

WEST BENGAL CENTRAL SCHOOL SERVICE COMMISSION & ORS. A

v.

ABDUL HALIM & ORS.

(Civil Appeal No.5824 of 2019) B

JULY 24, 2019

[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2007 – r.5 – West Bengal School Service Commission Act, 1997 – Clause (d) of Sub-section (2) r/w. Sub-section (1) of s.17 – The West Bengal Central School Service Commission invited applications for the posts of Assistant Teacher – Pursuant thereto, respondent No.1 applied for the post of Assistant Teacher of Arabic in a Bengali medium school in the format prescribed – Respondent No.1 was declared successful in the written test – After counselling, his recommendation/empanelment and his selection was cancelled on the ground that he opted for a Bengali medium school though he did not have Bengali as a subject either at the Secondary or at the Higher Secondary or at the graduation level – Writ petition – Single Judge of the High Court held that respondent No. 1 had successfully completed the certificate course in Bengali and Commission had wrongfully cancelled his selection for the post of Assistant Teacher of Arabic in the school – Aggrieved, appellants filed appeal before the Division Bench of High Court, which was dismissed – On appeal, held: The documents annexed by the respondent No.1 revealed that the course was of elementary level – Also, respondent No.1 did not produce any document or certificate certifying that his certificate course in Bengali was of a standard equivalent to Bengali language at the post Higher Secondary level – In this case, it is not in dispute that the respondent No.1 who had been educated outside the State of West Bengal, did not have Bengali as a subject at the Secondary, Higher Secondary, graduation or post graduation level – The interpretation of the last Clause of Paragraph 2 of the advertisement and/or r.5 (c) of the Rules, which reads “must have succeeded in higher level of education in that language paper” by

- A *the authorities as success in the language paper at the graduation level or the post graduation level, or alternatively an examination in the language paper of a level which is equivalent to the level of the language as taught in the graduation level and not any part time course conducted by a University is a plausible if not possible interpretation which ought not to have been interfered with by the*
- B *Writ Court.*

Allowing the appeal, the Court

- HELD: 1. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct**
- C **quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities. [Para 29] [1099-B]**

- 2. In exercise of its power of judicial review, the Court is to**
- D **see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there**
- E **may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan vs. Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision**
- F **would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari. [Para 30] [1099-C-E]**

- 3. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse. [Para 31] [1099-F]**

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4. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect. [Para 32] [1099-G-H; 1100-A]

5. In entertaining and allowing the writ petition, the High Court has lost sight of the limits of its extraordinary power of judicial review and has in fact sat in appeal over the decision of the respondent No.2. [Para 33] [1100-B]

6. In this case, it is not in dispute that the Respondent No.1 who had been educated outside the State of West Bengal, did not have Bengali as a subject at the Secondary, Higher Secondary, graduation or post graduation level. The interpretation of the last Clause of Paragraph 2 of the advertisement and/or Rule 5 (c) of the Rules, which reads “must have succeeded in higher level of education in that language paper” by the authorities as success in the language paper at the graduation level or the post graduation level, or alternatively an examination in the language paper of a level which is equivalent to the level of the language as taught in the graduation level and not any part time course conducted by a University is a plausible if not possible interpretation which ought not to have been interfered with by the Writ Court. [Para 34] [1100-C-D]

7. This Court cannot but take judicial notice of the fact that universities do not usually allow students to opt for a language subject at the graduation level if the subject was not cleared at the Higher Secondary level. As observed, documents annexed by the Respondent No.1 reveals that candidates who have studied the language at some level before the graduate level are debarred from admission to the Certificate Course, which makes it obvious that the course is of elementary level. [Para 35] [1100-E]

A **8. Significantly, the Respondent No.1 has not produced any document or certificate of the Delhi University certifying that the certificate course in Bengali is of a standard equivalent to Bengali language at the post Higher Secondary level. [Para 36] [1100-F]**

B *Satyanarayan v. Mallikarjuna* AIR 1960 SC 137 :
[1960] SCR 890 – relied on.

Case Law Reference

[1960] SCR 890 relied on Para 30

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5824 of 2019

From the Judgment and Order dated 27.06.2016 of the High Court at Calcutta in F.M.A. No. 3324 of 2015

D Rana Mukherjee, Sr. Adv., Ms. Ekta Pradhan, Ms. Dharitry Phookan, Advs. for the Appellants.

Debal Banerji, Sr. Adv., Pijush K. Roy, Mrs. Kakali Roy, Rajan K. Chourasia, Suhaan Mukerji, Ms. Astha Sharma, Amit Verma, Ms. Kajal Dalal, Ms. Dimple Magpal (for M/s. PLR Chambers and Co.), Advs. for the Respondents.

