 of 2023, who are similarly situated with the appellants in MAT 890 of 2023, submits that the procedure of selection as provided under Rule 8, earmarks 15 marks for academic qualifications, 5 marks for TET, 5 marks for extra-curricular activities and 10 marks for viva voce and interview/aptitude test. Thus, a candidate having very good academic records and having scored high marks in TET cannot be ousted even if he/she secures less marks in viva voce or interview/ aptitude test. On the converse if a candidate scores less marks in academics and TET would in all probability fail to come within the zone of appointment even if he/she secures high marks in viva voce or interview/aptitude test. In view thereof, disproportionate marking under different heads unless smeared with any vice of favouritism cannot constitute a ground for interference of a writ Court exercising discretionary jurisdiction. Such argument as advanced before the learned Judge was glossed over.

108. He further submits that a perusal of the impugned judgment would reveal that the Court has proceeded on the rudiments of a perception that as investigation by CBI is in progress, the selection of primary teacher cannot be said to be unaffected by any corrupt practices. Thus, on the basis of mere suspicion, appointment of 32,000 teachers had been cancelled.

109. Mr. Ray, learned advocate appearing for the appellants in MAT 1173 of 2023 adopts the arguments, as advanced, by the learned advocates appearing for the appellants in other appeals.



110. Mr. Tarun Jyoti Tewari, learned advocate appearing for some of the writ petitioners/respondents in MAT 873 of 2023 and some of the applicants in CAN 5 of 2023, CAN 9 of 2023, CAN 17 of 2024, CAN 19 of 2024 and CAN 35 of 2025, who are similarly situated with the writ petitioners, argues that fairness, transparency, accountability in public service recruitment process ensures public confidence in the same. The fact scenario in the instance case would reveal that there had been widespread flaws and malpractices in the recruitment process of the year 2016. The RR, 2016 provides for earmarked and non-earmarked vacancy as would be explicit from the provisions of Note 7 of Rule 6 and Rule 8(5). However, the vacancies have been jumbled together and filled up in a whimsical and arbitrary manner. It would be explicit from records that the Board had proceeded in a manner which would benefit particular persons at the cost of the authorities. Large scale irregularities and biasness in decision making process are apparent on the face of the records and for arriving at such finding the Court is not required to conduct any roving enquiry. In support of such contention the attention of this Court had been drawn to several documents in the compilation placed in course of hearing of the writ petition.

111. According to Mr. Tewari, there had been a scam and the entire recruitment stands maligned by corrupt practices. Pleadings to that effect would stand reflected from the averments made in paragraph 10 to 18 of the writ petition. As such, it cannot be argued that there was no pleading in the writ petition as regards the scam in the entire recruitment process. The averments in the writ petition clearly reveal that the authorities have acted *mala fide* and had proceeded in a biased manner.



112. Drawing our attention to the provision of Rule 2(l) and Rule 7 and Rule 8(5) of RR, 2016, Mr. Tewari argues that no panel whatsoever had been seen by any of the participants in the recruitment process. The mode and manner prescribed towards preparation and publication of panels in respect of the districts had admittedly not been followed by the Board. The ultimate victims of such irregularities had been the writ petitioners. An irregularity of such nature falls in the category of offences which travel far beyond private wrong. It has the potentiality to usher in a severe crisis in the educational structure of the State. In the event such blatant infirmities are left untouched, it would create a concavity in the solemnity which is expected in educational matters.

113. He further submits that Rule 7(1) of the RR, 2016 initially provided that the Board shall constitute selection committee within the jurisdiction of the Council. The said rule was subsequently amended *vide* notification dated 23.09.2017 and the jurisdiction of the Board stood enhanced providing *inter alia* that the Board shall constitute the selection committee within the jurisdiction of the Board.

114. He further argues that it is not a case that a bogey of busy bodies has attempted to blackmail adversaries through frivolous invocation of Article 226. The writ petitioners were totally unaware about the large-scale malpractices in the recruitment process at the time of participation in the TET 2014 examination. It is only after the Board disclosed the breakup marks of the participants on 28.11.2022, the illegalities stood disclosed. In the midst thereof, the present writ petition was affirmed on 12.09.2022.



Thus, there had been no delay in preferring the writ petition, as urged, on behalf of the appellants.

115. He contends that it would be surprising to note from the documents annexed at pages 123 to 134 of the paper book that the entire responsibility towards preparation of the panel, printing of OMRs answer sheets, scrutiny/verification of the testimonial of the candidates and authority to conduct viva voce tests was conferred upon a private agency in derogation to the provisions of the RR, 2016 and conducted with an intent to manipulate the entire recruitment process. The authorities cannot shy away from the fact that the said private agency had been instrumental towards grants of marks in viva voce and such act had maligned the entire recruitment process. The corrupt practices are inextricably bound with the manner and mode in which persons were given appointment as primary teachers. In the said conspectus, the Court rightly cancelled the appointment of untrained candidates. To buttress such contention, reliance has been placed upon several documents annexed to the compilation of the application being CAN 9 of 2025 including a notification dated 23.05.2023 and the replies to the applications under the Right to Information Act, 2005.

116. He argues that the candidates under reserved category, who secured more marks than the unreserved category candidates, would automatically be brought within the unreserved category and the resultant vacancies in the reserved category would be filled up by candidates in queue in the reserved category. There are several instances where the marks of the empaneled candidates under unreserved category are much lesser than the



marks obtained by the empaneled candidates in the reserved categories but they were not placed in the reserved categories and as a consequence thereof, thousands of reserved category candidates could not be accommodated. Such large-scale irregularities and illegalities could not have been without any purpose. The object was to provide employment, as rightly observed by the Court, at the cost of monitory consideration. Due to such appointment of ineligible and incompetent teachers, the public at large had been the sufferers since their children in primary schools would be the recipients of such service of incompetent teachers. The Court has thus rightly observed, as has been criticized by the learned advocates appearing for the appellants, that niceties of legal principles would have no manner of application *'in the face of the magnitude of stinking in the recruitment exercised of 2016 conducted by the Board'*.

117. He submits that Rule 11 of the RR, 2016 specifically provides that the statutory provision for reservation, relaxation of age and other concessions required to be provided for the SC, ST, OBC and specifically handicapped candidates have to be mandatorily adhered to. However, the facts of the case clearly reveal that such mandatory reservation provisions have been flouted and the Board had committed fraud which goes to the root of the matter. Fraud is considered as an anathema in judicial proceedings. Such exercise of fraud disrupts the golden thread which runs through the whole fabric of the Constitution. Equality is antithetic to arbitrariness and is violative of Article 14 of the Constitution of India.



118. Mr. Tewari contends that the writ petitioners had no materials at the time of filing of the writ petition to establish that no aptitude test, as defined under the RR, 2016, was ever held. The break-up chart in the compilation would clearly reveal that in respect of thousands of candidates, the marks obtained in viva voce/interview have been simply pasted in the column of the aptitude test. Thus, in fact, no aptitude test was held and the provision of aptitude test in the RR, 2016 was nothing but an eyewash. Taking advantage of the marks allotted for aptitude test (5) marks, the selectors have chosen their own candidates. A shocking instance would stand revealed upon perusal of pages 411 and 412 of the paper book. The said documents would reveal that three candidates were recommended by one working President of TMC at Lataguri, Jalpaiguri and the said candidates were brought within the zone of consideration by granting almost full marks in aptitude test.

119. Drawing our attention to page 222 of the paper book, Mr. Tewari submits that the authorities entrusted to conduct the selection had as per their whims prepared additional panel lists of the candidates and brought ineligible and incompetent persons within the zone of consideration for appointment.

120. He further argues that Note 5 of Rule 8(3) of RR, 2016 provides a chart towards grant of marks towards teaching experience applicable to para teachers. The said marks as provided are not in fraction, however, marks towards such teaching experience had been provided in fraction to some candidates. Thus, the persons who have been indicated in the para teacher



category were not para teachers. The vacancies had been deliberately jumbled up with an intent to grant appointment to the favoured candidates. In view thereof, the Court had rightly observed that *'the Board and its officials including its former President (who is in custody after arrest by Enforcement Directorate for transaction of huge money in the recruitment procedure) conducted the whole affair like an affair of a local club and now it is coming to light by investigation of Enforcement Directorate that the jobs for primary school teachers were actually sold to some candidates who had the money to purchase the employment'*.

121. Drawing our attention to the provisions of the RR, 2016 particularly, Rule 2(b), Rule 2(c), Rule 2(l), Rule 2(s), Rule 4(5) and Rule 5(4), Mr. Kumar Jyoti Tiwari, learned senior advocate appearing for the applicants in CAN 5 of 2023 filed in connection with the appeal being MAT 873 of 2023 submits that the untrained teachers have not been appointed in accordance with the provisions of the Act and the Rules. No aptitude test was held and there was no publication of the panels. In view of such flagrant violation of the RR, 2016 the entire recruitment process is liable to be cancelled.

122. A perusal of Rule 4 in its totality would reveal that the Board, with the prior approval of the State Government, would have the authority to engage any specialized agency *'for the purpose'*. The said phrase is attributable to *'information regarding vacancies'* and that as such specialized agency even if appointed would have had no jurisdiction to conduct the selection process. It would be evident from a composite perusal of Rule 2(l), Rule 4(5)(c), Rule 7(1) that the Board was the only authority to prepare the



panel. Rule 8(5) provided how the selection committee shall prepare separate council-wise panel. Thus, the selection committee appointed by the Board shall prepare the panel and it shall be published by the Board. The procedure towards preparation of such panel has been elaborated in Rule 8(5) which, *inter alia*, provides for segregation of the eligible candidates applying for earmarked vacancies from the other successful candidates. The publication of panel for non-earmarked vacancies would be district wise and category wise. There would be a general panel of candidates of all categories and thereafter there shall be a panel category-wise strictly according to descending order of merit as per existing vacancies medium-wise. The Rules also provide for a panel for exempted category, ex-servicemen and physically handicapped in a Council. In the Rules it has been further provided that an alternative set of panels of selected candidates for each category in a Council serially according to descending order of merit as per existing vacancy medium-wise shall be prepared. The purpose for preparation of such alternative panel had been detailed in Notes 1 and 2 of Rule 8(5)(b). The Rules also provided for preparation of an additional panel. However, in spite of such mandatory procedure laid down under the Rules, there had been no such preparation of panels and/or publication of the same. Such blatant infirmities weighed with the learned Court for exercising discretion in favour of the writ petitioners. In support of such contention reliance has also been placed upon the provisions of Rules 9, 10 and 11 of RR, 2016.

