

06.05.2026  
Sl. No.99  
Ct. No.14  
gd

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**WPA 27964 of 2025  
Animesh Sarkar  
versus  
State of West Bengal & Ors.**

Mr. Pulakesh Bajpai

...for the Petitioner.

Mr. Pratik Dhar, Id. Sr. Adv.

Ms. Madhurima Sarkar

...for Madrasah Service Commission.

1. By the present writ petition the petitioner seeks direction upon the respondent authorities, particularly West Bengal Madrasah Service Commission (*hereinafter referred to as the 'Commission'*) to recast the panel for the post of Assistant Teacher for Classes XI and XII, Subject-Physics (PG), Category-General Bengali Medium in 7<sup>th</sup> State Level Selection Test, 2023 (*in short 'SLST'*).
2. The petitioner contends that he completed Masters in Physics from Kalyani University on 2<sup>nd</sup> September, 2021 with 67.19% marks in total. The petitioner appeared in the 7<sup>th</sup> SLST for the post of Assistant Teacher for Classes XI and XII, Subject-Physics (PG), Category-General Bengali Medium. At the time of making application the petitioner was pursuing B.Ed. Course which was completed by the petitioner on 8<sup>th</sup> December, 2023. The petitioner was successful in the written examination and call letter for interview was

issued to him on 28<sup>th</sup> December, 2024. On the date fixed the petitioner appeared with all his testimonials, which were verified and also re-verified on a subsequent date. The petitioner obtained 48.50 marks out of 90 marks in the written examination as per the final answer key published by the Commission. The marks given to the petitioner in the interview is unknown to him. The marks obtained by the second empanelled candidate of 42.55 marks out of 100 marks including the marks in the interview is lesser than the marks obtained by the petitioner in the written examination itself apart from interview. However, the name of the petitioner did not figure in the final panel published by the Commission for the said post. Being aggrieved by the said action of the respondent authorities particularly the Commission the petitioner has preferred the present writ petition.

3. Mr. Pulakesh Bajpai, learned advocate appearing for the petitioner submits that the petitioner was allowed to participate in the different stages of the recruitment process. At the time the petitioner filled in the application for 7<sup>th</sup> SLST for the post of Assistant Teacher for Classes XI and XII, he was pursuing B.Ed. Course. By dint of the Notification dated 12<sup>th</sup> June, 2023 the petitioner was allowed to participate in the examination being a pursuing candidate of B.Ed course. Therefore, at the final stage of the examination the candidature of the petitioner cannot be cancelled on a flimsy ground that on the

last date of the application the petitioner did not complete the B.Ed. Course, for the simple reason that the petitioner was allowed by the Commission itself being a pursuing candidate of B.Ed course to participate in the examination. The Commission cannot retract from its own action. In the written examination the petitioner secured second highest marks. The second empanelled candidate having lesser marks than the petitioner has been empanelled. As the petitioner has gone through different stages of the examination, a legitimate expectation has accrued in favour of the petitioner and hence he should be considered for appointment of post of Assistant Teacher for Classes XI and XII Subject-Physics (PG) Category-General Bengali Medium. He seeks for appropriate orders recasting the panel for the said post of Assistant Teacher in 7<sup>th</sup> SLST.

4. Mr. Pratik Dhar, learned Senior advocate appearing for the Commission submits that although the petitioner was permitted to appear in the examination being a pursuing B.Ed. candidate and call letter for interview was also issued to him, however, that was a mistake on the part of Commission in doing so. As per the eligibility criteria the petitioner ought to have possessed B.Ed. qualification on the last date of application. The facts clearly reveal that on the last date of application the petitioner was not having the B.Ed. qualification. It is settled proposition of law that

the candidates selected must be qualified as on the last date of application for the posts in question or on the date mentioned in the advertisement/notification for the purpose. In the present case at hand the information guidelines clearly specifies that one has to possess the qualification on the last date of application. Since the petitioner did not possess the required qualification on the said date, as such he is ineligible to be considered for the said post. To buttress his contention, he relies on the following decisions of Hon'ble Supreme Court.

(a) ***Rekha Chaturvedi (Smt) versus University of Rajasthan & Ors*** reported in ***1993 Supp (3) SCC 168***.

(b) ***Ashok Kumar Sharma & Ors. versus Chander Shekhar & Ors.*** reported in ***(1997) 4 SCC 18***.

(c) ***Bhupinderpal Singh & Ors. versus State of Punjab & Ors.*** reported in ***(2000) 5 SCC 262***.

Further a mistake can always be corrected by following the due process of law and no right accrues in favour of a candidate derived from a mistake in the advertisement or a wrong appointment. Article 14 of the Constitution does not envisage negative equality. If the State committed the mistake, it cannot be forced to perpetuate the same mistake. In support of his contention, he relies on the following decisions:

(a) ***State of U.P. and Others versus Rajkumar Sharma and Others*** reported in ***(2006) 3 SCC 330***.

(b) ***Union of India and Others versus Narendra Singh*** reported in ***(2008) 2 SCC 750***.

(c) ***Union of India versus S.R. Dhingra and Others***  
reported in **(2008) 2 SCC 229**.

