2025 INSC 437

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 9586 OF 2024)

STATE OF WEST BENGAL ..... APPELLANT

VERSUS

BAISHAKHI BHATTACHARYYA (CHATTERJEE)
AND OTHERS ..... RESPONDENTS

W I T H

CIVIL APPEALS ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS. 9614, 11883, 9637, 10617, 12148, 11752, 10552, 10603-10607, 11765, 11867, 11759, 11761, 12144, 11880, 11746, 10485, 10599, 10545, 11769, 12766, 11721, 11878, 10669-10670, 11857, 11756, 11846-11848, 15233, 15232, 16109, 12134, 13358, 14070-14072, 16110, 18501, 17041, 17022, 16911-16915, 15234, 11313, 15839, 15842, 14116-14117, 15231, 15843, 15844, 13337-13339, 14331, 15845, 15101, 13989, 16088-16091, 15846, 15391-15392, 15835, 15833, 15838, 15836, 16160, 16111, 15298, 15077, 16113, 16114, 16118, 15987, 16115, 18621, 16249, 16116, 16117, 16643-16645, 16887, 15294, 16093, 19768, 12770, 18366, 16933, 20455, 22110, 20462-20464, 19179, 22112, 22158-22159, 22111, 26465, 22109, 25078 OF 2024

A N D

CIVIL APPEALS ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS. DIARY NOS. 20709, 21000, 21281, 23851, 25090, 25093 25096, 27432, 27690, 27815, 28146, 28314, 28508, 30235, 30857, 32112, 32157, 33587, 25086, 27647, 27934, 28790, 29406, 30458, 30460, 30645, 31169, 33463, 27969, 41922, 20467, 30364, 30457, 30498, 34059, 20930, 31175 OF 2024, AND DIARY NO. 2104 OF 2025

J U D G M E N T

SANJIV KHANNA, CJI.

Leave granted.

2. The impugned judgment dated 22.04.2024 *en bloc* sets aside the 2016 selection process conducted by the West Bengal Central School Service Commission[1] for the recruitment of non-teaching staff in Groups C and D, and Assistant Teachers for Classes IX and X, as well as Classes XI and XII.

3. The appellants before us are the selectees, some of whom have been working for over five years. They fall into two categories: (i) selectees with purported evidence and material indicating wrongdoing and (ii) other selectees who claim that they were validly selected and have committed no wrongdoing. The State of West Bengal and the WBSSC have also challenged the impugned judgment.

4. The respondents before us are the writ petitioners who have succeeded before the High Court at Calcutta. The Central Bureau of Investigation[2] which had carried out the investigation pursuant to the directions given by the High Court at Calcutta is also arraigned as a respondent.[3]

5. The implicated selectees have challenged the judgment on the following main grounds: First, that the evidence against them is weak, unproven, and inadmissible. Second, they were punished without an inquiry, violating the

[1] Hereinafter, "WBSSC".
[2] Hereinafter, "CBI".
[3] Diary No. 21281/2024, SLP (C) 16643-45/2024, SLP (C) 18366/2024, SLP (C) 11721/2024, SLP (C) 14331/2024, SLP (C) 22110/2024, SLP (C) 25078/2024 etc.

principles of natural justice. Third, while they were chargesheeted, they have not been convicted and should be treated as innocent. The other selectees, the State of West Bengal, and WBSSC argue that the High Court erred by annulling the entire selection process based on the CBI report and should have only cancelled the appointments of those found guilty, leaving the other appointments intact.

FACTUAL MATRIX

6. To avoid prolixity, we will not revisit the detailed facts or the origin of the litigation, as they are clearly outlined in the impugned judgment. Instead, we will focus on the key facts necessary to decide the appeals:

- The West Bengal School Service Commission Act, 1997 governs the establishment of the School Service Commission, which is responsible for selecting individuals for teaching and non-teaching positions in State-funded schools in West Bengal.
- The West Bengal Board of Secondary Education Act, 1963 governs the establishment and functioning of the West Bengal Board of Secondary Education,[4] which appoints teachers and non-teaching staff in the institutions as per the West Bengal School Service Commission Act, 1997.
- The West Bengal School Service Commission (Selection for Appointment to the posts of Teachers for Classes IX and X in Secondary and Higher Secondary Schools) Rules, 2016[5] govern the selection process for Assistant Teachers for Classes IX and X.

[4] Hereinafter, "Board".
[5] Hereinafter, "Class IX-X Rules".

- The West Bengal School Service Commission (Selection for Appointment to the posts of Teachers for Classes XI and XII in Secondary and Higher Secondary Schools) Rules, 2016[6] govern the selection process for Assistant Teachers for Classes XI and XII.
- The West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009[7] govern the selection process for Group C and Group D Non-Teaching posts.
- In 2016, WBSSC, the statutory selection body, had issued a notification for regional and state level selection tests and commenced the selection process for the following posts:
    (i) 12,905 Assistant Teachers for Classes IX & X;
    (ii) 5,712 Assistant Teachers for Classes XI & XII;
    (iii) 2,067 Non-teaching Staff under Group C; and
    (iv) 3,956 Non-teaching Staff under Group D.
- M/s. Nysa Communications Pvt. Ltd.[8] was given the task of scanning and assessing the Optical Mark Recognition[9] sheets.
- The candidates who had appeared in the exam were allowed to log in and check their respective status/result on the evaluation of the OMR sheet on or about the following dates:

(a)	Assistant Teachers for Classes IX & X	02.05.2017
(b)	Assistant Teachers for Classes XI & XII	08.05.2017
(c)	Non-teaching Staff Group 'C'	24.07.2017
(d)	Non-teaching Staff Group 'D'	23.06.2017

[6] Hereinafter, "Class XI-XII Rules".
[7] Hereinafter, "2009 Rules".
[8] Hereinafter, "M/s. Nysa".
[9] Hereinafter, "OMR".

- A common list with the marks was not uploaded. However, candidates were allowed to log in to the WBSSC website to check if they had been called for a personality test or interview.
- WBSSC then conducted the interviews and personality tests, maintaining a ratio of 1:1.4 for teachers and 1:2 for non-teaching staff, based on the marks obtained by the candidates.
- Personality tests/interviews for the candidates were conducted on the following dates:

(a)	Assistant Teachers for Classes IX & X	06.11.2017 onwards
(b)	Assistant Teachers for Classes XI & XII	14.09.2017 to 24.09.2017
(c)	Non-teaching Staff Group 'C'	24.10.2017 to 02.11.2017
(d)	Non-teaching Staff Group 'D'	16.08.2017 to 31.08.2017

- The final status rank list was published on the website of WBSSC as per the details given below:

(a)	Assistant Teachers for Classes IX & X	28.08.2018
(b)	Assistant Teachers for Classes XI & XII	27.11.2017
(c)	Non-teaching Staff Group 'C'	20.12.2017
(d)	Non-teaching Staff Group 'D'	06.11.2017

The list did not display the marks obtained, but it included both the candidates who were in the panel and those on the waiting list.

- Even before the results were declared, WPA No. 30649 of 2016 was filed by Baishakhi Bhattacharyya against the State of West Bengal and others before the High Court at Calcutta in December 2016. The allegation made by Baishakhi Bhattacharyya was the failure to grant age relaxation. This case became the lead case before the High Court at Calcutta.
- Other writ petitions were filed subsequently in 2021, seeking individual appointments and alleging illegalities in the 2016 recruitment process. Illustratively, some of the issues raised were:

I. Appointment letters were received but candidates were not allowed to join.[10]

II. Non-publication of the fourth phase of the counselling list contrary to the 2009 Rules.[11]

III. Rank jumping i.e. candidates holding the rank below the petitioner(s) had been given appointments.[12]

IV. Candidates in the waiting list for Group D posts in the panel published on 20.06.2019 were ignored, as a new notification dated 14.06.2021 had been published initiating a new recruitment process.[13]

V. Pick and choose method in selecting candidates and flouting of recruitment rules.[14]

VI. Candidate(s) neither in the merit list nor in the waiting list was/ were given appointment and also joined the school(s).[15]

- Counter affidavits, affidavits and reports were filed by the WBSSC and the Board.
- On some occasions, WBSSC filed affidavits accepting the illegalities and mistakes, be it on account of rank-jumping or the person being issued appointment letter(s) was not one of the selected/empanelled candidates.
- When questioned, WBSSC stated that it could not verify the number of illegal recommendations or provide details of such candidates. We will later refer to their affidavit dated 27.09.2022 filed in WPA No. 17273 of 2021 for further explanation.