123. Mr. Tewari argues that the recruitment process had been conducted in a totally unfair manner and on the diktat of a political party. The records clearly reveal that the writ petitioners were much better qualified than the



persons who have been given appointment. Such illegal appointments would affect the backbone of our society since illegal appointees would be given the responsibility of teaching the innocent students, who have no concern with the illegalities of the selection. In support of such contention reliance has been placed upon the judgment delivered in the case of *Tanmoy Nath and Others vs State of Tripura and Others*, reported in 2014 SCC Online Tri 291.

124. Drawing our attention to the orders passed by the Court on 17.01.2023, 06.02.2023, 21.02.2023 and 05.04.2023 annexed at pages 428 to 440 of the paper book, Mr. Kumar submits that the Court rightly exercised its jurisdiction in terms of section 165 of the IE Act to elicit truth and to act in the interest of justice. In order to discover or obtain proper proof of the relevant facts, the Court can ask the question to the parties concerned and there is no infirmity in such process as adopted. It would be explicit from the answer given by the President of the Board, as recorded in the order dated 05.04.2023 that he had knowledge that the result of the recruitment process had been compartmentalized. In other words, separate groups were prepared for granting undue favour and in view thereof, the Court rightly held that the jobs were sold by the Board, moreso when the Board chose not to cross-examine the persons who were questioned by the Court. Reliance has been placed upon the judgment delivered in the case of *Ritesh Tewari and Another vs State of UP and Others*, reported in (2010) 10 SCC 677.

125. Mr. Tiwari contends that the Board had miserably failed to establish that it had published the panels and in the absence of such publication and



denial to bring the panels within public domain only leads to the irresistible conclusion that the recruitment process was conducted in a clandestine manner applying different yardsticks in respect of different groups of candidates. Such arbitrariness on the part of an instrumentality of the State was rightly interfered with by the Court. In support of such contention reliance has been placed upon the judgment delivered in the case of *National Fertilizers Limited and Others vs Somvir Singh*, reported in 2006 (5) SCC 493. The Board had also miserably failed to disclose the specific dates on which the respective panels lost their lives. To that effect only a vague statement had been made in the affidavit-in-opposition at page 385 of the paper book that '*the panels pertaining to the 2016 recruitment process expired on different dates between 30.01.2018 to 22.09.2020*'. In paragraph 9 of the said affidavit-in-opposition at page 389 of the paper book it was categorically admitted by the Board that '*in terms of the directions passed by this Hon'ble Court, the answering respondents on 28. 11. 2022 did publish the break-up of marks for candidates who were recommended from the 2016 recruitment process*'. The illegalities perpetrated thus came within the knowledge of the petitioners only after disclosure of such break-up of marks. In view thereof, there was in fact no delay in preferring the writ petition. The Court is not deprived of its jurisdiction to entertain petition under Article 226 merely on the ground of delay or on the ground that the relief claimed involved disputed question of facts. It is true that the jurisdiction exercised by a writ Court is discretionary but the discretion has to be exercised on sound judicial principles. In view of the enormity of malpractices, the Court rightly entertained the writ petition and in such cases of fabrication and



malpractices question of issuance of any notice to the beneficiaries of such malpractices has been frowned upon by the Court as a useless formality. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Gunwant Kaur (Smt.) and Others. vs Municipal Committee, Bhatinda and Ors.*, reported in 1969 (3) SCC 769, *Bishwa Ranjan Sahoo and Ors. vs Sushanta Kumar Dinda and Others.*, reported in 1996 (5) SCC 365, *Ashok Kumar Sonkar vs U.O.I and Others.*, reported in 2007 (4) SCC 54, *U.O.I and Another vs Raghuwar Pal Singh*, reported in 2018 (15) SCC 463, *Natwar Singh vs Director of Enforcement and Another.*, reported in 2010 (13) SCC 255 and *State of West Bengal vs Baishakhi Bhattacharya (Chatterjee) and Others.*, reported in 2025 SCC Online SC 719.

126. He argues that it is now a well-entrenched principle of law that those members belonging to the reserved category who got selected in the open competition on the basis of their own merit have a right to be included in the general list/unreserved category and not to be counted against quota reserved for SC/ST/OBC. It is evident from the records that thousands of candidates belonging to reserved category were admittedly not brought within the general/unreserved list and as a consequence thereof, thousands of candidates in reserved category have been ousted from the zone of consideration. Such illegality has maligned the entire recruitment process. Reliance upon the judgment delivered in the case of *Samta Aandolan Samiti & Another vs Union of India & Ors.*, reported in 2014 (14) SCC 745.

127. Mr. Soumya Majumder, learned senior advocate appearing for some of the applicants in the application being CAN 5 of 2023 filed in connection



with the appeal MAT 873 of 2023, who are similarly situated with the writ petitioners, submits that it was incumbent upon the Board to conduct the selection process in strict consonance with the provisions of the RR, 2016. Rule 8 specifically prescribed the procedure of selection. It details the stages how panels are required to be prepared. Indisputably, there had been no such publication of panels. Dealing with such allegation in the writ petition, the then President of the Board had affirmed an affidavit-in-opposition on 06.02.2023 stating in paragraph 9 that *‘in exercise of delegated legislative power by the School Education Department, Government of West Bengal never mandated the answering respondents to publish in public domain the panel, merit list, category-wise merit list, break- up of marks, rank of candidates’*. It was further stated that *‘the answering respondents cannot be faulted, not to have caused publication of the above in public domain’*. On the teeth of such revelation what emerges is that no panel was ever published by the Board. In the absence of such publication of panel the Board could not have issued appointment letters. Thus, in a clandestine manner only favoured candidates were granted appointment. In the said conspectus, the sole conclusion which can be drawn is that the jobs were sold as observed by the Court in the impugned judgment.

128. Mr. Majumder further submits that he is also appearing for the applicants in CAN 6 of 2023 and CAN 7 of 2023 comprising of persons who preferred separate writ petitions which were adjourned *sine die* due to pendency of the writ petition being WPA 21187 of 2022. Drawing our attention to a memo dated 11.01.2023 he submits that prior to publication of the breakup of marks, as directed by the Court on 23.11.2022, the



petitioners had no knowledge about the illegal and discriminatory acts of the Board. In view thereof, it cannot be urged that the applicants had approached the Court belatedly. It would also be explicit from the order passed by the Hon'ble Appeal Court at an interim stage on 19.05.2023 that '*admittedly the writ petitioners accrued a cause of action with the discovery of fresh materials placed by the Board on 28.11.2022*'. A cause of action is continuing when the act alleged to be wrongful is repeated over a period of time and consequently extending the limitation period. Cause of action is a bundle of facts giving rise to a legal right. Unless there is a complete cause of action, limitation cannot run. In the writ petition being WPA 21187 of 2022, a tabular chart of 139 candidates was prepared and upon perusing the same, the Court by an order dated 22.12.2022 directed the Board to come with particulars in a tabular form of the marks obtained by the last empanelled candidates of different categories and different medium of all districts on 10.01.2023. From the breakup of marks disclosed by the Board it would appear that there had been rank jumping and candidates who scored lesser marks from the applicants were offered appointment. In view thereof, there is no infirmity in the judgment impugned directing cancellation of appointment of persons who were the beneficiaries of an illegal selection process.

129. Referring to the averments made in the affidavit-in-opposition affirmed by the President of the Board pursuant to the order dated 17.01.2023, Mr. Majumder submits the techniques and tools as discovered in the said affidavits were not used by the interviewers for assessing the aptitude of prospective primary teachers. In paragraph 12 of the said



affidavit also it has been categorically stated '*no distinctive record which was kept and maintained in such recruitment process, wherefrom it can be ascertained as to which interviewer(s) took the interview/viva voce/aptitude test of a given candidate, at a given centre, in a particular room number*'. In the said affidavit the incumbent also took a plea that as there was no methodology in the RR, 2016, it was not obligatory on the part of the examining body to maintain the records.

130. He further submits that after interview, no question was put to test the aptitude and in fact no aptitude test was conducted and such infirmity maligns the entire recruitment process. There is a serious dispute as to whether the aptitude test was at all conducted by the Board. In view thereof, the Court may direct the Board to publish a fresh panel on the basis of the marks obtained by the untrained candidates excluding the marks allotted to them in the purported aptitude test. Such exclusion of the aptitude test marks cannot in any manner prejudice the trained candidates who have already been appointed since they were awarded 15 marks for training.

131. Mr. Bikash Ranjan Bhattacharya, learned senior advocate appearing for the applicants in CAN 2 of 2023 and CAN 3 of 2023 and other applications, as recorded in the order dated 11.11.2025, who are also similarly situated with the writ petitioners in WPA 21187 of 2022 submits that the Board was entrusted to conduct the recruitment process in terms of the RR, 2016 as framed. Even a sole instance of illegality would be sufficient to malign a recruitment process. In such circumstances, it is the duty of the writ Court to defend Constitutional morality and to strike down such



recruitment process. Elaborating his arguments. Mr. Bhattacharya submits that there had been innumerable instances of rank jumping and grant of appointment only to a favoured few in a very clandestine manner without even publication of the panels, as mandatorily required under the RR, 2016. There had thus been a systemic fraud which goes to the root of the recruitment process. No panel was published as mandatorily required under the rules. The same were kept outside the public domain. No material had been disclosed on the basis of which the candidates were given appointment. Such appointments were given discriminatorily and as per the whims and fancies of the Board functionaries.