5. Upon hearing the learned advocates for respective parties, the only issue which falls for consideration is whether the petitioner's candidature ought to have been considered for empanelment to the post of Assistant Teacher for Classes XI and XII Subject-Physics (PG) Category-General Bengali Medium or not in the facts and circumstances of the present case.
6. In order to examine the aforesaid issue, it would be profitable to note that as per the information guidelines for 7<sup>th</sup> SLST (AT) 2023 the eligibility for selection of Post Graduate Teachers for Classes XI and XII is Post Graduate in concerned subject with 45% marks with B.Ed. before 29<sup>th</sup> July, 2011. The information guidelines in Clause 16 of the Note specifies that the qualification will be as on last date of application. As per Notification no. MSC/Notice/05/2023 the last date of application was extended till 19<sup>th</sup> June, 2023. Indisputably the petitioner passed B.Ed. on 8<sup>th</sup> December, 2023 and, therefore, he did not possess the requisite B.Ed. qualification on the last date of application i.e. 19<sup>th</sup> June, 2023. The question which crops up at this juncture is whether the petitioner who was successful in written examination and was also called for interview can claim his right to empanelment in the said post in the recruitment process in such circumstances.

7. In order to deal with the above question, it would be profitable to reproduce the observation of the Hon'ble Supreme Court in its decisions as hereunder.
8. In *Rekha Chaturvedi (supra)* the Hon'ble Supreme Court held as follows:

*“10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission, Hyderabad v. B. Sarat Chandra* [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 4 SLR 235 : (1990) 13 ATC 708] and *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M.**

*Tripura Sundari Devi [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 4 SLR 237 : (1990) 14 ATC 766] .*

11. However, for the reasons which follow, we are not inclined to set aside the selections in spite of the said illegality. The selected candidates have been working in the respective posts since February 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, it would result in injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. It is for this purpose that we lay down the following guidelines for the future selection process:

A. The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its Ordinance/ Statutes.

B. The candidates selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/ notification for the purpose. The qualifications acquired by the candidates after the said date should not be taken into consideration, as that would be arbitrary and result in discrimination. It must be remembered that when the advertisement/ notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration.

C. When the University or its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/ notification both that the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal.

*D. The University/Selection Committee must mention in its proceedings of selection the reasons for making relaxations, if any, in respect of each of the candidates in whose favour relaxation is made.*

*E. The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of. An adverse inference is liable to be drawn if the minutes are destroyed or a plea is taken that they are not available.*

9. In *Ashok Kumar Sharma (supra)* the Hon'ble Supreme Court observed as hereunder:

*"6. The review petitions came up for final hearing on 3-3-1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234] . The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible*

*justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.”*

10. In *Bhupinderpal Singh (supra)* the Hon’ble Supreme Court held as follows:

*13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar [(1997) 4 SCC 18 : 1997 SCC (L&S) 913 : JT (1997) 4 SC 99] , A.P. Public Service Commission v. B. SaratChandra [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 13 ATC 708 : (1990) 4 SLR 235] , District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766 : (1990) 4 SLR 237] , Rekha Chaturvedi v. University of Rajasthan [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234 : JT (1993) 1 SC 220] , M.V. Nair (Dr) v. Union of India [(1993) 2 SCC 429 : 1993 SCC (L&S) 512 : (1993) 24 ATC 236] and U.P. Public Service Commission U.P., Allahabad v. Alpana [(1994) 2 SCC 723 : 1994 SCC (L&S) 742 : (1994) 27 ATC 101 : JT (1994) 1 SC 94] the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.*

11. Bearing in mind the aforesaid proposition of law as laid down by the Hon’ble Supreme Court, it is manifest that in order to be eligible the petitioner

ought to possess the requisite qualification on the last date of examination as provided in Clause 16 of Note of the information guidelines. As the petitioner did not possess B.Ed. qualification as per requirement on the last date of application, he became ineligible to participate in the recruitment process.

12. Admittedly the petitioner was permitted by the Commission to appear in the written examination as a pursuing candidate of B.Ed course and was also called for interview. At this stage, the question arises whether any right accrues to the petitioner in such circumstances, when he was ineligible to participate. Placing reliance on the decisions of Hon'ble Supreme Court in *Rajkumar Sharma (supra)*, *Narendra Singh (supra)* and *S.R. Dhingra (supra)* Mr. Dhar, learned Senior advocate appearing for the Commission fairly submitted that although such action of permitting the petitioner to appear in the examination and then issuing call letter for interview was an error on the part of Commission yet mistake can always be corrected and no right accrues in favour of a candidate derived from a mistake in the advertisement.

13. The Hon'ble Supreme Court in *Narendra Singh (supra)* has held that mistakes are mistakes and they can always be corrected by following due process of law. In *Rajkumar Sharma (supra)* the Hon'ble Apex Court in Paragraph no. 15 observed that even if in some cases appointments have been made by mistake or

wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake, it cannot be forced to perpetuate the same mistake. Further, in *S.R. Dhingra (supra)* the Hon'ble Apex Court held that it is well settled that a mistake does not confer any right to any party and can be corrected. Therefore, as the petitioner was ineligible to participate in the examination hence permitting the petitioner to appear in the examination and thereafter issuing call letter for interview was an error on the part of Commission. Be that as it may, bearing in mind the above principles of law as settled by the Hon'ble Supreme Court, such mistake can be corrected by the Commission and no right accrues in favour of the petitioner entitling him to appointment. Thus, the action of the Commission in not empanelling the petitioner in the said post cannot be called in question. Hence, the writ petition falls short of merit.

14. In light of the above discussion, the writ petition being **WPA 27964 of 2025** stands dismissed.
15. Interim order, if any, stands vacated.
16. All connected applications, if any, stand disposed of.
17. There shall be no order as to costs.
18. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

19. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

**(Bivas Pattanayak, J.)**