[10] WPA No. 14612 of 2021.
[11] WPA No. 12266 of 2021.
[12] WPA 18585 of 2021.
[13] WPA 12270 of 2021.
[14] WPA No. 13700 of 2021.
[15] WPA 17273 of 2021.

- A four-member committee, chaired by Justice Ranjit Kumar Bag, a retired Judge of the High Court at Calcutta, was formed. The committee included representatives from WBSSC, the Board, and an Advocate. This committee was tasked with scrutinizing and verifying the appointments of non-teaching staff in Groups 'C' and 'D'. We will discuss their findings later.
- WBSSC was unable to produce the original OMR sheets. Initially, they submitted mirror/scanned copies, but later claimed they had not retained these copies. They stated that these copies had been provided by M/s. Nysa.
- WBSSC, citing Rule 21 of the Classes IX-X and Classes XI-XII Rules, justified its executive decision dated 22.07.2019 to destroy the physical OMR sheets one year after the results were declared. We will examine this argument subsequently.
- Although the applicable rules clearly do not permit the destruction of OMR sheets for non-teaching staff (Groups C and D), WBSSC violated these rules by directing the destruction of the physical OMR sheets through its executive decision dated 22.07.2019.
- Upon realizing illegalities in appointment, WBSSC terminated the services of some candidates under Rule 17 of the Classes IX-X and XI-XII Rules, and Rule 18 of the 2009 Rules. In accordance with the interim orders passed by the High Court at Calcutta, WBSSC also withdrew the recommendations for certain candidates.
- *Vide* order dated 15.02.2022[16], the Single Judge directed the CBI to investigate the alleged illegalities in the recruitment process. Pursuant to

[16] Passed in WPA 12270 of 2021.

further orders dated 05.04.2022,[17] 07.04.2022,[18] 18.05.2022,[19] and 20.05.2022[20] of the Single Judge, four different FIRs[21] were registered by CBI.

- Special Leave Petitions were filed before this Court and heard.[22] *Vide* order dated 09.11.2023, while dealing with a batch of cases in ***Achinta Kumar Mondal and Others etc.*** v. ***Laxmi Tunga and Others etc.***,[23] this Court directed that:

> "We accordingly direct the CBI to complete the investigation within two months and submit its report before the High Court. The CBI shall also be at liberty to take such steps as may be lawful in pursuance of their investigation.
>
> (ii) We also direct that protection to the appointments which is being accorded today in this order shall continue for a period of six months to enable the Division Bench to finally adjudicate on the subject-disputes. The Division Bench shall examine all the points that may be raised before it including the question of maintainability of the proceedings.
>
> (iii) The proceedings in which petitioners/appellants have approached this Court directly without being impleaded as parties to the proceedings before the High Court shall also have right of audience before the High Court but for that purpose, appropriate application(s) shall have to be filed before the High Court.
>
> (iv) As we foresee the possibility of a large number of litigants approaching the Division Bench of the High Court, we leave it to the Division Bench to formulate its own procedure for regulating the manner in which hearing shall be conducted by it. The Division Bench may explore the possibility of hearing the parties in representative capacity, so that there is no multiple hearing on the same point of law or fact."

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[17] Passed in WPA 18585 of 2021.
[18] Passed in WPA 5538 of 2022.
[19] Passed in WPA 5406 of 2022.
[20] Passed in WPA 12270 of 2021.
[21] RC0102022A0002, RC0102022A0003, RC0102022A0004 and RC0102022A0005.
[22] Arising out of impugned final/interim judgment and orders dated 16-02-2023 in MAT No. 274/2023 & MAT No. 259/2023 passed by the High Court at Calcutta.
[23] SLP (C) Nos. 4078-4079/2023.

- Pursuant to the direction for investigation, the CBI had submitted four interim and final Reports[24] before the High Court.
- *Vide* impugned judgment dated 22.04.2024, the Division Bench set aside the entire selection process. The Division Bench has given the following directions:-

> "363. In view of the discussions above, we issue the following directions:
>
> (i) Writ petitions appearing in the monthly list of March, 2024 of this Bench, which are not filed and numbered in the years 2021 and 2022 are released from the list due to lack of jurisdiction/determination.
>
> (ii) All appointments granted in the selection processes involved being violative of Articles 14 and 16 of the Constitution of India, are declared null and void and cancelled.
>
> (iii) OMR sheets available in the three hard disks, if not already done or such portion not done, must be uploaded in the website of SSC forthwith and made available to the public for viewing.
>
> (iv) Persons who had been appointed outside the panel, after expiry of the panel as also those who submitted blank OMR sheets but obtained appointments, must return all remunerations and benefits received by them to the State exchequer along with interest calculated at 12 percent per annum, from the date of receipt thereof till deposit, within a period of four weeks from date.
>
> (v) In default, the District Magistrates under whose jurisdictions, such candidates reside, will take expeditious steps to realize such amount from such persons, as arrears of land revenue and shall ensure that recovery is made within a period of six weeks of the date of initiation of proceeding for recovery.
>
> (vi) Respective District Inspectors of School will report to the respective District Magistrates as to whether money directed to be paid by the persons concerned have been paid to the State exchequer or not.

[24] Dated 09.01.2024 in WPA 18585/2021, 16.01.2024 in WPA 5406/2022, 05.02.2024 in WPA 5406/2022 and 07.12.2022 in WPA 13700/2021.

(vii) CBI will undertake further investigation in respect of all the four cases. CBI will interrogate all persons who had received appointments beyond the panel, after expiry of the panel and after submitting blank OMR sheets. If necessary, CBI shall undertake custodial interrogation in respect of each of them.

(viii) CBI will undertake further investigations with regard to the persons involved, in the State Government approving creation of supernumerary post to accommodate illegal appointments. If necessary, CBI will undertake custodial interrogation of such person involved.

(ix) CBI shall submit its reports with regard to further investigations as directed herein, preferably within three months from date, with the jurisdictional Court.

(x) Leave granted to SIT to seek appropriate directions so that the investigations and trials come to their logical conclusions.

(xi) SSC shall undertake a fresh selection process in respect the declared vacancies involved in these selection processes preferably within a fortnight from the date of declaration of results of the ensuing elections.

(xii) Appointments for preparation, evaluation and scanning of OMR sheets shall be made by SSC by open tender and after declaring the eligibility criteria and other terms and conditions of the contract.

(xiii) SSC shall follow the Rules governing the selection processes in letter and spirit.

(xiv) SSC shall make available all policy decisions with regard to compliance of the Recruitment Rules governing any of the categories of the selection process in its website."

LEGAL POSITION

7. This Court in several cases has examined the question when the entire selection process should be struck down in case of irregularities. It will be apposite to refer to some of the decisions as the ratio and reasoning, in our opinion, is clear and does not suffer from contradictions. In ***Sachin Kumar and Others*** v. ***Delhi Subordinate Service Selection Board (DSSSB) and***

Others,[25] this Court observed that determining when the examination process is vitiated by irregularities requires an in-depth fact-finding inquiry. The answer lies in examining whether the irregularities were systemic enough to undermine the sanctity of the process. In some cases, the irregularities may border on or even constitute fraud, which severely damages the credibility and legitimacy of the process. In such cases, the only option is to cancel the result entirely. These are situations where it is difficult to separate the tainted from the untainted participants, and the irregularities are widespread, indicating a malaise or fraud that has corrupted the process. On the other hand, there are cases where only some participants have committed irregularities. In such cases, it may be possible to segregate the wrongdoers from those who adhered to the rules. The innocent should not suffer for the actions of the wrongdoers. By segregating the guilty, the selection process for the untainted candidates can proceed to its logical conclusion. This aligns with the principle of equality of opportunity under Article 16(1) of the Constitution of India, as well as the fundamental requirement of Article 14 of the Constitution, which mandates a fair, equitable, and reasonable process. Care must be taken to ensure that the innocent are not unfairly penalized alongside the wrongdoers by cancelling the entire process. To treat the innocent and the wrongdoers equally would violate Article 14 of the Constitution, as it would involve treating unequals equally. The innocent should not be punished for faults they did not commit. Finally, while the decision of the recruiting body is subject to judicial control, the body must retain a measure of discretion.