132. Drawing our attention to pages 126 to 153 of the spiral binding submitted by the writ petitioners, Mr. Bhattacharya submits that for conducting the TET examination of 2014, a private body was selected and given quotation for printing, delivery of OMR, answer script and for processing of results. There had been no disclosure of the procedure as to how one '*S. Basu Roy and Company*' was selected. There was no tender for engagement of any such private authority which raises serious question as to the integrity, sanctity and validity of the entire recruitment process. It would be surprising to note from the documents annexed to the said spiral binding that such private agency was also authorised for scrutiny/verification of OMR, the testimonials as well as viva voce sheets of the applicants and for preparation of panels as per rules for which there had been correspondence with a '*Confidential Processor, West Bengal Board of Primary Education*' even prior to publication of the advertisement on 26.09.2016. From such sequence of facts, it would be explicit that the



elements of fraud seeped into the entire recruitment process. Faced with such questions, the President of the Board conveniently stated in the affidavit affirmed on 24th January, 2023 that he had assumed charge as the President of the Board only in the year 2022 and that '*from records available in my office, it is evident that in the 2016 Recruitment process marks were given by the selectors both in Interview as also in Aptitude Test to the candidates*'. The President had thus shirked his responsibility upon feigning ignorance about the entire procedure as adopted while conducting the 2016 selection process. Even if the burden of proof does not lie on a party, the Court may draw an adverse inference if the competent authority withholds important documents in his possession which can throw light on the facts at issue. The bottom-line of the purpose of the IE Act is to adopt a procedure that helps to facilitate justice and ultimately what is required is to unearth the truth to prevail. In the instance case the writ petitioners/applicants have been able to establish the truth of the facts asserted and accordingly a rebuttable presumption of law exists in favour of the writ petitioners and the burden of rebutting such presumption shifts to the functionaries of the State and the Board. Reliance has been placed upon the judgments delivered in the cases of *Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. and Ors.*, reported in (2006) 6 SCC 94 and *Mohd. Abudullah Azam Khan Vs. Nawab kazim Ali Khan*, reported in (2022) 20 SCC 233.

133. Drawing our attention to the averments made in paragraphs 9 to 12 of the writ petition in MAT 873 of 2023, Mr. Bhattacharya argues that the entire selection process of 2016 was vitiated and maligned due to the acts of



the State and the Board functionaries. Deficiencies in drafting pleadings cannot be a secret weapon to non-suit a party. The documents annexed to the spiral binding clearly reveal instances of illegalities such as rank jumping and grant of appointment only to a favoured few. The specific allegations as regards non publication of panel had also not been controverted in the affidavit in opposition filed on behalf of the Board. In the said affidavit affirmed there is also no specific assertion that aptitude test was conducted in strict consonance with the RR, 2016. On the other hand in paragraph 12 of the said affidavit it has been admitted that *'no distinctive record which was kept and maintained in such recruitment process, wherefrom it can be ascertained as to which interviewer(s) took the interview/viva voce/aptitude test of a given candidate, at a given centre in a particular room number'* and that *'in the RR of 2016 Rules no methodology was suggested that such details as regards selection are required to be maintained by the examining body'*. In the guise of such vague averments the President of the Board had refused to bring material documents on record pertaining to the interviews/viva voce/aptitude test. From such facts it is explicit that the selection process was conducted in a clandestine manner and appointment was given to ineligible candidates. Such lack of transparency in the selection process was rightly interfered with by the Court. By not following the RR, 2016 the authorities had practised fraud on statute which had led to gross illegalities in the selection process.

134. Referring to the memo dated 9/13.04.2015 annexed at page 95 of the writ petition and RR, 2016 and the advertisement dated 26.09.2016, Mr. Bhattacharya argues that the relaxation granted to the State of West Bengal



under section 23(2) of the Right to Education Act, 2009 for appointment of teachers was up to 31.03.2016 whereas the advertisement was made subsequent thereto. There had thus been a fundamental flaw in the recruitment process leading to participation of ineligible candidates. The proviso to Rule 6(3) does not bridge the gap from 31.03.2016 to 26.09.2016 and as a consequence thereof, the entire recruitment process pertaining to untrained candidates was flawed. The untrained candidates did not fulfil the eligibility criteria. In support of such contention reliance has been placed upon the averments made in paragraphs 9 and 19 of the writ petition.

135. Placing reliance upon an unreported judgment delivered in a writ petition being WPA 1577 of 2025, Mr. Bhattacharya argues that the District Primary School Council Purba Medinipur was last constituted pursuant to a notification dated 21.02.2011. It had a statutory tenure of 4 years which expired in the year 2015. No election or reconstitution of the members took place thereafter under the provisions of Sections 40 and 41 of the West Bengal Primary Education Act, 1973 and as a consequence thereof, there was no legally functional Council since the year 2015.

136. Mr. Bhattacharya argues that corruption in a civilized society is a disease like cancer which if not detected in time is sure to spread its malignance amongst the polity of the country leading to distress consequences. Issues of health and education in a State are of prime consideration in as much as such issues have a long-standing effect upon the welfare of the State. In the present case, the blatant illegalities are pertaining to appointment of teachers, who have a moral obligation to teach



the students of tender age. The teachers constitute the backbone of the society. In view thereof, the Court had rightly interfered with the recruitment process and directed cancellation of appointment of the illegally appointed teachers without being bound by '*Niceties of Law*'. A recruitment process conducted by a public body must be above board and any infirmity in such process needs to be dealt with strictly with an intent to ensure that the polity do not lose faith in the system.

137. In conclusion Mr. Bhattacharya argues that there had been an institutional corruption. A private body was entrusted to conduct the entire selection process. Rule 4(5) provides that only with the prior approval of the State Government, the Board can engage any specialized agency. Rule 7 provides that the Board shall constitute the selection committee and Rule 8 provides that such selection committees should conduct the selection process. All the three provisions have been violated since the appellants has not been able to establish that prior approval of the Government was obtained or selection committees were constituted by the Board. Such infirmity maligns the entire recruitment process. The beneficiaries of such illegal selection cannot advance arguments to justify such laches on the part of the statutory authority. The Board further had even failed to produce the broad sheet prepared by the respective the selection committees to establish that the recruitment process was conducted in terms of the rules.

138. He argues the contents of the charge sheet filed by CBI in an investigation pertaining to the recruitment process of 2016 would reveal that the office bearers of the said Board in connivance with political personalities



including the Education Minister had been successful in granting illegal appointment in lieu of money. Corruption is a reprehensible crime in a society and it is an assault on the faith of common people upon officers and ministers and peoples' representatives. It defiles, degrades and shocks the confidence of the people at large upon the government and causes psychological harm in the society. The contents of the charge sheet would reveal a money trail amongst the officers and ministers. The charge sheet would clearly reveal that interview/viva voce was conducted and that the Board officials and ministers had directed the Chairperson of concerned DPSC to immediately issue appointments to the ineligible candidates. The third supplementary charge sheet would reveal that meetings were conducted about the modus operandi of collection of bribe from the undeserving candidates and getting them illegally appointed by manipulating the result and the officers facilitated such illegal appointment of candidates. It was also stated in the said supplementary charge-sheet that one individual had collected bribe of Rs.1.39 crores from Gunadhar Khanra Ex-Panchayat member of Salepur-I Arambagh of TMC for arranging illegal appointments. In support of the arguments advanced reliance has been placed upon the judgments delivered in the cases of *Manohar Joshi vs State of Maharashtra and Others*, reported in (2012) 3 SCC 619, *Magraj Patadia vs RK Birla and Others*, reported in (1970) SCC 888, *Maria Margarida Sequeira Fernandes and Others vs Erasmo Jack De Sequeira (Dead) Through Lrs*, reported in (2012) 5 SCC 370, *State of Tamil Nadu and Another vs A. Kalaimani and Others*, reported in (2012) 16 SCC 217, *H.R. Adyanthaya*, reported in (1994) 4 SCC 164, *Baishakhi Bhattacharya*



(Chatterjee) and Others vs State of West Bengal Others, reported in 2025 SCC Online SC 719, *State of Odisha and Others vs Sulekh Chandra Pradhan and Others*, reported in (2022) 7 SCC 482, *Azmal Hoque vs State of West Bengal and Others (MAT 1309 of 2029)* and in the case of *State of Gujrat and Another vs Justice R. A. Mehta (Retired) and Others.*, reported in (2013) 3 SCC 1.

139. Mr. Sabir Ahmed, learned advocate appearing for the applicants in CAN 4 of 2023 filed in connection with MAT 890 of 2023 and preferred by one Pratik Das and 51 others submits that the breakup of marks disclosed by the Board pursuant to the order passed by the Court would clearly reveal that the applicants were denied appointment though they had secured more marks than the persons appointed. Such illegality maligns the entire recruitment process and constitutes systemic deficiencies. In paragraph 8 of the said application, it has been stated that the TET 2014 examination was held on 11th October, 2015 and on that date the notification issued by Ministry of Human Resources Development (hereinafter referred to as MHRD) was not in force. In paragraphs 10 and 11 it has been averred that the result of TET 2014 was published on 14th September, 2016 but no merit list and score card was given to anyone and there was no publication of any panel or merit list. Answering our query, he submits that in CAN 4 of 2023, 17 applicants have already got appointment and that 486 candidates, who secured less marks than the applicants in the respective categories, have been appointed. In paragraphs 22 and 23 it was disclosed that the appellants had filed a writ petition being WPA 23763 of 2022 along with others and the said writ petition had been kept pending.



140. Mr. Sauvik Nandi, learned advocate appearing for the applicants in CAN 106 of 2025 filed in connection with MAT 873 of 2023, affirmed on 20.08.2025 by one Saifulla Gazi and 14 others contends that the applicants are necessary and proper parties and their presence would be necessary for pointing out that the Board had violated the provisions of Rule 8 and as a consequence thereof the applicants, who possess B. Ed qualification prior to the date of advertisement had been illegally ousted from the zone of consideration for appointment as primary teachers. The applicants having D.EL.Ed and B.Ed qualification ought to have been given preference moreso when they emerged to be successful in TET 2014. The applicants preferred writ petitions contending that their training qualification ought to have been taken into account by the Board, however, by an order dated 10th April, 2024 the writ petition was adjourned sine die with liberty to mention after disposal of MAT 873 of 2023.