E Co.), Advs. for the Respondents.

The Judgment of the Court was delivered by

INDIRA BANERJEE, J. 1. Leave granted.

F 2. Heard Mr. Rana Mukherjee, learned senior counsel for the Appellants and Mr. Debal Banerji, learned senior counsel for the Respondent No.1.

G 3. This appeal is against a final Judgment and order dated 27.6.2016 of a Division Bench of Calcutta High Court dismissing an appeal being FMA No.3324/2015 filed by the Appellants against an order dated 19.4.2010 passed by the Single Judge allowing Writ Petition No.21512(W) of 2009 filed by Respondent No.1 *inter alia* cancelling the candidature, empanelment and selection of the Respondent No.1 for the post of Assistant Teacher in Arabic (Pass) in Jiaruddintola High School, a Bengali medium school in District Malda in West Bengal, hereinafter referred to as “School”.

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4. The West Bengal Central School Service Commission issued an advertisement No.01/AT/08 dated 26.8.2008 *inter alia* in the issue of the Bengali daily “Aajkaal” published on 27.8.2008, inviting applications for the posts of Assistant Teacher as specified in the said advertisement.

5. It appears that there were vacancies *inter alia* in the posts of two categories of teachers, that is, the pass category for which the essential minimum educational qualification was Bachelor’s Degree in the Pass course from any UGC recognized university having the concerned subject as a combination subject of at least 300 marks at the degree level or 200 marks in the old 2-year Degree course, and the Honours/Post Graduate category for which the essential minimum qualification was Bachelor’s Degree with Hons. or alternatively Master’s Degree in the concerned subject from any UGC recognized university. For both the above categories qualification in Teachers’ Training such as B.T, B.Ed, P.G.B.T etc. was desirable.

6. In exercise of power conferred by Clause (d) of Sub-section (2) read with Sub-section (1) of Section 17 of the West Bengal School Service Commission Act, 1997 and in supersession of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2006, the Government of West Bengal framed the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2007 (hereinafter referred to as the “Rules”). Rule 5 of the Rules provides as follows:-

“ **5. Additional essential qualification of candidate.-** A candidate willing to be selected as a Teacher in any School or Madrasah, having Bengali or English or Hindi or Nepali or Oriya or Santhali or Telegu or Urdu as the medium of instruction, must have Bengali or English or Hindi or Nepali or Oriya or Santhali or Telegu or Urdu, as the case may be, as first or second or third language at any of the Secondary or Higher Secondary or Graduation level -

(a) at Secondary level or the Board or Board of Madrasah or equivalent; or

(b) at Higher Secondary level of the Council or equivalent; or

(c) at any subsequent higher level of education in that language paper.”

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A The said advertisement No. 01/AT/08 *inter alia* set forth the eligibility criteria for the teaching posts advertised. Paragraph/Note 2 of the said advertisement read:-

B “**Medium of instruction**..... Vacancies are mainly in Bengali medium schools (excluding Madrasahs). Candidates applying for School (excluding Madrasah) with particular language as medium must have that language of the medium as first or second or third language at Secondary level of the West Bengal Board of Secondary Education/West Bengal Board of Madrasah Education or from any equivalent Board or at Higher Secondary Level of the West Bengal Council of High Secondary Education or from C any equivalent Board/Council or must have succeeded at any subsequent higher level of education in that language paper.”

D 7. Pursuant to the aforesaid advertisement the Respondent No. 1 applied for the post of Assistant Teacher of Arabic in a Bengali medium school in the format prescribed. It appears that the Respondent No.1 was educated outside the State of West Bengal and he did not have Bengali as a subject either at the Secondary level or at the Higher Secondary level or at the graduation or post graduation level.

E 8. It is the case of the Respondent No.1 that he had successfully completed a one year Certificate Course in Bengali conducted by the University of Delhi, Department of Modern Indian Languages and Literary Studies. The syllabus for the said Certificate Course, which was a part time course comprised of:-

- F 1. Paper -I : Grammar and Translation - 100 Marks
2. Paper -II : Composition and History of Literature - 100 Marks
3. Paper III : Oral (Reading, Writing and Conversation) - 100 Marks

9. The break up of marks in the three papers is as follows:-

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Paper – I :	Grammar and Translation	100 Marks
(a)	Elementary Grammar	50 Marks
(b)	Translation from English to Language concerned	25 Marks
(c)	Translation from the Language concerned to English	25 Marks

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Paper – II:	Composition and History of Literature	100 Marks
1)	Paragraph writing	15 Marks
2)	Story writing	15 Marks
3)	Letter writing	15 Marks
4)	Comprehension	25 Marks
5)	History of Literature	30 Marks

Paper- III: Oral	Reading, Writing and Conversation	100 Marks
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10. The Respondent No.1 has annexed Statement of Marks awarded to him by the University of Delhi in the Certificate Course examination in Bengali. It appears that he obtained aggregate of 155 Marks out of 300 Marks. The Respondent No.1 obtained 57 Marks on 100 in the 1st Paper, 53 Marks on 100 in the 2nd paper and 45 on 100 in the 3rd paper (Oral).