[25] (2021) 4 SCC 631.

8. ***Sachin Kumar*** (supra) refers to an earlier decision of three Judges of this Court in ***Bihar School Examination Board*** v. ***Subhas Chandra Sinha and Others***[26] where it was held that when the conduct of all examinees, or at least the vast majority, at a particular examination centre reveals the use of unfair means, it may not be necessary for the board to give individual opportunities of hearing to the candidates if the entire examination is being cancelled. This is not a case where anyone is charged with unfair means and would need to defend themselves. An examination vitiated by widespread unfair means falls into a separate category, so giving notice in individual cases is not required.

9. In ***Board of High School and Intermediate Education, U.P., Allahabad*** v. ***Ghanshyam Das Gupta and Others,***[27] a Constitution Bench of this Court held that when there is a discovery of widespread unfair practices, such as the leakage of question papers or destruction of answer books, it may not be necessary to give each examinee an opportunity to be heard. While it may not be appropriate to completely whittle down the requirement of natural justice and fair play, a straitjacket formula cannot be applied when the examination was not properly conducted or when the majority of the examinees did not act as they should have. Therefore, insisting that the Board should hold a detailed inquiry into each individual case was considered incorrect. It was also observed that such an approach would delay the functioning of an autonomous body like the Board of High School and Intermediate Education.

10. In line with the above ratio, this Court in ***Anamica Mishra and Others*** v. ***U.P. Public Service Commission, Allahabad and Others***,[28] has held that the

[26] (1970) 1 SCC 648.
[27] AIR 1962 SC 1110.
[28] (1990) Supp SCC 692.

cancellation of the entire recruitment process was not justified as there was no systemic flaw in the entire recruitment process, and the issue was only with regard to calling the candidates for interview. However, in ***Madhyamic Shiksha Mandal, M.P.*** v. ***Abhilash Shiksha Prasar Samiti and Others***,[29] the entire examination was cancelled in view of the report of mass copying and leakage of the question paper. In ***Madhyamic Shiksha Mandal, M.P.*** (supra), the teachers did not object to the students entering the examination hall with books, indicating their complicity. It was held that the fact that some innocent students may have suffered in the given facts was inconsequential.

11. Similarly, in ***Union of India and Others*** v. ***Rajesh P.U., Puthuvalnikathu and Another***,[30] this Court examined a case where a Special Committee scrutinized the answer sheets of 134 successful and 184 unsuccessful candidates, identifying only 31 as involved in unfair practices. Based on this, the Court struck down the decision of the competent authority to cancel the entire recruitment process, deeming it extreme, unreasonable, and unnecessary given the circumstances. The Court applied the test of whether there were widespread, pervasive issues that had undermined the entire process and whether it was impossible to weed out those benefiting from the irregularities or illegalities.

12. In yet another decision in ***Inderpreet Singh Kahlon and Others*** v. ***State of Punjab and Others***,[31] this Court elucidated three principles which must be adhered to when cancelling appointments. First, there must be satisfaction

[29] (1998) 9 SCC 236.
[30] (2003) 7 SCC 285.
[31] (2006) 11 SCC 356.

regarding the sufficiency of the material collected so as to enable the State to conclude that the selection process was tainted. Second, to determine whether the illegalities committed go to the root of the matter and vitiate the entire selection process, such satisfaction should be based on a reasoned and thorough investigation conducted in a fair and transparent manner. Third, there must be sufficient material to support the conclusion that the majority of the appointments were part of the fraudulent purpose or that the system itself was corrupt. This three-pronged test, as outlined by Sinha J., is appropriate and should be adhered to.

13. The precursor to ***Inderpreet Singh Kahlon*** (supra) involved raids that led to the recovery of large sums of cash from the house of the Chairman of the Punjab Public Service Commission. The allegations suggested that the Chairman – who served from 1996 to 2002 – had made several appointments between 1998 and 2001 for extraneous considerations, including monetary ones. The affected appellants before this Court, whose services were terminated, comprised four categories of officers selected through four recruitment examinations held between 1997 and 2001. Two FIRs came to be registered against the Chairman and other officers of the Public Service Commission. However, among the selectees, an FIR was filed only against one. In this factual background, Sinha J. drew a distinction between a proven case of mass cheating in a Board Exam and an unproven charge of corruption in the context of appointment of a civil servant. The *en masse* termination order setting aside several selections spread over 3-4 years was reversed. This was an unprecedented case of mass termination, with a walloping impact and consequences. Applying the threefold factual and legal test, *en masse*

termination was set aside. In this context, it was observed that termination orders should only be issued in cases where it is found to be impossible or highly improbable to separate the tainted cases from the non-tainted ones.

14. In our considered view, the opinion expressed by Dalveer Bhandari J. in ***Inderpreet Singh Kahlon*** (supra) regarding the strict compliance with the principles of natural justice is not in line with the ratio of the earlier three Judge Bench decision in ***Bihar School Examination Board*** (supra). We would like to observe that the *en masse* termination in ***Inderpreet Singh Kahlon*** (supra) was based on the charge of corruption against the former Chairman, leading to the cancellation of the entire selection process and appointments, even though the charges against him had not yet been proven in a court of law.

15. Similarly, in another two Judge Bench decision in ***Joginder Pal and Others*** v. ***State of Punjab and Others***,[32] this Court observed that every effort should be made to separate tainted from untainted candidates, and if it is found that segregating the tainted from untainted is possible, cancellation of the entire selection process would be incompatible with law.

16. In ***Chairman, All India Railways Recruitment Board and Another*** v. ***K. Shyam Kumar and Others***,[33] where the decision of the Railway Recruitment Board to cancel the examination and conduct retest on the ground of malpractices involving mass copying, leakage of question paper and impersonation was struck down by the High Court, this Court – reversing the judgment of the High Court – upheld the order of the Board to cancel the

[32] (2014) 6 SCC 644.
[33] (2010) 6 SCC 614.

examination and conduct retest. Considering the material on record, the widespread irregularities and malpractice in the first written test, and the ultimate object of fair selection, this Court upheld the finding of the Board that the test was vitiated due to mass copying, impersonation, and question paper leakage, rather than misconduct by just a few candidates. In the said facts and circumstance, the decision of the Board to cancel the selection and reconduct the examination was held to be reasonable and well-balanced.

17. In ***State of Tamil Nadu and Another*** v. ***A. Kalaimani and Others***,[34] there were allegations of large-scale malpractices involving tampering with OMR sheets. After re-evaluation and further scrutiny, the Teachers Recruitment Board found that 196 candidates had been the beneficiaries of fraudulent alteration of marks. This Court referred to the observations in ***Gohil Vishvaraj Hanubhai and Others*** v. ***State of Gujarat and Others***[35] to hold that the authority of the State to maintain the purity of the examination process is unquestionable. ***Gohil Vishvaraj Hanubhai*** (supra) takes note of the settled dictum that the cancellation of the examination is necessary and required in cases where large-scale malpractices in the course of the conduct of any examination process are alleged. In this context, this Court in ***A. Kalaimani*** (supra) held that despite the inconvenience caused to the untainted candidates, a serious doubt regarding the magnitude of manipulation in the examination has to be given due weightage. It was held that the finding of the Board that there were chances of more people being involved in the

[34] (2021) 16 SCC 217.
[35] (2017) 13 SCC 621.

manipulation of marks was a bona fide decision being taken by the Board to instil confidence in the public regarding the integrity of the selection process.