141. Mr. Lahiri, learned advocate appearing for the applicants in CAN 109 of 2025 affirmed on 28.08.2025 by one Shwetadri Kundu and two others contends that the applicants do not come within the 32000 candidates, whose appointment has been cancelled. In support of such contention reliance has been placed upon the averments made in the paragraph 8 of the application, wherein it has been stated, *inter alia*, that for having B. Ed degree, applicants were termed as untrained candidates but in terms of NCTE notification dated 23.08.2016 under clause 3(B), such candidates with B. Ed degree were allowed to undergo six months bridge course/training course to obtain eligibility to teach at primary level and that the applicants have subsequently completed training course either by six



months bridge course or D.EL. Ed. degree in addition to their B. Ed degree. In the said application it has also been urged that B.Ed is a valid qualification for teaching at primary level and accordingly necessary direction needs to be issued *‘to remove the applicants from the expression and purview of untrained candidates’*.

142. Mr. Alamgir, learned advocate appearing for the applicants in CAN 12 of 2023, CAN 14 of 2024, CAN15 of 2024, CAN 16 of 2024, CAN 18 of 2024, CAN 60 of 2025, CAN 101 of 2025, CAN 116 of 2025 and CAN 123 of 2025 filed in connection with the appeal being MAT 873 of 2023 submits that the recruitment process was conducted in two phases, the first phase was the TET 2014 and the persons who emerged to be successful were thereafter considered for appointment as primary teachers. No aptitude test was held and several candidates, as stated in paragraph 12, who were appointed as teachers secured lesser marks than all the applicants. The applicants’ presence would be required for pointing out the blatant infirmities in the said recruitment process. However, the said applicants had preferred an independent writ petition and the same is still pending.

143. Mr. Dasgupta, learned advocate appearing for the applicants in CAN 27 of 2023 filed in connection with the appeal being MAT 873 of 2023 adopts the submissions of Mr. Ahmed and submits that there was no publication of any panel or merit list and the applicants in spite of having secured more marks than the appointees, were illegally denied appointment.

144. Mr. Pratip Mukherjee, learned advocate appearing for the applicants in CAN 30 of 2024 and other applications, as recorded in the list filed on



06.11.2025, in connection with the appeal being MAT 873 of 2023 also adopts the submissions of Mr. Ahmed.

145. Mr. Bari, learned advocate appearing for the applicants in CAN 32 of 2024 filed in connection with the appeal being MAT 873 of 2023 submits that though the applicants were all trained candidates, they have been illegally prevented from competing in the recruitment process as their TET results were published belatedly.

146. Mr. Bihani, learned advocate appearing for the applicants in CAN 26 of 2024 filed in connection with the appeal being MAT 873 of 2023 submits that the applicants are in-service candidates but they do not come within the group of the primary teachers whose appointment had been cancelled.

147. Mr. Chatterjee, learned advocate appearing for the applicants in CAN 4 of 2023 and other applications, as recorded in the order dated 11.11.2025, filed in connection with the appeal being MAT 873 of 2023 submits that high marks were awarded to the favoured candidates in interview and aptitude test to illegally enable them to come within the zone of consideration for appointment. Some candidates have been given appointment illegally declaring them as trained candidates. Such infirmities had maligned the entire recruitment process.

148. Mr. Siddique, learned advocate appearing for the applicants in CAN 4 of 2025 and other applications, as recorded in the order dated 11.11.2025, filed in connection with the appeal being MAT 1358 of 2023 adopts the submissions of Mr. Ahmed and submits that there was no publication of any



panel or merit list and the applicants in spite of having secured more marks than the appointees, were illegally denied appointment.

149. Mr. Ekramul Bari, learned advocate, assisted by Mr. Kabir, learned advocate appearing for the applicants in CAN 31 of 2024 filed in connection with the appeal being MAT 873 of 2023 adopts the arguments advanced on behalf of the applicants in CAN 32 of 2024 and submits that though the applicants were all trained candidates, they have been illegally prevented from competing in the recruitment process as their TET results were published belatedly.

150. Mr. Majhi, learned advocate appearing for the applicant in CAN 105 of 2023 filed in connection with the appeal being MAT 873 of 2023 submits that the applicant had not preferred any independent writ petition and as he is suffering from the dreaded disease of thalassemia, his appointment should be protected.

151. Mr. Dyuk Banerjee, learned advocate appearing for the applicants in CAN 69 of 2025 filed in connection with the appeal being MAT 873 of 2023 submits that the applicants are in-service candidates and they do not come within the group of the primary teachers whose appointment had been cancelled. The applicant is a physically handicapped candidate and his appointment needs to be protected.

152. Mr. Firdous Shamim, learned advocate appearing for the applicants in CAN 70 of 2025 filed in connection with the appeal being MAT 873 of 2023 submits that the applicants had been illegally ousted from the selection process and the writ petitions preferred by them had been



adjourned sine die. In view thereof, they have no other forum to ventilate their grievances.

153. In reply, Mr Dutta, learned senior advocate appearing for the Board submits that from the averments made in writ petition, particularly in paragraphs 12, 16, 17 and 18 it would be explicit that the scope and ambit of the writ petition was pertaining to TET, 2014. The primary allegation was of a scam in the said examination. The second phase of selection was not under challenge and that as such the direction towards cancellation of the appointment of 32,000 teachers is absolutely unsustainable. On an omnibus plea that there had been corruption in all selection processes after 2011, the appointments have been directed to be cancelled. The judgment itself does not contain any reason to support the conclusion. The relaxation granted by MHRD covers all the TET qualified candidates which would be more explicit from the provisions of Rule 6 of the RR, 2016. The writ petitioners cannot challenge the appointment of the teachers appointed through a writ petition filed after the status of the said candidates has changed and after they had completed their training after appointment.

154. He further argues that the allegations made pertaining to engagement of M/s. S. Basu & Company are not supported with any pleading in the writ petition. The said firm being the confidential processor was conferred the authority to conduct clerical jobs comprising of printing of district wise aptitude test sheets along with attendance sheets. The said firm had no other role to play in the selection process. In support of such contention attention has been drawn to a resolution adopted by the Board



on 4th October, 2016 and the contents of charge-sheet including the first, second, third and fourth supplementary charge-sheets wherein the investigating authority had categorically observed that *'the role confidential processor firm named M/s. S. Basu Roy and Company was looked into, who was awarded the work of designing, printing and supply of OMR sheets and also processing the same for preparation of panels'*. Referring to a letter dated 5th October, 2016, Mr. Dutta contends that the Commissioner of School Education had instructed the District Inspector of School (PE/SE) of all the districts to constitute sub-committees for scrutiny of testimonials of TET, 2014 qualified candidates. By a notification dated 12th October, 2016, the Board laid down guidelines for conducting the scrutiny/verification of the testimonials and viva voce/interview and aptitude tests of TET, 2014. Government officials being the District Inspector of Schools, Assistant inspector of School and Sub-inspector of School were engaged as scrutinizers and interview was conducted by Professors, Headmasters and teachers of different schools. In view thereof, the arguments of Mr. Bhattacharya that the said firm had a major role to play in the selection process and was also involved in interview/viva voce and aptitude tests and that the said firm had tinkered that the recruitment process are not tenable.

155. He contends that no element of corruption was involved in the recruitment process. Errors in procedure cannot be construed to be a facet of corruption. When issues of procedural irregularities are brought to the notice of a writ court necessary orders are passed for correction of such errors in the procedure. A decision taken to set aside the entire recruitment process and to cancel the appointments merely on the ground of procedural



infirmities, is not sustainable in law. Findings arrived at by the investigating authority would not reveal that the appointed candidates were involved in any corrupt practices. Upon investigation it was ascertained by CBI that irregularities exist in respect of 264 candidates, who were given grace marks and were identified. Additionally, 96 candidates who did not secure qualifying marks were appointed and they were also identified. Subsequently, the said 96 candidates were terminated but they are still continuing in service on the strength of an order passed by the Hon'ble Supreme Court.

156. In response to the specific argument advanced on behalf of the writ petitioners that there had been no publication of panel, Mr. Dutta submits that panels were duly prepared and approved by the Board and were sent to the respective DPSCs and the list of names of eligible and selected candidates for appointment as teachers in primary schools pertaining to the respective districts were hung up in the respective district primary school council offices. Furthermore, in the earlier writ petitions preferred by one *Monika Das and others* and by one *Rabiul Sk*, the panels were annexed to the writ petitions and upon considering the same the writ petitions were dismissed.

157. Replying to the argument advanced by Mr. Bhattacharya placing reliance upon paragraphs 10, 11, 17 and 18 of the application being CAN 3 of 2023, Mr. Dutta submits that the candidates in paragraph 10 were all trained candidates and they were given appointment as per the orders passed by the Hon'ble Court on 1st February, 2018 and 15th May, 2018. The



appointment of the candidates in paragraph 11 of the said application had already been terminated since they were not TET qualified candidates. In paragraph 17 of the said application, candidates at serial nos. 1 to 81 participated in the 2020 recruitment process whereas the candidates at serial nos. 82 to 84 were trained candidates. The candidates referred to in paragraph 18 of the said application obtained training certificates from outside State and they were subsequently appointed on the basis of orders passed by the Court. Thus, the allegations of fraud and corruption in the recruitment process, as averred in CAN 3 of 2023, are not tenable.

158. In response to the argument advanced by Mr. Sabir Ahmed, learned advocate appearing for the applicants in CAN 4 of 2023, Mr. Dutta contends that the comparative list as provided has not been prepared upon comparison of the marks of similarly situated candidates. An enquiry would reveal that comparison had been made between candidates, who do not belong to the same category and/or of the same districts. In TET, 2014 the candidates were given a unique identification mark. After a candidate entered the second phase of selection, he/she was granted a roll number incorporating the district code to the roll number of the same candidate in TET, 2014. However, it has not been pointed out by Mr. Ahmed that the district code of a candidate would be pertaining to the district in which he sought for appointment as a teacher and not the district code of the district from which he hails. In the list, upon which reliance had been placed by Mr. Ahmed, one Jaganath Mishra, who hails from the district having a district code no. 17 had been shown to have obtained more marks than three other appointed candidates. However, the said three candidates hail from districts



other than the district having a district code no. 17. The Court had been sought to be misled by the writ petitioners and the applicants by distorting the facts with an intent to raise doubt as regards the sanctity of the recruitment process.