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11. It appears that after applying pursuant to the aforesaid advertisement along with copies of all certificates including the certificate course in Bengali, the Respondent No.1 was issued admit card to appear for the 9th Regional Level Selection Test scheduled to be held on 21.12.2008.

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12. The Respondent No.1 was successful in the Written Test after which a letter dated 25.5.2009 was issued to the Respondent No.1 asking him to appear for a personality test scheduled to be held on 6.7.2009. The letter inviting the Respondent No.1 for the personality test read:-

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“7. You are requested to appear for the Personality Test on the assumption that you fulfil the requirements of educational qualifications etc. in terms of Advertisement made by the Commission in connection with the Examination.

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.....

Please note that your candidature is liable to be rejected at any stage, if you are found ineligible according to the terms of Advertisement No.01/AT/08 dated 26.08.08, the WBSSC Act, 1997, the WBSSC (Selection of Persons for Appointment to the Post of Teachers) Rules, 2007 and in terms of provisions of Indian

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- A Penal Code without assigning any reason as well as in terms of ITEM NOS. 17, 18 and 19 of the Application Form meant for 9th RLST (AT), 2008.”

13. The Respondent No.1 was asked to produce all documents in support of his eligibility in original, which he did, at the time of the personality test. The Respondent No.1 was, thereafter, empanelled for the post of Assistant Teacher in Arabic on the basis of results of 9th Regional Level Selection Test (AT) 2008. The Appellant thereafter invited the Respondent No. 1 for counselling on 21.8.2009 for recommendation of his candidature for the post of Assistant Teacher in Arabic of the Pass category.

- C 14. On the date of counselling i.e., 27.8.2009 the Respondent No.1 opted for appointment as an Assistant Teacher in Arabic In Jiaruddintola High School, District- Malda.

- D 15. After counselling, while the Respondent No.1 was awaiting appointment letter, he received an impugned communication cancelling his recommendation/empanelment and his selection to the School on the ground that he had opted for a Bengali medium school though he did not have Bengali as a subject either at the Secondary or the Higher Secondary or the graduation level.

- E 16. The Respondent No.1 filed Writ Petition No.2151(W) of 2009 in Calcutta High court, challenging the impugned communication on the ground that he was eligible for the post, since he had successfully completed the Certificate Course in Bengali from the Delhi University.

- F 17. When the writ petition was taken up for hearing, no one appeared on behalf of the Appellants. Nor had any affidavit in opposition been filed on behalf of the Appellant. The learned Single Judge allowed the writ petition *ex parte* observing that the case of the Respondent No.1 in Paragraphs 15 and 16 of the writ petition remained uncontroverted.

- G 18. The Single Judge held that the Statement of Marks dated 9.5.2008, issued by the University of Delhi, showed that the Respondent No.1 had successfully completed the Certificate Course in Bengali, obtaining 155 out of 300 Marks, and further proceeded to hold that in view of Paragraph 2 of the advertisement referred to above and, in particular, the last Clause, which read “must have succeeded at any

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subsequent higher level of education in the language paper”, the Respondent No.1, who had passed Certificate Course in Bengali from University of Delhi, was justified in contending that the Commission had wrongfully cancelled his selection for the post of Assistant Teacher of Arabic in the school. The Single Judge, therefore, directed the Appellant No.2 to offer appointment to the Respondent No.1 within a week.

19. Being aggrieved by the judgment and order dated 19.4.2010 passed by the Single Judge, the Appellants filed an appeal being F.M.A.T. No.1296 of 2010, later numbered as FMA 3324 of 2015, which was dismissed by impugned order dated 27.6.2016 which is under appeal.