18. In ***Vanshika Yadav*** v. ***Union of India and Others***,[36] this Court observed that a holistic view must be adopted by assessing the extent of unfair means used and whether it is possible to separate the tainted candidates from the untainted ones. The court must ensure that allegations of malpractice are substantiated and that the material on record, including investigative reports, supports this conclusion. There must be at least some evidence for the court to reach such a conclusion. However, the standard of evidence need not be unduly strict. Specifically, the material on record need not point to a single, definitive conclusion that malpractice occurred at a systemic level. Nevertheless, there must be a real possibility of systemic malaise, as reflected in the material before the court.

19. The following principles emerge from the aforesaid discussion:

- When an in-depth factual inquiry reveals systemic irregularities, such as malaise or fraud, that undermine the integrity of the entire selection process, the result should be cancelled in its entirety. However, if and when possible, segregation of tainted and untainted candidates should be done in consonance with fairness and equity.
- The decision to cancel the selection *en masse* must be based on the satisfaction derived from sufficient material collected through a fair and thorough investigation. It is not necessary for the material collected to conclusively prove malpractice beyond a reasonable doubt. The standard

[36] (2024) 9 SCC 743.

of evidence should be reasonable certainty of systemic malaise. The probability test is applicable.

- Despite the inconvenience caused to untainted candidates, when broad and deep manipulation in the selection process is proven, due weightage has to be given to maintaining the purity of the selection process.
- Individual notice and hearing may not be necessary in all cases for practical reasons when the facts establish that the entire selection process is vitiated with illegalities at a large scale.

ILLEGALITIES IN THE SELECTION PROCESS

20. In our opinion, this is a case wherein the entire selection process has been vitiated and tainted beyond resolution. Manipulations and frauds on a large scale, coupled with the attempted cover-up, have dented the selection process beyond repair and partial redemption. The credibility and legitimacy of the selection are denuded. The High Court has referred to the illegalities in the impugned judgment as under:

> "335. The evidence placed before us have established the following illegalities in the selection process: –
>
> (i) SSC had appointed an agency namely M/s. NYSA for the purpose of scanning and evaluating the OMR sheets by a closed-door tender process in violation of Articles 14 and 16 of the Constitution of India
>
> (ii) such agency had engaged another agency namely, Data Scantech to scan the OMR sheets
>
> (iii) although scanning was done at the office premises of SSC, it is claimed by SSC that, SSC had never engaged Data Scantech to scan the OMR sheets or authorised M/s. NYSA to engage Data Scantech or any other agency
>
> (iv) SSC had destroyed the original OMR sheet ostensibly with scanned mirror image thereof being preserved in its server

(v) CBI did not find any scanned mirror image of OMR sheets in the server of SSC

(vi) OMR sheets had been destroyed without the scanned mirror images being preserved in the server of SSC

(vii) SSC had provided scanned OMR sheets to RTI applicants in the year 2018 till 2023 claiming that such OMR sheets were from its database although, CBI did not find any OMR sheets in the server of SSC

(viii) appointments higher than the declared vacancies had been given in respect of all 4 categories

(ix) appointments had been given to persons who were not even in the panel

(x) appointments had been given to persons who submitted blank OMR sheets

(xi) appointments had been given persons after expiry of the panel

(xii) persons placed lower in rank had been given appointment in preference to persons placed higher in rank in the merit list

(xiii) merit list containing the marks obtained by the respective candidates had never been published

(xiv) counselling had been held subsequent to the expiry of the panel

(xv) total beneficiaries of the illegalities are yet to be identified and rendered improbable given the stand of SSC, Board and State

(xvi) SSC had applied for permission to create supernumerary posts to accommodate the illegal appointees

(xvii) Recruitment Rules governing the four categories had never been adhered to either in letter or spirit"

The aforesaid established irregularities, cumulatively and incrementally, demarcate the contours of the court to navigate the reliefs sought. To ensure clarity and objectivity, we shall independently examine the facts and form our conclusion.

21. First, we begin by referring to the findings of the Justice (Retd.) Bag Committee, which undertook a thorough scrutiny and verification of the appointments of non-teaching staff in Groups C and D. The summary of the findings are as under:

> "**Summary of findings of the Enquiry Committee.** On consideration of our findings, described in detail under heading 6 and fixing of responsibility of the individuals described under heading 7, we would like to summarize our findings as follows:
>
> (i) The Central Commission changed the rank of the candidates in the panel before uploading the panel in the website of the Central Commission on June 20, 2019 in spite of direction of the High Court at Calcutta to upload to entire existing panel already published on November 6, 2017.
>
> (ii) The constitution of the Committee approved by the Hon'ble MIC of School Education Department (Dr. Partha Chatterjee) notified in the form of an Order of the Joint Secretary to the Government of West Bengal on November 1, 2019 to supervise, monitor and guide the Central Commission in connection with pending recruitment process cannot be construed as direction of the State Government in terms of Section 19 of the School Service Commission Act, 1997 and as such the said Order cannot have any validity in the eye of law.
>
> (iii) Dr. Sharmila Mitra, Chairperson of Southern Regional Commission, Dr. Mahuya Biswas, Former Chairperson of the Eastern Regional Commission, Mr. Subhajit Chattopadhyay, 55 Former Chairman of the South-Eastern Regional Commission and Sk. Sirajuddin, Chairman of Northern Regional Commission and Chairman of Western Regional Commission abdicated their duties and responsibilities in counseling the candidates and recommending the names of the candidates of Group "D" posts in terms of the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 during the period of validity of the panel.
>
> (iv) Dr. Subires Bhattacharya, Former Chairman of the Central Commission usurped the power and authority of the Regional Commissions by counseling the candidates and making recommendation of names of the candidates for Group "D" posts by manipulating infrastructure and evolving illegal procedure in violation of the provisions of Rule 16(v) and 18(1) and (2) of the School Service Commission Rules, 2009.

(v) Dr. Subires Bhattacharya, Dr. Sharmila Mitra, Dr. Mahuya Biswas, Mr. Subhajit Chattopadhyay and Sk. Sirajuddin are prima facie liable for disciplinary action on the charge of gross dereliction of duty for violating the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 and as such disciplinary action can be taken against them by the Disciplinary Authority or the Pension Sanctioning Authority in case of retirement of any of the above officials in terms of the provisions of the Rules by which they are governed.

(vi) Samarjit Acharya, Programme Officer of the Central Commission and Dr. Santi Prasad Sinha, Former Advisor of the Central Commission are prima facie liable for committing offences punishable under Section 465/417/468/34 of Indian Penal Code.

(vii) Prof. Saumitra Sarkar, Mormer Chairman of the Central Commission, Mr. Ashok Kumar Saha, Former Assistant Secretary, Former Secretary and Former Chairman of the Central Commission, Dr. Santi Prasad Sinha, Former Advisor of the Central Commission and Dr. Kalynmoy Ganguly, President of the Board are prima facie liable for committing offences punishable under Section 120B of Indian Penal Code.

(viii) FIR can be registered against Samarjit Acharya and Dr. Santi Prasad Sinha on the allegation of committing offences punishable under Section 465/417/468/34 of Indian Penal Code and against Prof. Saumitra Sarkar, Mr. Ashok Kumar Saha, Dr. Santi Prasad Sinha and Dr. Kalyanmoy Ganguly on the allegation of committing offences punishable under Section 120B of Indian Penal Code.

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6. Summary of findings of the Enquiry Committee. On consideration of our findings, described in detail under heading 5 and fixing of responsibility of the individuals described under heading 6, we would like to summarise our findings as follows:

(i) The Central Commission did not maintain transparency at the time of publication of the panel of Group “C” posts on December 20, 2017, as the candidates could not access t the panel to know his/her rank vis-a-vis the rank of other candidates in the panel and the copy of the panel was not circulated among the Regional Commissions and the offices of the District Magistrates of the concerned district.