159. Ms. Minakshi Arora, learned advocate appearing for the appellants in MAT 1616 of 2023, in reply, submits that no supporting documents have been brought on record to substantiate the allegations of fraud and corruption. No specific allegation has also been levelled against the primary teachers, whose appointment has been directed to be cancelled by the Court. The judgment impugned is also bereft of any reasoning towards the cancellation of the appointment of 32000 teachers. The Court had acted as the prosecutor and had on its own summoned witnesses and recorded their statements without grant of any opportunity to the Board to cross-examine them. As the untrained teachers appointed in the said recruitment process were not even made parties to the writ petition, they also could not get any opportunity to cross the witnesses.

160. She further submits that till date the said primary teachers have discharged services uninterruptedly for about eight years upon completion of the training in terms of the RR, 2016. The appointment of 32000 teachers has been cancelled on the rudiments of statements made by about 26 candidates, who constitutes miniscule percentage of the participants. In the charge-sheet there is no statement that the appointed candidates had paid any money to avail favour. There is nothing on record to link the names of



the appointed candidates with the alleged irregularities in the selection process.

161. She contends that a desperate attempt had been made by the applicants in various applications to bring fresh documents on record. However, the allegations sought to be established on the basis of the fresh documents have not even been pleaded. The writ petitioners also did not take proper steps to amend the pleadings. In view thereof, no reliance can be placed upon the documents annexed to the applications.

162. Mr. Bandhopadhay, learned advocate appearing for the appellants in MAT 890 of 2023, in reply, submits that the case made out in the writ petition is that though the writ petitioners are similarly situated with the untrained candidates, who have been appointed, the Board had acted discriminatorily. Vacancies are still existing and the writ petitioners should be accommodated in the same and as such they have not challenged the appointments given and did not even implead the candidates appointed. The learned Court, however, acted as the prosecutor and cancelled the appointment of the 32,000 teachers.

163. According to Mr. Bandhopadhay, a charge-sheet expresses only an opinion. A person in a criminal proceeding can be held guilty only when the observations made in the charge-sheet are proved to its hilt and beyond reasonable doubt. The persons involved as identified in the charge-sheet are not even the teachers appointed. The Court had proceeded by making an observation in the impugned judgment that the candidates '*who were trained at the time of recruitment are outside the scope of this matter*' and



went on to arrive at a purported finding that no aptitude test was conducted. Such aptitude test as per the RR, 2016 have to be conducted both in respect of trained as well as untrained candidates. In view thereof, the trained teachers also could not have been kept outside the scope of the writ petition. In the event this Court affirms the judgment, the trained teachers would also be penalized without being parties to the proceeding and would give rise to a chaotic situation.

164. He contends that the allegation that no panel was published is nothing but a ploy to mislead the Court. A perusal of the judgments delivered in the cases of *Monika Das (supra)* and *Rabiul Sk (supra)* would reveal that the writ petitioners therein did not even urge that panels were not published. In fact, such panels were annexed to the writ petition itself. To cite an instance reliance has been placed upon the averments made in paragraph 36 of the writ petition being WP 21720 (W) of 2019 (*Niladri Jana and Others vs State West Bengal and Others*) which was heard along with *Rabiul Sk (supra)*. In paragraph 26 of the said writ petition it has been averred that the Board published the list of candidates and the district-wise lists were affixed in the 'sign board of the District Primary School Council office in some districts'. In paragraph 35 it was also stated that from the published panel the petitioners therein came to learn that candidates securing lesser marks than the petitioners have been appointed. In the said conspectus, the allegations in the present writ petition that there was no publication of panel and that all documents were not in the public domain are not sustainable. The Court did not take into consideration the judgments delivered by a coordinate Benches in the cases of *Monika Das*



(*supra*) and *Rabiul Sk (supra)* and had thus acted contrary to the principle of binding precedents.

165. Mr. Majumder, learned senior advocate in reply had urged that the writ petitioners had raised a hue and cry that there had been no publication of panel and that Rule 8 had not been followed, however, it would be explicit from the averments made and the orders passed in the cases of *Monika Das (supra)* and *Md. Rabiul Sk (supra)* that the said issues were considered and the writ petitions were dismissed. The panels prepared were also annexed to the writ petitions heard analogously with *Md. Rabiul Sk (supra)*. Some of the writ petitioners herein were even parties in the case of *Monika Das (supra)*.

166. Referring to the contents of the charge-sheet, Mr. Majumder submits that the investigating agency arrived at a finding '*that the 264 candidates were appointed in a grossly irregularity manner*'. The said 264 candidates had also been identified and the names of the other 96 candidates were also identified. In respect of the said candidates litigation is pending before the Hon'ble Supreme Court. In view of such identification, the allegations of fraud and corruption levelled against the appointed candidates are deceptive and *mala fide*.

167. As regards the allegation of rank jumping, as urged on behalf of the applicants in CAN 4 of 2023, Mr. Majumder submits that no reliance can be placed upon the instances cited since the marks obtained by candidates in a particular district and category had been compared with the marks obtained in different districts and categories. Some of the applicants in CAN 2 of 2023 CAN 3 of 2023 are already in service.



168. Mr. Ashok Banerjee, learned senior advocate appearing for the appellants in MAT 1462 of 2023, in reply, reiterates that the recruitment process has been conducted in strict consonance with the rules. The teachers, who have been appointed are innocent and in the charge-sheet there is no observation that the said appointed teachers are involved in any conspiracy.

169. Mr. Jayanta Mitra, learned senior advocate in reply submits that the total vacancies were approximately 42,949 and 10 % of the said vacancies were earmarked for para teachers and all were not filled up. It has been alleged that some of the para teachers have been marked in fractions in respect of his/her experience. For such alleged irregularity, the appointed para teachers cannot be penalized. Even if the fractions are omitted, the said applicants would still come within the zone of appointment. Such argument has been adopted by Mr. Lahiri appearing for the para teachers in MAT 913 of 2013 and by Mr. Siddharta Banerjee appearing for the para teachers in MAT 1368 of 2023 and 913 of 2023.

170. We have bestowed our anxious and painstaking consideration and careful thought to all aspects of the case and have deeply examined the rival contentions of the parties both collectively and individually.

171. The issues dealt with and decided in the present judgment would be applicable to all the untrained candidates, who have participated in the recruitment process of the year 2016. All the applicants herein come within the fold of untrained teachers who participated in the selection process. The Court has the power to hear the applicants as interveners to give effect to



the primary object of the power which is to avoid multiplicity of actions. The jurisdiction of the Court to allow any party to intervene is discretionary in nature and in the facts and circumstances of the case it would be apt to consider the arguments advanced on their behalf instead of formally adding them (above five thousand candidates) as parties to the appeals. Accordingly, we have granted opportunity to all the learned advocates, who had appeared on behalf of the applicants to advance their arguments on the merits of the matter. Needless to observe, office shall take necessary steps to amend the cause title of the memorandum of appeal in terms of the earlier orders dated 19.05.2023, 04.09.2023 and 26.09.2023 passed by co-ordinate Benches of this Court allowing the applications for addition of parties.

172. The writ petition being WPA No.21187 of 2022 was preferred by 140 petitioners impleading the Union of India, the State of West Bengal, the National Council of Teachers Education (hereinafter referred to as NCTE), the West Bengal Board of Primary Education and its functionaries being the President and the Secretary. It was affirmed on 12th September, 2022. The petitioners sought for issuance of necessary direction upon the authorities to file a report disclosing names, numbers, rank, category of all untrained candidates recruited from TET, 2014 and to treat the petitioners equally with the untrained candidates, who have been recruited by the Board after expiry of the relaxation given by MHRD on 09.04.2015 and to recruit the petitioners. It was also prayed that appropriate directions be issued upon the authorities to publish a merit list by maintaining full transparency regarding TET, 2014.



173. Indisputably, the writ petitioners emerged to be successful in TET, 2014 and accordingly they had participated in the recruitment process of 2016. In the writ petition, there is no pleading that the selection procedure as prescribed under the RR, 2016 had not been adhered to or that no aptitude test was held. There is no allegation that the petitioners were denied participation in the 2016 recruitment process after they had emerged to be successful in TET, 2014. There is also no averment that no interview or no aptitude test was held. No ground to that effect had been taken in the writ petition. On the rudiments of such averments and grounds, the writ petitioners have sought for issuance of necessary direction upon the respondents to grant them the benefit as granted to other untrained candidates appointed by the Board in the 2016 recruitment process. There was no challenge against the appointment of untrained candidates and the petitioners consciously chose not to implead the untrained appointed candidates since their grievance was pertaining to TET, 2014.

174. The petitioners have alleged that there had been a scam in TET, 2014, however, nothing has been produced by the petitioners to establish the involvement of any single appellant in such alleged scam. In the writ petition all the allegations are pertaining to TET, 2014 in which petitioners themselves have emerged to be successful. Indisputably, corruption and scam are severe allegations and the same needs to be established on the rudiments of proper documents and evidence. Nothing has been produced by the petitioners to establish the involvement of any single appellant in such alleged scam. For the alleged involvement of the functionaries of the State in any illegality, the appellants cannot be made to suffer and a fresh



recruitment could not have been directed upon cancellation of appointment of 32,000 teachers.

175. The writ petition was filed in a narrow conspectus, seeking direction to provide them jobs in the existing vacancies, as stated in paragraph 14 of the writ petition. There is no pleading that the authorities have proceeded in a biased manner in filling up the posts. Appointment of no candidate amongst the 32,000 appointees has been cited as an instance of biased or illegal selection. The collation of facts put together in a given case assists the Court in arriving at a conclusion about involvement of bias in a particular decision. Bias is not a defined personality nor a visible object which by its fits and starts reveals itself instantaneously. It is shapeless. It is the result of examination of a conduct which is propelled by an intention to influence the decision in favour of someone to remove the other deserving contestants from the fray. The case of actual bias is few and far between. In the present case no imputation of actual bias or favouritism can be deduced from the facts. Bald allegations, mere skirmishes, surmises or conjectures would not be enough. There must be circumstances from which a reasonable man would think it likely or probable that one side was favoured unfairly at the expense of the other. It also cannot be deduced from the pleadings that the appointments were illegal and there is also no prayer in the writ petition to cancel the appointment of the teachers already appointed in the year 2017. The said appointees cannot be thrown away from service, especially after they had rendered a long period of service. Such appointments need to be protected by equity, moreso when the alleged



irregularity is bereft of any malicious intent. A belated challenge is also not entertainable under the equitable doctrine of laches.