20. The Division Bench rejected the argument advanced on behalf of the Appellants that a one year part time Certificate Course in Bengali from the University of Delhi was not a course contemplated in Rule 5(c) of the 2007 Rules. The Division Bench found that the Respondent No.1 indisputably did not come under Rule 5(a) or Rule 5(b). The question was whether he came under Rule 5(c). The Division Bench answered the aforesaid question in favour of the Respondent No.1 holding as follows:-

“Since the Rules do not specifically state that Certificate Course is not a course which is subsequent to higher level of education and the respondent No.1/writ petitioner fulfilled the parameters of Rule 5(c), the learned Single Judge was justified in passing the order impugned”

21. The Division Bench, by its order under appeal, directed Appellant No.2 to recommend Respondent No.1 for appointment as Assistant Teacher of Arabic (pass) in Bengali to the school.

22. The Division Bench and the Single Bench have erred in arriving at the finding that the Respondent No.1 had fulfilled the requirements of Paragraph 2 of the Advertisement and/or Rule 5(c) of the Rules.

23. With the greatest of respect, the Division Bench as also the Single Judge failed to appreciate that the question of eligibility of the Respondent No.1 for the post of Assistant Teacher of Arabic, in terms of Paragraph 2 of the Advertisement and/or Rule 5(c) of the 2007 Rules, necessitates an enquiry into and determination of the factual issue of whether Bengali taught in the Certificate Course conducted by the Department of Modern Indian Languages and Literary Studies of the

- A University of Delhi was of a level higher than the level of Bengali taught at the Higher Secondary level of the West Bengal Council of Higher Secondary Education or any equivalent Board.

24. A part time Certificate Course in a language, conducted by a University for graduates, is not necessarily of a level higher than the
B Higher Secondary level of the West Bengal Council of Higher Education or equivalent Board or for that matter, higher than the Secondary level of the West Bengal Board of Secondary Education or an equivalent Board

25. A Certificate Course could very well be a basic course for
C graduates who are beginners in the language. The syllabus for the Certificate Course in Bengali shows that out of three papers of 100 marks each, in which candidates are tested there is one Oral Paper of 100 marks for 'Reading' 'Writing' and 'Conversation', which are generally tested at the primary or at best the middle school level. Moreover the
D Certificate Course is not meant for candidates who have studied Bengali earlier.

26. The reasoning of the Division Bench that the Single Bench was justified in allowing the writ petition, since the rules do not specifically state that the Certificate Course is not a course which is subsequent to higher level of education is patently misconceived. It is preposterous to
E expect that statutory rules for appointment of teacher in the State of West Bengal, would not only have to prescribe the minimum qualifications, but also specify which of the certificates issued by Boards or Universities all over the country could not be considered as of standard equivalent to the standard of Bengali taught by a University at the under
F graduate level.

27. It is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision making process to ascertain whether there was such infirmity in the decision making process, which vitiates the decision and calls for
G intervention under Article 226 of the Constitution of India.

28. In any case, the High Court exercises its extraordinary jurisdiction under Article 226 of the Constitution of India to enforce a fundamental right or some other legal right or the performance of some

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legal duty. To pass orders in a writ petition, the High Court would necessarily have to address to itself the question of whether there has been breach of any fundamental or legal right of the petitioner, or whether there has been lapse in performance by the respondents of a legal duty. A

29. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities. B

30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan vs. Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari. C D E

31. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse. F

32. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but G

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- A a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect.

33. In entertaining and allowing the writ petition, the High Court has lost sight of the limits of its extraordinary power of judicial review and has in fact sat in appeal over the decision of the respondent No.2.

34. In this case, it is not in dispute that the Respondent No.1 who had been educated outside the State of West Bengal, did not have Bengali as a subject at the Secondary, Higher Secondary, graduation or post graduation level. The interpretation of the last Clause of Paragraph 2 of the advertisement and/or Rule 5 (c) of the Rules, which reads “must have succeeded in higher level of education in that language paper” by the authorities as success in the language paper at the graduation level or the post graduation level, or alternatively an examination in the language paper of a level which is equivalent to the level of the language as taught in the graduation level and not any part time course conducted by a University is a plausible if not possible interpretation which ought not to have been interfered with by the Writ Court.

35. This Court cannot but take judicial notice of the fact that universities do not usually allow students to opt for a language subject at the graduation level if the subject was not cleared at the Higher Secondary level. As observed above documents annexed by the Respondent No.1 reveals that candidates who have studied the language at some level before the graduate level are debarred from admission to the Certificate Course, which makes it obvious that the course is of elementary level.

36. Significantly, the Respondent No.1 has not produced any document or certificate of the Delhi University certifying that the certificate course in Bengali is of a standard equivalent to Bengali language at the post Higher Secondary level.

37. The judgment and order under appeal cannot be sustained and the same is set aside. Accordingly, the appeal is allowed with no order as to costs.