(ii) The Central Commission changed the rank of the candidates in the existing panel before uploading the entire panel in the website of the Central Commission on June 20, 2019 in spite of direction of the High Court at Calcutta to upload the entire existing panel already published on November 6, 2017.

(iii) The constitution of the Committee approved by the Hon'ble MIC of School Education Department (Dr. Partha Chatterjee) notified in the form of an Order of the Joint Secretary to the Government of West Bengal on November 1, 2019 to supervise, monitor and guide the Central Commission in connection with pending recruitment process cannot be construed as direction of the State Government in terms of Section 19 of the School Service Commission Act, 1997 and as such the said Order cannot have any validity in the eye of law.

(iv) Dr. Sharmila Mitra, Chairperson of Southern Regional Commission, Dr. Mahuya Biswas, Former Chairperson of the Eastern Regional Commission Dr. Chaitali Bhattacharya, Former chairperson of South-Eastern Regional commission, Mr. Subhajit Chattopadhyay, Former Chairman of the South-Eastern Regional Commission and Dr. Sk. Sirajuddin, Chairman of Northern Regional Commission and Chairman of Western Regional Commission abdicated their duties and responsibilities in counselling of the candidates and recommending the names of the candidates of Group "C" posts in terms of the provisions of 73 amended Section 7 of the School Service Commission Act, 1997 and Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 during the period of validity of the panel.

(v) Dr. Subires Bhattacharya, Former Chairman of the Central Commission during the first half of the year 2018 and Dr. Sharmila Mitra, Former Chairperson of the Central Commission During the second part of the year 2018 usurped the power and authority of the Regional Commissions by counselling the candidates and making recommendation of names of the candidates for Group "C" posts by manipulating infrastructure and evolving illegal procedure in violation of the provisions of amended Section 7 of the School Service Commission Act, 1997 and Rule 16(v) and 18(1) and (2) of the School Service Commission Rules, 2009.

(vi) Dr. Subires Bhattacharya, Dr. Sharmila Mitra, Dr. Mahuya Biswas, Dr. Chaitali Bhattacharya, Mr. Subhajit Chattopadhay and Dr. Sk. Sirajuddin are prima facie liable for disciplinary action on the charge of gross dereliction of duty for violating the provisions of amended Section 7 of the School Service Commission Act, 19997 and the provisions of Rule 16(v) and

Rule 18(1) and (2) of the School Service Commission Rules, 2009 and as such disciplinary action can be taken against them by the Disciplinary Authority or the Pension Sanctioning Authority in case of retirement of any of the above officials in terms of the provisions of the Rules by which they are governed.

(vii) Mr. Samarjit Acharya, Programme Officer of the Central Commission and Dr. Santi Prasad Sinha, Former Advisor or the Central Commission are prima facie liable for committing offences punishable under Section 465/417/468/34 of Indian Penal Code.

(viii)Prof. Saumitra Sarkar, Former chairman of the Central Commission, Mr. Ashok Kumar Saha, Former Assistant Secretary, Former Secretary and Former Chairman of the Central Commission, Dr. Santi Prasad Sinha, Former Advisor of the Central Commission and Dr. Kalyanmoy Ganguly, President of the 74 Board are, prima facie, liable for committing offences punishable under Section 120B of Indian Penal Code.

(ix) FIR can be registered against Samarjit Acharya and Dr. Santi Prasad Sinha on the allegation of committing offences punishable under Section 465/417/468/34 of India Penal Code and against Prof. Saumitra Sarkar, Mr. Ashok Kumar Saha, Dr. Santi Prasad Sinha and Dr. Kalyanmoy Ganguly on the allegation of committing offences punishable under Section 120B of India Penal Code."

22. We have four reports submitted by the CBI. We would like to quote some of the passages from the report dated 05.02.2024, submitted by the CBI in compliance with the order dated 24.01.2024 passed by the High Court at Calcutta. The relevant portion of the said report reads as under:

"3. That during investigation, it was revealed that the West Bengal Central School Service Commission (hereinafter referred to as 'commission' had awarded a work order to M/s Nysa Communication Private Limited ('hereinafter referred to as M/s. NYSA') for scanning and evaluation of OMR answer sheets pertaining to the selection tests of Group – D, Group – C, Assistant Teachers for classes IX – X and XI – XII.

4. Investigation has established that Sh. Puneet Kumar was the then Director and Sh. Niladri Das was the then Vice President of the said M.s Nysa Communications Pvt. Ltd. during relevant period. It has been established during

investigation that Sh. Niladri Das was in charge of operations in respect of recruitment examinations conducted by WBCSSC and frequently visited the officer of WBCSSC to attend to the actual operational part and did the requisite liaison on behalf of the agency for necessary compliance of the instructions given by WBCSSC. Sh Puneet Kumar, being the Director, mainly looked after the financial affairs of the agency and represented it on records.

5. Investigation has established that the scanning of OMR sheets was undertaken by the said M/s Nysa Communication Pvt Ltd at WBCSSC office at Acharya Sadan under direct supervision of Sh Niladri Das and in presence of WBCSSC officials. It has been further established that M/s NYSA communication Pvt. Ltd. had further given work order w.r.t. scanning the original OMR to M/s Data Scantech Solutions, Noida who remained present on the premises of WBCSSC for the scanning work. After completion of scanning, the precessed data in the form of scanned images of OMRs, scan data etc. were handed over by M/s Data Scantech Solutions to M/s Nysa Communication Pvt Ltd. who took the same to their officer located at Noida in digital form (Hard Disks) leaving the original hard copies of OMR sheets in the office of the WBCSSC, WBCSSC handed over their answer keys in respect of all subjects to M/s Nysa Communications Pvt Ltd for evaluation of OMR responses.

6. That, while scanning the original OMR sheets by M/s Data Scantech Solutions on behalf of M/s Nysa, two ".DAT" files were generated containing SCAN NO., Bar Code, ROLL NO., VENUE CODE, BOOKLET SERIAL NUMBER, SUBJECT CODE, CATEGORY, GENDER, MEDIUM and RESPONSE CODE. In the process of scanning, the image copies of the original OMR sheets were also captured.

7. That, a sample of the ".DAT" file generated during sscaning of one OMR sheet is cited as an example below: -

Responses of candidates in the OMR is appearing as Response Code in alphabets, while "#" indicates end of one OMR sheet

8. That, two such ".DAT" files are generated since scanning is done twice to avoid any technical error. Thereafter, a final ".DAT" file is prepared which is called a clean data file. After receiving the answer keys from Commission, the same is compared with this final ".DAT" file and a "DBF" File is generated having the score of the candidates.

9. That during investigation the server database of the Commission was seized by the Central Bureau of Investigation containing all the data pertaining to selection tests of Group – D, Group – C, Assistant Teachers for classes IX – X and XI – XII.

10. That, during investigation of the case, three hard disks were recovered on 15/16.09.2022 from the residence of Pankaj Bansal, ex-employee of M/s. NYSA, located at Ghaziabad. The certificates dated 16.09.2022 u/s 65-B of Indian Evidence Act, 1872, from Shri. Pankaj Bansal were also obtained, in triplicate, with regard to genuineness of the date contained in these three hard-disks so recovered.

11. That, During investigation, data files containing scanned OMRs, ".DAT" files etc. pertaining to the aforesaid WBCSSC recruitment matters were also seized from M/s Data Scantech Solutions. During investigation of RC-03(A)/2022-Kol, the hash values of these Data files of Scantech Solutions were matched with the hash value of the corresponding files recovered from the hard discs seized from Pankaj Bansal and was found to be matching, which establishes that the data contained in the three hard disks recovered from Pankaj Bansal's possession were not contaminated.

12. That, a similar exercise of matching the data available on the hard disks of Pankaj Bansal with the data seized from the Commission was done during the course of investigation and it was found that there were mismatch between the two, in as much as, the written marks awarded to candidates as available on the server of the commission had been increased to qualify undeserving candidates. This mismatch establishes that manipulation in marks of written examination in the case of many candidates was resorted to and such candidates were identified. The comparison of these actual/genuine OMR marks with the OMR marks available in WBCSSC Server shows that there is manipulation in 952 nos. of candidates of IX-X, 907 nos. of candidates of XI-XII, 3481 nos. of Gr. C candidates and 2823 nos. of Gr. D candidates.