176. The Court ought to have taken into consideration that the participation in the recruitment process was from an age group of 18 years to 40 years. The appointees had already rendered service for about nine years. Today, a person of 18 years at the time of entry into service, would be aged about 27 years whereas a person of 40 years, at the time of entry into service, would be aged about 49 years. In view thereof, any direction for re-examination at this stage would have a dissimilar impact upon the appointees.

177. Records would reveal the writ petition was first heard on 02.12.2022 and the petitioners were directed to pay the full Court fees. On the returnable date i.e., 06.12.2022 it was observed that the petitioners appeared in 2016 recruitment process and were TET qualified and had approached the Court after documents and marks were produced before a Division Bench in which His Lordship was a party. The petitioners contended that *'large number of candidates were appointed who got marks below the petitioners'* and that they were not called in the interview. On behalf of the Board, it was submitted that the petitioners have prayed for publication of some information which are already in public domain except *'the petitioners breakup of marks'*. Leave was granted to the petitioners to file a supplementary affidavit enclosing the call letters for interview and the documents as regards their training. Thereafter, on 20.12.2022 the Court recorded that *'though the petitioners got higher marks before addition of*



marks against interview and aptitude test comparing to some candidates who have been given appointments against 2016 recruitment process even after adding their marks for personality test and aptitude test, they have not been given appointments'. In the said order, it was also recorded that the petitioners have prepared a tabular chart of 139 candidates who have got higher marks than the last employed candidate but they have not been given appointment. The supplementary affidavits were taken on record and the Board was directed to verify the marks of the petitioners along with that of the 139 candidates and to come up with the particulars as regards the marks obtained by the last candidate of different categories and different medium of all the districts. The matter again appeared on 17.01.2023 when it was alleged by the petitioners that *'only interview was taken and there was no aptitude test'*. In view thereof, the Court decided to exercise power under Section 165 of the Indian Evidence Act (hereinafter referred to as 'IE Act') and asked some questions after administering oath to 7 of such candidates being the petitioner nos.1,4,7,19,50,90 and 94. In the said order, the Court also observed *'from their evidence I am satisfied that there was no aptitude test for the petitioners'* and the President of the Board was directed to file an affidavit disclosing as to whether *'there was any aptitude test in 2016 selection process and what is the method the Board is following this year to take aptitude test of the candidates'*. The matter was heard thereafter on 24.01.2023 when the Court in exercise of its powers under section 165 of IE Act took evidence of 19 candidates. Some of such names were intimated to the Court by the petitioner's learned advocate. In total, 26 candidates were examined but no leave was granted to Board to file affidavit-in-



opposition. Instead, the President of Board was directed to file affidavit explaining what is an '*aptitude test*' and to produce a list in a sealed cover containing the list of names of the interviewers. On 06.02.2023 the affidavit filed by the Board was taken on record. The Court also perused the letters issued by the Board to different experts seeking their response as regards the meaning of aptitude test and the same were also placed in a sealed cover. Another list of persons who took interview in different districts was also perused. However, the lists of interviewers of 5 districts (Hooghly, Howrah, Uttar Dinajpur, Cooch Bihar and Murshidabad) were opened and kept in a separate file. The interviewers of the said 5 districts were directed to appear on 21st February, 2023 at 2.00 pm. In the district of Hooghly, the names of interviewers called were at serial numbers 1,3,5,7,11,14,18 and 20. The names of the interviewers called from the district of Uttar Dinajpur were at serial numbers 32 and 43 in the list. The names of the interviewers called from the district of Cooch Bihar were at serial numbers 5 to 14 in the list. The names of the interviewers called from the district of Murshidabad were at serial numbers 4,5,6,7,8 and 9 in the list. In the order it was further observed that questions would be put to the interviewers and the proceeding of asking questions to the interviewers would be done in camera. Thereafter on 21.02.2023 the Court observed that the real question was as to whether aptitude test of the candidates was taken or not. The answers given by 30 interviewers were incorporated in the said order with a further observation that '*no question was asked by the appearing parties to the above interviewers*'. The Court thereafter noted that there were no formal engagement letters for acting as interviewers and they were called over



phone. There was also no guideline towards awarding of marks for aptitude test and that *'a large number of interviewers were not intimated by the Board/DPSC's that there is one aptitude test, a different test altogether; also beside interview'* and that one interviewer (Md. Maruf Alam) stated that he took the aptitude test and that an aptitude test means confidence and body language of a candidate. On the next date of hearing, i.e., on 05.04.2023, the Court *suo motu* directed the Superintendent of Presidency Correctional Home for physical production of the President of the Board, namely, Manik Bhattacharya on the self-same date at 3.00 pm. Such direction was duly complied with and the answers given by Mr. Bhattacharya to the questions put by the Court were also recorded in the said order. Thereafter hearing was concluded on 11.05.2023 and judgment was delivered on 12.05.2023.

178. In paragraphs 1 to 4 of the impugned judgment it was recorded that all the 140 petitioners had qualified in TET, 2014 and had participated in the 2016 recruitment process but they did not get appointment. The provisions of Rule 6(3) were referred to with an observation that the petitioners wanted the authorities to file a report disclosing the name, number, rank category etc of the non-trained candidates who had been recruited from TET, 2014. In paragraphs 5 to 8 it was recorded that the petitioners have no grievance in respect of trained candidates and that they were called in for the interview but did they not get the job. The petitioners alleged that the particulars given in the breakup are absolutely false *'as because the lowest number empanelled candidates was shown in the report as 14.191 whereas throughout West Bengal 824 candidates whose score below 13 were appointed'*. To that effect the petitioners prepared a tabular



sheet and annexed the same to the exception filed in the form of an affidavit on 24.01.2023 to the Board's report. The marks of the lowest empanelled candidates of different categories like SC, ST, OBC etc. were not produced and that as such the Board suppressed material facts. As regards aptitude test the Court in paragraphs 9 to 11 came to a finding that *'it has been proved before this Court that no aptitude test was taken'* placing reliance upon the evidence of 30 candidates, as detailed in the order dated 06.02.2023. The Court further observed that the said order dated 06.02.2023 in which the Court recorded that *'no question asked by the appearing parties to the above interviewers'* and that there was no formal engagement letters nor any guideline for awarding marks for aptitude test, went unchallenged and that as such the marks given to the candidates against aptitude test is wholly illegal and false exercise *'to hoodwink all concerned including the court'* and that the Board had also not given any reply *'in respect of awarding 9.5/10 marks to a large number of candidates'* specifically to those candidates whose academic score and TET score were very low. In paragraphs 12 and 14 the Court observed that the petitioners' allegation as to corruption was sought to be established by the documents in a booklet (Spiral Binding) alleging that candidates whose marks were very poor in secondary and higher secondary and TET were given 9.5 marks out of a total of 10 marks in interview and aptitude test and that no aptitude test was taken at all, which stands proved from the evidence of the candidates. It was also observed that the allegation of corruption *'now has come to light from the investigation by CBI and ED'* and that such absurd marking could not have been made by the interview Boards in different



districts. In paragraphs 15 to 20 it was recorded that the Board could not give reply to the pleadings as regards non-empanelment of reserved category candidates in the general category and that no selection committee was constituted for the purpose of selection as per Rule 7 of the RR, 2016 by the Board and an outside agency was engaged and the Board and its officials including its former President conducted the whole affair as that of a local club and jobs were actually sold. The former Education Minister and the former President of the Board and a number of middlemen sold the jobs, who are behind the bars and instead of answering such allegations, the Board raised some '*niceties of law*' and that in the recruitment scam '*stinking rats are being smelt*'. In paragraph 21 of the judgment the Court cancelled the appointment of 36000 (more or less) candidates who were untrained at the time of recruitment in 2016 for the reasons given in paragraphs 1 to 20. In paragraphs 22 to 25 Board was directed to arrange for recruitment exercise afresh.

179. The findings that can be culled out from the impugned judgment are as follows :

- i) No aptitude test was taken;
- ii) There was no formal engagement letter for acting as an interviewer nor any guideline for awarding marks for aptitude test;
- iii) The marks given to the candidates against aptitude test is wholly illegal and false exercise '*to hoodwink all concerned including the court*';



iv) There was wholly absurd assessment in interview and such assessment reveals *'extraneous factors (which includes corruption) as has been alleged by the petitioners and now has come to light from the investigation by CBI & ED'*;

v) Non empanelment of reserved category candidates in the panel for general category candidates who got better marks than the general category candidates in open competition;

vi) No selection committee was constituted for the purpose of selection by the Board and an outside agency was engaged and the Board and its officials including its former President conducted the whole affair as that of a local club and jobs were actually sold to some candidates who had the money to purchase the employment;

vii) In the recruitment scam stinking rats are being smelt;

180. The first finding is contrary to the statement of the writ petitioners themselves that they were called for the interview, as recorded in paragraph 5 of the impugned judgment and in the second paragraph of the order dated 20.12.2022. The second finding has been arrived at being oblivious of the fact that the Board did produce the letters issued to different interviewers which were perused by the Court on 06.02.2023 and some interviewers were also examined by the Court. The third finding was arrived at on the basis of a perception that the marks in aptitude and the marks in academics should be proportional. Mere suspicion, howsoever high, cannot be a substitute of actual proof and writ Court ought not to interfere with the selection made by expert bodies upon assessing the comparative merits of



the candidates. The investigation by CBI & ED could not have been the basis towards cancellation of the recruitment process moreso when in the writ petition no appointment of any candidate amongst the 32,000 appointees could be cited as an instance of biased or illegal selection and that as such the fourth finding is not sustainable. The material on record does not prove the chain of circumstances pointing out the guilt of the appellants beyond the shadow of reasonable doubt. Proof beyond reasonable doubt cannot be stretched morbidly to embrace every hunch and hesitancy. The fifth finding has been arrived at being oblivious of the fact that similar ground as urged in the earlier writ petitions had been turned down and no appeal had been preferred against the said judgments delivered in the cases of *Monika Das (Supra)* and *Md. Rabiul Sk. (Supra)*. The sixth finding that no selection committee was constituted for the purpose of selection by the Board is not sustainable inasmuch as the Court itself found that interviewers were engaged and thirty interviewers were also summoned and questioned by the Court. Rule 4 of the RR, 2016 conferred authority towards engagement of any specialized agency. The Court made sweeping observations that the Board and its officials including its former President conducted the whole affair as that of a local club and jobs were actually sold to some candidates who had the money to purchase the employment, in the absence of appropriate pleadings. Even a point which is ostensibly a point of law is required to be substantiated by facts. The allegations of *mala fides* are more easily made than proved. The law casts a heavy burden on the persons alleging *mala fides* to prove the same on the basis of facts. Such proposition of law was, however, not considered which renders the finding to be



unacceptable and beyond the pale. The seventh finding that in the recruitment scam stinking rats are being smelt is also not supported by the pleadings in the writ petition. There is no existence of any material to suggest that the candidates appointed were involved in any money trail. Such finding is thus the outcome of mere surmises and conjectures.