13. That, during the course of investigation, several emails were found to have been exchanged between the accused officials of the Commission, certain private persons and officials of NYSA. These emails contained lists of candidates, whose OMR marks were found to be increased in the server of the Commission. Besides this, emails have been exchanged between the staff of NYSA themselves containing manipulated data of candidates. This shows the complicity of officials of M/s NYSA in this conspiracy.

14. That, during investigation, it emerged that in the year 2019, Shri Niladri Das of M/s NYSA Communications Pvt Ltd left NYSA and started his own business in name & style of M/s ND Info Systems Pvt Ltd., Noida, and was engaged in the business of Data processing in line of M/s NYSA. The said Niladri Das poached Pankaj Bansal, Kuldeep Singh, Anoy Saha, Muzammil Hossain and others support staff from NYSA.

15. That, it has emerged from the investigation that before leaving NYSA, Niladri Das and his staffs retained all the data pertaining to recruitment examinations of WBCSSC including the data of Group C,D, Assistant Teacher (IX-X, XI – XII) with them. Even after leaving NYSA, Niladri Das, Pankaj Bansal and Muzammil Hossain kept providing assistance to WBCSSC in the matters of RTI on the basis of the data of NYSA which was manipulated and also hosted on the WBCSSC server. This also establishes that Niladri Das, Pankaj Bansal and Muzammil Hossain who were involved in the entire scam and it was in their knowledge that data has been manipulated and therefore they continued to extend this assistance solely to avoid detection.

16. That, if there would have been no manipulations then the scanned images of OMRs available with WBCSSC were sufficient to respond to RTI queries. Investigation revealed that WBCSSC had destroyed the original OMR sheets and the scanned images of original OMR sheets in the year 2019, which again leads to an inference that the same were destroyed to keep the entire scan under wraps.

17. That, investigation establishes that as a reward for doing aforesaid manipulation in the OMR score, M/s NDISPL of Niladri das was provided work of recruitment of Teachers in Upper Primary conducted by WBCSSC. Apart from this, many other recruitment works were also assigned to Niladri Das by the Government of West Bengal. Various list of candidates related to Upper Primary were communicated to Niladri Das from S P Sinha, Sharmila Mitra, etc. Were found in the email of Niladri Das (niladri@ndispl.com) which shows his criminal conduct.

18. Result of comparison of these electronic records collected from M/s Data Scantech Solutions with that of the hard disks seized from Pankaj Bansal –

(a) As discussed in the preceding paragraphs, the hard disk recovered from Pankaj Bansal contained the marks of written examination, typing test, etc. This marks when compared with marks available in WBCSSC server resulted in the identification of candidates whose marks of written examination, typing test were manipulated.

(b) M/s Data Scantech Solutions made the initial scanned images of OMR's. These scanned images were given to M/s NYSA. Pankaj Bansal retained a copy of these scanned images.

(c) That in connection with candidates of Class IX – X, XI – XII, the scanned image of OMR sheets as collected from M/s Data Scantech Solutions pertaining to the alleged candidates whose OMR marks were found manipulated were matched with the scanned image of OMR sheets as available in the hard disk of Pankaj Bansal and the same are found identical.

(d) The Response string of candidates pertaining to IXX and XI- XII as recovered from M/s Data Scantech Solutions matches with the Response String available in the hard disk seized from Pankaj Bansal. On the basis of these response strings the actual/ genuine OMR marks of IX-X and XI-XII candidates were determined. The comparison of these actual/ genuine OMR marks with the OMR marks available in WBCSSC Server shows that there is manipulation in 952 nos. Of candidates of IX-X and 907 nos. of candidates of XI-XII.

(e) The Response string of candidates pertaining to Gr. C & Gr. D as recovered from M/s Data Scantech Solutions matches with the Response String available in the hard disk seized from Pankaj Bansal. On the basis of these response strings the actual/ genuine OMR marks of Gr. C & Gr. D candidates were determined. The comparison of these actual/ genuine OMR marks with the OMR marks available in WBCSSC Server shows that there is manipulation in 3481 nos. of Gr. C candidates and 2823 nos. of Gr. D candidates.

(f) That, the investigation has established the genuineness of the data of hard disks seized from Pankaj Bansal.

19. THAT, in compliance to the solemn order dated 24.01.2024 of this Hon'ble Court, three hard-disks, in original, seized from the residence of Pankaj Bansal along with original certificate dated 16.09.2022 u/s 65-B of Indian Evidence Act, 1872, obtained from Pankaj Bansal are being submitted before this Hon'ble Court. The three hard-disks are in sealed condition. The certificate u/s 65-B of Indian Evidence Act, 1872, in original, obtained from Shri. Pankaj Bansal dated 16.09.2022 is annexed hereto and marked as "Annexure – A".

20. That, Hon'ble Division Bench at High Court at Calcutta in WPA 2613 of 2018 (Basanta Das Vs The State of West Bengal & Ors) directed CBI on 24.01.2024 for production of the above mentioned three original hard disks seized from Pankaj Bansal and in compliance to such direction all the said

three hard disks were returned back by CFSL, Hyderabad in sealed condition and are now being produced with this report.

21. That, the present status of all the above mentioned four recruitment cases of CBI is "disposed –off from investigation", where multiple charge sheets in each such cases have been filed by CBI before the Learned Trial Court, Alipore. The alleged offences of the First Information Reports and the subsequent irregularities found during the course of investigation have been substantiated in all such cases of CBI and all the charge sheets contain the detailed investigation carried out by CBI in such cases."

The facts stated in the report dated 05.02.2024, submitted by the CBI, speak for themselves.

23. WBSSC has been candid enough to admit; (i) rank jumping, that is, to say candidates having lower rank were preferred over those having higher rank, (ii) out of panel appointments, that is, candidates who are not in the panel of shortlisted candidates have been recommended and appointed, (iii) candidates who were not recommended by WBSSC were appointed by the Board, and (iv) manipulation of the OMR scores. However, there is a discrepancy in both the number of candidates and their corresponding percentages where such irregularities have been identified.

24. The impugned judgment refers to the following statistical report submitted by WBSSC before the High Court[37] :

S. No.	Post Name	Class Level	Total Recommendation	OMR Issue	Rank Jumping	Alleged Irregularity	Alleged Irregularity in Percentage
1.	Assistant Teacher	IX-X Level	11610	808	185	993	8.50%
2.	Assistant Teacher	XI-XII Level	5596	771	39	810	14.47%
3.	Group-C (clerk)	-	2037	783	-	783	38.43%
4.	Group-D	-	3880	1741	-	-	44.87%

[37] See paragraph 240 of the impugned judgment.

25. In the written submissions filed on behalf of WBSSC in this Court, two tables have been furnished. Table 1 pertains to candidates who either jumped rank or were appointed despite not being in panel. Their details are as under:

TABLE – 1

S. No	Category (a)	Rank Jumped (b)	Out of Panel but still appointed (c)	Total (d)
1	Assistant Teachers for Class IX-X	74	111	185
2	Assistant Teachers for Classes XI-XII	20	18	38
3	Group C	132	249	381
4	Group D	237	371	608
5	Total	463	749	**1212**

Table 2 furnished by WBSSC is for candidates who were appointed by manipulating the OMR sheets. Table 2 is as under:

TABLE – 2

Category (a)	No. of Candidates with alleged OMR score mismatch as per CBI image	No. of Candidates out of (b) who were appointed
Assistant Teachers Classes IX and X	952	808
Assistant Teachers for Classes XI and XII	907	772
Group C	3481	782
Group D	2823	1911

26. In another written submission filed on behalf of WBSSC in this Court, it is claimed that on further verification, the following details of the candidates who

either jumped rank or were appointed despite not being in the panel came to light:

A: Person identified as tainted in the category of Rank Jumping and out of Panel but appointed

Category	Rank Jumped	Out of Panel but still Appointed
Assistant Teachers-Classes IX-X	74	111
Assistant Teachers-Classes XI-XII	20	18
Group C	132	249
Group D	237	371
Total (1212)	463	749

The details of candidates who were appointed by manipulation of the OMR scores is as under:

B: Person identified having dispute in OMR issue:

Category	No. of Candidates identified by CBI (appointed and not appointed)	OMR issue and recommended by Commission
Assistant Teachers-Classes IX and X	952	796
Assistant Teachers-XI and XII	907	772
Group C	3481	782
Group D	2823	1741
TOTAL		4091

WBSSC claims that 57 Group C and 170 Group D selectees/appointees with OMR mismatches were not recommended but appointed. However, their names also figure in the lists of candidates appointed through rank jumping and out of panel. WBSSC admits that:

- 1,498 out-of-panel candidates were illegally appointed;
- 926 candidates were involved in rank jumping; and

- 4,091 candidates were recommended despite OMR mismatches.

Thus, excluding 239[38] candidates who fall under both OMR mismatch and other illegalities, WBSSC acknowledges that 6,276 illegal appointments were made.

27. At this stage, we would like to refer to the affidavit dated 27.09.2022 filed on behalf of the WBSSC before the High Court at Calcutta, wherein the WBSSC stated:

> " I, further say that in the course of the investigation by the Central Bureau of Investigation (CBI, in short) the Chairman and the Secretary of the Commission have had several meetings with the officials of the CBI including the Head of Branch, ACB, wherefrom it appeared that in the course of their investigation/interrogation they have also come across a considerable number of illegal appointments. However, as the CBI has not disclosed the details with regard to the said illegal appointments detected by them to the Chairman and/or Secretary of the Commission, the Commission is not in a position to state the number of such illegal recommendations and/or furnish the details of such candidates."

WBSSC, however, submits that the affidavit dated 27.09.2022 was filed before they had access to the status reports of the CBI and the data/details gathered pursuant to their investigation, including the scanned mirror copies of the OMR sheets. The data which has now come to light allows segregation of meritorious candidates from those appointed illegally. Therefore, WBSSC argues that the entire selection process should not be annulled.

28. We may have accepted this argument if WBSSC had the original physical OMR sheets or the mirror copy of the OMR sheets. However, WBSSC accepts that

[38] 57 candidates (Group C – OMR Mismatch), 170 candidates (Group D – OMR Mismatch) and 12 candidates (Class IX-X Assistant Teacher – common to rank jumping and out of panel).

they do not have the physical OMR sheets as they were destroyed in terms of Rule 21 of the Class IX and X and Class XI and XII Rules, which require retention of the OMR sheets for only one year. Rule 21 of the Class IX and X and Class XI and XII Rules reads:

> "**21. Preservation of written examination answer scripts. –** The written answer scripts/OMRs of examinations shall be destroyed by the Commission after 1 year from the date of publication of the panel."

29. Admittedly, the OMR sheets for the candidates who had applied for non-teaching Groups C and D posts were also destroyed. The reliance placed on Rule 21 by WBSSC to justify the destruction of OMR sheets is misplaced, as Rule 21 applies only to Assistant Teachers for Classes IX-X and XI-XII, not to non-teaching Groups C and D posts. It is acknowledged that the Chairman of WBSSC, in a letter dated 22.07.2019, instructed the destruction of OMR sheets related to the 2016 selection process for Assistant Teachers (Classes IX-X and XI-XII) and Group C and D employees.

30. Moreover, given that the recruitment process was ongoing even after the one-year validity period of the panel, there is no justification for the destruction of the OMR sheets. It is apparent that the time period specified in Rule 21 was coinciding with the time period specified for the validity of the panel. Further, WBSSC did not maintain the mirror copies of the OMR sheets in their computer/records. Thus, the destruction of the physical OMR sheets and the failure to maintain scanned/mirror images of the OMR sheets are significant factors which were rightly taken into consideration by the High Court. We concur.

31. WBSSC has also tried to justify the extension of the term of the panel. As noted above, the time period of one year specified in Rule 21 for the destruction of the OMR sheets coincides with the time period specified for the validity of the panel. There is no doubt that the counselling process and appointments made to the post of Assistant Teachers for classes IX-X and XI-XII were made after the expiry of the panel. This is illegal and contrary to the rules. Reliance on the orders/judgments of the High Court in stray cases of rank jumping, where the High Court directed to appoint candidates after the expiry of the validity of the panel, would not have any significant impact. The court, at that stage, was not concerned and aware of the illegalities in the appointment procedure and had not specifically examined the question of appointment after the expiry of the panel.

32. The CBI report dated 05.02.2024 states that M/s. Nysa – contracted for scanning and evaluation of OMR sheets by WBSSC – undertook the said exercise at the offices of WBSSC. M/s. Nysa had further sub-contracted the work order w.r.t. scanning the original OMR sheets to M/s Data Scantech Solutions, whose officials also remained present at the offices of WBSSC for scanning. The scanning process was conducted by examining two outputs:- (i) the scanned image of the OMR sheet and (ii) the scanned image of the answer string with language coded inputs. M/s. Nysa then made a tabulation of the results of the OMR sheet evaluation and shared it with WBSSC.

33. It is peculiar that WBSSC did not retain the mirror/scanned copies of the OMR sheets in their electronic record while allowing M/s. Nysa to keep them. The CBI report dated 05.02.2024 indicates that WBSSC did initially retain the scanned/mirror copies of the OMR sheets which were subsequently

deleted/destroyed.[39] The contradictory stance of WBSSC on the possession and destruction of scanned/mirror copies of the OMR sheets reflect an attempt to cover up illegalities and lapses in the selection process. Though the WBSSC claimed to not retain the scanned/mirror images of the OMR sheets, *vide* Right to Information application response dated 12.10.2023 and 18.01.2024, they furnished the scanned/mirror images of OMR sheets to two candidates. WBSSC records in the Right to Information application response dated 12.10.2023 and 18.01.2024 that the mirror image of OMR sheet is being furnished 'as per data stored in Commission's database'. However, subsequently WBSSC took a stance that the said scanned/mirror copies of the OMR sheets were obtained from the data retrieved by CBI.

34. WBSSC in the initial affidavits filed before the High Court and earlier when they had furnished information, including marks reflected in the OMR sheets, had not claimed non-availability of the scanned OMR sheets.

35. The CBI report dated 05.02.2024 notes the mismatch between the OMR sheet evaluation and the marks as recorded by WBSSC. The CBI report also refers to the email exchange between the staff of M/s. Nysa regarding the increase of marks for specific candidates and the manipulation of data. The email correspondence also shows that as a reward for the manipulation in the OMR score, some other works were awarded to M/s. Indi Info Systems Private Limited, Noida, a company founded by Mr. Niladri Das, who was previously associated with M/s. Nysa. The report suggests a connection between the awarding of this work and the manipulation of the examination results.

[39] Para. 16, CBI Report dated 05.02.2024.

36. Apart from WBSSC not retaining mirror copies of the scanned OMR sheets, other questions arise. In particular are the significant discrepancies between the marks in WBSSC's computer software and the data found on the three hard disks recovered from Pankaj Bansal's office in Noida. Further, WBSSC did not upload the marks of candidates while uploading the list of the candidates called for interview or included in the panel/waitlist. Marks were only displayed after the High Court *vide* order dated 12.05.2022 in WPA 8059 of 2022 mandated the disclosure of marks for each empanelled candidate. This omission appears deliberate, likely intended to conceal the marks of candidates on the waitlist, raising concerns about potential data manipulation. It is also a known fact that some candidates who did not attempt a single question were awarded marks and issued appointment letters.