181. The writ petitioners had admittedly not challenged the appointments made in the year 2017 contemporaneously. In the writ petition affirmed in the year 2022 also there is no challenge against the appointments. Qua them, therefore the matter stood '*settled*' and about five years thereafter the Court ought not to have directed cancellation of 32,000 teachers which '*unsettles the settled position*' and such exercise ordered would only lead to anomalous results.

182. A panel gets its life from the date of approval by the Board. There is no provision in the RR, 2016 towards publication of panel. Such fact was known to the writ petitioners, however, the lack of such provision and the alleged non-publication of panel was neither objected to through any contemporaneous complaint. The issue of alleged violation of the provisions of Rule 8(5) of the RR, 2016 was specifically argued earlier in the cases of *Monika Das (Supra)* and *Md. Rabiul Sk. (Supra)* but the said writ petitions were dismissed and no appeal was preferred against the judgments delivered in the same. The issue of alleged non-publication of panel is not sustainable inasmuch as the Court in the case of *Monika Das (supra)* in paragraph 16 observed *inter alia* that '*firstly, it is not in dispute that pursuant to the selection process that was initiated by issuance of notification dated 26th*



September, 2016 a panel of successful candidates were prepared and appointments have been given to a huge number of candidates'. In view thereof, the writ petitioners in the present proceeding could not have urged that no panel was published, moreso when some of the writ petitioners herein were parties in the case of *Monika Das (supra)*.

183. Writ petitions filed contending that candidates securing less marks had been appointed are still pending. Writ petitions filed contending that applicants having D.EL.Ed and B.Ed qualification ought to have been given preference moreso when they emerged to be successful in TET 2014 are also pending. Such challenge would be open for consideration in the pending proceedings and such irregularities cannot be construed as systemic in nature for striking down the appointment of all untrained candidates. Issues urged that B.Ed is a valid qualification for teaching at primary level and accordingly necessary direction needs to be issued '*to remove the applicants from the expression and purview of untrained candidates*' and that trained candidates have been illegally prevented from competing in the recruitment process as their TET results were published belatedly, have no relevance and are not necessary for adjudication of the present dispute. Applications have also been preferred by trained assistant teachers in primary schools, who have already been granted the appropriate scale of pay and whose status and qualification are undisputed have unnecessarily approached this Court filing miscellaneous applications.

184. The grievance of the petitioners was that in view of the MHRD notification dated 09.04.2016 the Board could not have appointed untrained



teachers since the relaxation granted in respect of the minimum teacher qualification was till 31.03.2016 whereas the advertisement was published on 26.09.2016. Having appointed such untrained teachers, the authorities could not have denied appointment to the petitioners. Such challenge needs to be discounted in view of the NCTE notification dated 22.09.2017 by which the period for conclusion of training was extended. The benefit of such extension was also availed by the writ petitioners and their applications for participation were duly accepted and they were allowed to participate in the recruitment process of 2016. In view thereof, the allegation of discrimination citing the MHRD notification dated 09.04.2015 is absolutely unfounded.

185. The argument that M/s S. Basu & Company was authorised for scrutiny/ verification of the testimonials as well as viva voce sheets of the applicants and for preparation of panels is also not acceptable to this Court. Such allegations were also not levelled in the earlier rounds of litigation or in the pleadings. The appointment of the said Company was for the limited purpose of collation of data. This is supported by the fact that interviewers were appointed and that they conducted such interview which is explicit from the contents of the judgment and the examination conducted by the Court of about 30 interviewers. Considering the reply given on behalf of the Board, it cannot also be ruled out that erroneous particulars were given by several applicants in the applications for addition, particularly in CAN 3 of 2023.

186. There is no quarrel with the proposition of law as discussed in the judgments upon which reliance has been placed by the writ



petitioners/respondents. However, it is well-known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight difference in fact or an additional fact may make a lot of differences in the decision-making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases.

i) The facts in the case of *Tanmay Nath and Others (supra)*, which was upheld by the Hon'ble Supreme Court in the case of *Ajoy Deb Barman and Others (supra)*, do not have any striking resemblance to the facts of the case at hand and in the same the constitutional validity of the employment policy of the State of Tripura was under challenge. In the said selection process advertisements were issued thrice inviting applications for filling up the posts of under graduate, graduate and post graduate teachers. Initially challenging such appointment, a large number of writ petitions were filed which were disposed of by common judgment dated 16th November, 2011 remanding the matter back to the Government for thorough scrutiny and examination for constituting a committee of responsible officers. The State challenged the said judgment and the writ appeals were allowed holding that the matter should be decided by the Court. In the back drop of the above facts and considering the issue of reservation towards linguistic and religions minorities as well as reservation on economic basis, the Court held that the whole selection process was a cruel joke on the youth of Tripura and the selection was held to be totally unfair and was set aside. The issue



of lack of pleadings was discounted observing that the petitioners therein have in most of the cases set out their own marks in total and also made averments on affidavit that their marks are higher than those of the private respondents. The issue of non-joinder of parties was set aside observing that no *mala fide* had been pleaded against the members of the interview Boards. In the present case similar writ petitions were dismissed by the same learned single Judge on the ground of delay. However, a different stand had been taken by the same learned Judge in the present case. The Court arrived at a finding that the recruitment process stands maligned due to inappropriate conferment of marks in interview and aptitude tests and on the grounds of fraud and corruption though there were no appropriate pleadings pertaining to the said issues;

ii) In the case of *Ritesh Tiwari and another (supra)* the Court was considering a prayer for the issuance of necessary direction upon the respondents not to interfere with the actual physical possession and construction of the petitioners' multi-storied building and the validity of State's inter-departmental communications. As regards section 165 of the IE Act, the Court observed that such provisions empower the Court to ask questions relevant, irrelevant, related or unrelated to the case to the party to ascertain true facts and that it is an extraordinary power conferred upon the Court to elicit the truth. Similar observations made while interpreting section 165 of the IE Act in the case of *Md. Abdullah Azam*. Such authority, however, can be exercised only after being fully satisfied about the factual statements and not in a casual and cavalier manner. In the present case, however, the Court examined only 26 candidates and 30 interviewers in a



recruitment process pertaining to 20 districts and arrived at a finding in slipshod manner that no aptitude test was conducted. The exercise of such discretion is not based on sound legal principles;

iii) In the case of *National Fertilizer Limited and Others (supra)*, the controversy was as to whether the appointments given to the respondents were irregular or illegal and the Court held that '*only because the respondents have worked for some time, the same by itself would not be a ground for regularization of their services*'. The controversy in the said matter was pertaining to a policy decision taken by National Fertilizer Limited by which a ban was imposed as regards recruitment in the marketing division and has no manner of application in the facts of the present case;

iv) In the case of *Gunwant Kaur (supra)*, the writ petition was filed challenging a notification under section 4 of the Land Acquisition Act. The Writ Court dismissed the petition in limine observing, *inter alia*, that disputed question of fact cannot be gone into by the Writ Court. The said decision was interfered with the Hon'ble Appeal Court observing, *inter alia*, '*that the High Court had jurisdiction to determine questions of fact*' and it ought to have entertained the writ petition and called for an affidavit-in-reply. In the present case, however, the Court, in the absence of specific pleadings, conducted a roving enquiry and cancelled the appointment of 32,000 teachers;

v) In the case of *Bishwa Ranjan Shaw and Others (supra)* in support of the contention that principle of natural justice need not be strictly adhered to in a case mass malpractice. Such findings were rendered in the facts



where fictitious roll numbers were allotted to each candidate and the CBI reported that the investigation revealed that interview sheets of some of the board members were blank and there had been fabrication of records. In the backdrop of such fact the Court held '*fraud has reached its crescendo*'. Accordingly, the entire selection process was set aside and the Court directed that '*the appointment held by these 96 candidates (including the respondents, will have no right to go to the office*'. In the present case no material had been brought on record to come to any irresistible conclusion that fraud or corruption had been practiced;

vi) The judgment delivered in the case of *Ashok Kumar Sonkar (supra)* is clearly distinguishable on facts since the controversy in the said case was as to whether the appellant had the requisite qualification on the cut-off date which '*would be the last date for filing the application*';

vii) In the case of *Union of India and Another Vs. Raghuwar Pal Singh (supra)* the Court was considering as to whether the appointment of the respondent therein made by the Director in-charge without prior approval of competent authority was a nullity and as to whether the service of the respondent therein could have been disrupted without granting any opportunity of hearing. In the facts of the said case the Hon'ble Court observed that grant of an opportunity of hearing before issuance of the subject office order was not an essential requirement and it would be an exercise in futility. The ratio of the said judgment has no manner of application since in the Special Leave Petition preferred challenging the interim direction of the Appeal Court of the High Court of Calcutta dated



19.05.2023, the Hon'ble Supreme Court did not interfere with the interim direction of stay of termination and relegated the controversy to the High Court for final decision pertaining to the selection of the primary teachers upon observing that '*at present we are prima facie impressed with the contention of the petitioners herein that the order passed by the learned single Judge) without joining them as party, and without hearing them even in a representative capacity, though they are working since more than 5 years*';

viii) The judgment delivered in the case of *Natwar Singh (supra)* also has no manner of application since in the said case the Court was considering '*whether a noticee served with show cause notice under Rule 4(1) of the Foreign Exchange Management adjudication proceedings an appeal (Rules of 2000) is entitled to demand to furnish all the documents in possession of the adjudicating authority including those documents upon which no reliance has been placed to issue a notice requiring him to show cause should not be held against him?*' In such facts and circumstances, Court in paragraph 25 held that Rule 4 does not require the adjudicating authority to supply copies of any documents along with the show-cause notice since '*there is no such thing as a merely technical infringement of natural justice*'. The Court did not interfere in the appeal since it could not be established by the appellant that real prejudice was caused to him. In the present case, however, 32,000 teachers had suffered cancellation of appointment;



ix) Reliance has been placed upon the judgment delivered in the case of *State of West Bengal Vs. Baishakhi Bhattacharyya (Chatterjee) and others (supra)* in support of the proposition that principle of natural justice cannot be invoked to validate the fraud that has occurred. Delay is fact specific and the Court observed that '*where fraud was concealed, as well as a cover up was practiced, the principles of delay, laches, acquiescence cannot be applied*'. In the said matter, 2016 selection process conducted by the School Service Commission (in short SSC) for recruitment to the posts of Group-D and C, to the posts of Assistant Teacher in class IX and X and to the post of Assistant Teacher in class XI and XII was under challenge. By an order passed in the writ petition being WPA 12266 of 2021 the Court directed the CBI to investigate the legalities and money trail, if any. The said order was not interfered with in any appeal. A four-member committee was also constituted for a thorough investigation. The Committee made a thorough investigation and issued recommendations. In the proceeding, the SSC admitted the appointment of one *M/s Nysa* for scanning and assessing the OMR answer scripts. The Chairman of SSC also admitted that in exercise of executive powers he directed destruction of the OMRs, answer script and other papers within a year after keeping a mirror image of the same. The reports filed by CBI revealed that in OMR sheets recovered serious manipulation was detected. Surprisingly, SSC also filed an application to protect illegal appointments by creating supernumerary posts. In the said conspectus, the petitioners prayed for setting aside the entire selection process. The Court found that the OMR sheets for non-teaching staff were destroyed through an executive decision on 22.07.2019 when there was no



such provision in the applicable rules. The facts on the rudiments of which the appointments were cancelled stood corroborated through materials on record including investigation reports and such materials pointed to definitive conclusion that malpractice occurred at a systemic level. In the present case, however, the writ petitioners have miserably failed to establish any fraud. The appointments were made in the year 2017 and at the said juncture it was within the knowledge of the writ petitioners that they had not succeeded in the selection process but they approached the Court in the year 2022 without explaining the delay. Furthermore, incumbents similarly situated with the writ petitioners herein earlier challenged the recruitment process alleging that appropriate marks were not given to them and that the panel was not prepared in consonance with the RR, 2016 but such challenge was turned down by two Courts in the cases of *Monika Das Vs. State of West Bengal*, reported in (2019) SCC OnLine Cal 4324 and *Md. Rabiul Sk. and Others Vs. State of West Bengal and Others*, reported in 2023 SCC OnLine Cal 710 observing, *inter alia*, that the claim involved disputed questions of fact and as the Court cannot be asked to judge the selection process on the basis of microscopic details;

x) In the case of *Smata Aandolan Samiti & Another (supra)* the Court was considering an issue of reservation. The said judgment would not be applicable to the facts of the present case since such issue of reservation, as urged in the earlier writ petitions, was turned down and no appeal was preferred against the same moreso when some of the writ petitioners herein were also parties in the said writ petitions;



xi) In the case of *Standard Chartered Bank (supra)*, the Court was considering two appeals under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. The Court observed that if a plea is not specifically made and yet it is covered by implication, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it. In the present case, however, there was no challenge against the recruitment process and the appointed teachers were not even parties to the proceeding;

xii) *Manohar Joshi vs State of Maharashtra and Others*, reported in (2012) 3 SCC 619. The appeals arose out of a public interest litigation in the High Court and as such has no relevance in the present case;

xiii) The judgment in the case *Magraj Patadia vs RK Birla and Others* was delivered pertaining to a challenge as to the validity of the election of the respondent therein considering the alleged corrupt practice of incurring expenditure beyond the prescribed limit on the basis of the detailed evidence adduced. The facts are thus clearly distinguishable;

xiv) *Maria Margarida Sequeira Fernandes and Others vs Erasmo Jack De Sequeira (Dead) Through Lrs*, reported in (2012) 5 SCC 370 which laid down a proposition of law that a Judge in the Indian system has to be regarded as failing to exercise its jurisdiction, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. The said judgment is clearly distinguishable since in the present case, some teachers



not even parties to the proceeding were called by the Court itself to adduce evidence;

xv) *State of Tamil Nadu and Another vs A. Kalaimani and Others*, reported in (2012) 16 SCC 217, cited in support of the proposition that the Court should not in exercise of the power of its judicial review tinker with the decision of an authority taken on the basis of sufficient materials on record is also distinguishable on facts;

xvi) In the present case the recruitment process was conducted in two phases, the first phase was the TET 2014 and the persons who emerged to be successful were thereafter considered after they faced interview and aptitude test and that as such the proposition of law that appointments made in contravention of statutory provisions are void ab initio is not applicable and the judgments delivered in cases of *H.R. Adyanthaya*, reported in (1994) 4 SCC 164 and *State of Odisha and Others vs Sulekh Chandra Pradhan and Others*, reported in (2022) 7 SCC 482 are not applicable to the facts of this case;

xvii) In the case of *State of Gujrat and Another vs Justice R. A. Mehta (Retired) and Others.*, reported in (2013) 3 SCC 1 challenge was against the appointment of Justice R.A. Mehta to the post of Lokayukta and is thus distinguishable on facts.

187. As per Notes 7 and 8 of Rule 6, the State Government at the very inception is required to earmark up to 10 % of the total posts for the



candidates belonging to para teachers. The para teachers were called for verification and thereafter for viva voce or interview. In view of such segregation, it cannot be contended that the para teachers would also come within the selection process prescribed for the untrained candidates, who had applied for the remaining 90 % of the vacancies and for the said category, the rules provided for an aptitude test. Rule 8(5), however, made provision for grant of marks towards teaching experience to the para teachers. All the untrained teachers who participated in the recruitment process were erroneously construed to be a composite class and alleging that there had been a widespread corruption, the appointment of 32,000 primary teachers was cancelled.

188. It is true that the Courts should emphasize the need for fairness, transparency, accountability in public service and shall support wholesale cancellation of examination if systemic irregularities undermine the process integrity. Systemic irregularities refer to wide spread flaws or malpractices within a system, process or organization. It includes cheating and impersonation. Large scale irregularities including those which have the effect of denying equal access to similar circumstanced candidates are suggestive of malaise eroding credibility of process. However, Court is not expected to indulge in roving enquiry to rule out all possible explanations and alternative scenarios justifying such irregularities. There is a difference between a proven case of mass cheating in a Board examination and unproven imputed charge of corruption. When the services are terminated on the ground that the incumbent aided and abetted corruption, the Court



must satisfy itself that condition for this exists. The irregularities alleged in the writ petition were primarily pertaining to TET, 2014 through which the candidates earned the eligibility to participate in the interview/aptitude test. While deciding the issue urged, the Court went beyond the pleadings and cancelled the appointments made upon a purported finding that no aptitude test was held.

189. In the dispensation of justice, Courts are prevented from innovating at pleasure. Neither can they don the helmet of a *'knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness'*. At all times, Courts are expected to draw *'inspiration from consecrated principles.'* [See Benjamin Cardozo, 'The Nature of Judicial Process']. A finding as regards widespread or systemic irregularities is absolutely indispensable for cancelling all the appointments made. For cancellation of the entire examination there must be as a rule possibility of systemic malaise as borne out by materials on record. Assessment of the data does not indicate systemic cheating. It also needs to be mentioned that during the period of service rendered by the appellants there had been no allegation regarding the integrity or efficiency of those teachers. It is not a case that instructions were given to the examiners to give higher marks or that the candidates who paid money had been given high marks in the interview. A group of unsuccessful candidates should not be allowed to damage the entire system and moreso when it cannot be ruled out that innocent teachers would also suffer great ignominy and stigma. The service of the appointees cannot also be terminated only on the basis of an ongoing criminal proceeding.



190. Reliance has been placed upon the charge-sheet and the supplementary charge-sheets by the writ petitioners. In the same, the investigating agency observed categorically that appointment letters were issued upon receiving recommendation letters from the Board. Findings arrived at by the investigating authority would not reveal that the appointed candidates were involved in any corrupt practices. Upon investigation it was ascertained by CBI that irregularities exist in respect of 264 candidates, who were given grace marks and were identified. Additionally, 96 candidates who did not secure qualifying marks were appointed and they were also identified. Subsequently, the said 96 candidates were terminated but they are still continuing in service on the strength of an order passed by the Hon'ble Supreme Court. In view of such identification, the allegation of fraud and corruption pertaining to the entire recruitment process, is not sustainable and the appointment of the 32,000 teachers cannot be interfered with.

191. It is the impact of the action that would define the nature of the procedure that is to be adopted. The effect of any direction for re-examination at this stage would have a dissimilar impact upon the appointees. Any such direction for re-examination would fail to secure fair play in action. A job taken away after about nine years of service would indisputably cause insurmountable inconvenience to the appellants and their survival along with their family members would be at stake. In such circumstances and considering the enormity of the impact, we are not



inclined to uphold the cancellation of appointment of the 32,000 teachers, who have worked in the post for a long period.

192. For the reasons discussed above, the judgment impugned dated 12.05.2023 passed in the writ petition being WPA 21187 of 2022 is set aside and all the appeals and the connected applications are disposed of.

193. There shall, however, be no order as to costs.

194. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)

L A T E R

After delivery of the judgment, Mr. Tiwari, learned advocate appearing for some of the writ petitioners/respondents in MAT 873 of 2023 and some of the applicants in CAN 5 of 2023, CAN 9 of 2023, CAN 17 of 2024, CAN 19 of 2024 and CAN 35 of 2025, prays for stay of operation of the judgment.

Such prayer is considered and rejected.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)