37. It is also important to refer to another finding recorded in the impugned judgment regarding a discrepancy in the recommendations made by WBSSC and the number of appointment letters issued by the Board. The investigation revealed the following disparities between the number of candidates recommended for appointment by WBSSC and the number of appointment letters issued by the Board:

Post Name	**Number of candidates recommended for appointment by WBSSC**	**Number of appointment letters issued by the Board**	**Excess appointment letters issued by the Board**
Assistant Teachers for Classes IX and X	11,425	12,946	1,071
Assistant Teachers of Classes XI and XII	5,557	5,756	199
Group C	2067	2483	416
Group D	3881	4550	669

When confronted, the Board had proffered that all appointment letters were issued on the recommendation of WBSSC. On the other hand, the WBSSC contradicted the stance of the Board by stating that they had not issued recommendations for the excess numbers mentioned by the Board. WBSSC and the Board now claim that the discrepancy in the number of appointment letters issued is incorrect. The Board counted all letters without adjusting for candidates who did not join, while WBSSC excluded those candidates from its recommendations. Therefore, there is no discrepancy for teaching staff, and the small difference for non-teaching staff is irrelevant, as many of these candidates are already on the tainted list for rank-jumping or being out of panel. We reject this late attempt by WBSSC and the Board to reconcile the figures, as the number of recommendations made by WBSSC is independent of whether a candidate joined the post.

38. There is also a dichotomy in the positions taken by the tainted candidates and the untainted candidates regarding the scanned copies of OMR sheets recovered from Pankaj Bansal and M/s. Data Scantech Solutions. It is the stand of the tainted candidates before us that the scanned copy of the OMR sheets are not the ones which the candidates had filled up at the time of examination. Thus, they cannot be persecuted and treated as tainted. On the other hand, the untainted candidates claim that the scanned copies of the OMR sheets are the original sheets which the candidates had filled up.

39. It is also submitted by the tainted candidates that the certificate under Section 65B of the Indian Evidence Act, 1872[40] is inadmissible and thus, the said data

[40] Hereinafter, “Evidence Act”.

is unreliable. In our opinion, the issues of authenticity of the data *viz*. the mismatch between the datasets and the admissibility of the certificate under Section 65B of the Evidence Act, need not be decided in these proceedings, as it falls under the purview of the criminal court. However, suffice it to state that the Evidence Act does not strictly apply to the proceedings in a Writ Court, and the decision is rendered based on the evidence and material on record. Further, the issue involved in the present case is different and one relating to the purity and sanctity of the selection process. Therefore, the Court can rely upon the contradictory pleas taken by the tainted and the untainted candidates. In the given facts and circumstances, the failure of WBSSC to keep scanned/mirror copies of the OMR sheets assumes great importance.

40. Further, it is clear that there is a discrepancy between the scanned OMR sheets recovered from the three hard disks in Pankaj Bansal's possession and the marks recorded in WBSSC's computer/records. This discrepancy has been acknowledged and accepted by WBSSC.

41. The claim that the data on the three hard disks shows no interpolation and is consistent with the data in M/s. Data Scantech Solutions' computers fails to account for significant gaps and discrepancies. These issues, highlighted in both the impugned judgment and our findings, clearly point to large-scale manipulation and tampering with results, including rank-jumping, discrepancies in marks, the issuance of appointment letters to candidates not on the panel, and appointments made beyond the panel's validity period.

42. In spite of the factual background and the credible evidence indicating irregularities, WBSSC initially did try and cover up the lapses and illegalities.

The cover up itself has made the verification and ascertainment more difficult or rather impossible given the scale of camouflage and dressing up done at each stage. We are convinced that the entire selection process was intentionally compromised due to the illegalities involved.

DELAY, LACHES AND NATURAL JUSTICE

43. WBSSC and the candidates have raised pleas of estoppel, delay, and laches in filing the writ petitions. In our view, the impugned judgment correctly dismisses these pleas, relying on this Court's judgment in ***Chennai Metropolitan Water Supply and Sewarage Board and Others*** v. ***T.T Murali Babu.***[41] The judgment distinguishes between acquiescence, delay and laches, noting that they have distinct characteristics, though the underlying principle remains one of estoppel. Laches refers to remissness or slackness, involving unreasonable delay or negligence in seeking equitable relief, which prejudices the other party. It arises from the neglect of a party to assert their right, thereby preventing them from obtaining relief. In our opinion, this bar does not apply here, as the fraud and illegalities were only uncovered in 2021 and 2022. Applying the defence of laches, which is not a statutory bar, would be contrary to equity and justice in these circumstances. The principle of acquiescence also does not apply, as it assumes knowledge of the act, followed by passive acceptance. Therefore, it introduces a new implied defence that does not fit the facts of this case. Delay, as a general principle, encompasses both laches and acquiescence, and delay is always fact-specific. In this case, where fraud was concealed, as well as a cover up was practised, these principles cannot be applied.

[41] (2014) 4 SCC 108.

44. We have already partially addressed the plea of failure to adhere to the principles of natural justice while examining the applicable case law. It is also important to emphasize that, in this case, public notices were issued, and the candidates/applicants/petitioners were afforded the opportunity to inspect the data and present their arguments. In light of the facts of this case, we are of the opinion that the principles of natural justice cannot be invoked to validate the fraud that has occurred. These principles are not rigid or inflexible; rather, they must be applied with due regard to the specific facts and circumstances at hand.

CONCLUSION

45. The last question relates to the relief and whether it requires any modification. We find no valid ground or reason to interfere with the direction of the High Court that the services of tainted candidates, where appointed, must be terminated, and they should be required to refund any salaries/payments received. Since their appointments were the result of fraud, this amounts to cheating. Therefore, we see no justification to alter this direction.

46. For candidates not specifically found to be tainted, the entire selection process has been rightly declared null and void due to the egregious violations and illegalities, which violated Articles 14 and 16 of the Constitution. As such, the appointments of these candidates are cancelled. However, candidates who are already employed need not be asked to refund or restitute any payments made to them. However, their services will be terminated. Furthermore, no candidate can be appointed once the entire examination process and results have been declared void.

47. Some of the appointed candidates who do not fall within the category of tainted candidates may have previously worked in different departments of the State Government or with autonomous bodies, etc. In such cases, although their appointments are cancelled, these candidates will have the right to apply to their previous departments or autonomous bodies to continue in service with those entities. These applications must be processed by the respective government departments or bodies within three months, and the candidates will be allowed to resume their positions. Further, the period between the termination of their previous appointment and their rejoining will not be considered a break in service. Their seniority and other entitlements will be preserved, and they will be eligible for increments. However, for the period they were employed under the disputed appointment, no wages will be paid by the State Government or autonomous bodies. Further, if required and necessary, supernumerary posts may be created for persons appointed in the interregnum.

48. Lastly, we address the case of disabled candidates. Our attention has been drawn to one such case where the impugned judgment held that the appointee, Ms. Soma Das, shall be allowed to continue on humanitarian grounds. While we will not interfere with this finding, we make it clear that other differently-abled candidates will not be entitled to the same benefit, as it would contradict legal principles and the rule of law. However, in consideration of their disability, these candidates will be permitted to continue and will receive wages until the fresh selection process and appointments are completed.

49. The disabled candidates mentioned in the previous paragraph will be allowed to participate in the fresh selection process, if required, with age relaxation and other concessions. Similarly, other candidates who are not specifically tainted will also be eligible to participate, with appropriate age relaxation. In our opinion, such a direction would be fair and just, as it would allow these candidates to take part in the fresh selection process, which should now be initiated to fill the vacancies.

50. Our observations and findings would not influence the criminal proceedings.

51. Accordingly, we uphold the impugned judgment cancelling *en bloc* / entire selection process but have made certain modifications in the directions issued by the High Court. The appeals are disposed of in aforesaid terms.

52. We, however, will independently take up the issue raised in the appeal(s) filed by the State of West Bengal with regard to the direction of investigation by the CBI on the decision taken to create supernumerary posts. The Special Leave Petition(s) to this extent will be listed for hearing on 08.04.2025.

53. All pending applications, including impleadment applications, also stand disposed of. No order as to costs.

.....CJI.
(SANJIV KHANNA)

….....J.
(SANJAY KUMAR)

NEW DELHI;
APRIL 03, 2025.