

21.01.2021
SL No.102
Court No.12
(gc)

**MAT 82 of 2021
With
CAN 1 of 2021**

**Priyanka Mondal
Vs.
The State of West Bengal & Ors.**

(Via Video Conference)

Mr. S.N. Mukherjee, Sr. Adv.,
Ms. Susmita Shaw,
Mr. Nilendu Bhattacharya,
Mr. Kapil Guha,
...for the appellant.
Mr. L.K. Gupta, Sr. Adv.,
Mr. Subir Sanyal,
Mr. Ratul Biswas,
...for the W.B.B.P.E.
Mr. Kishore Dutta, A.G.,
Mr. Sayan Sinha,
...for the State.
Mr. Ajay Chaubey,
Mr. Sanjeeb Seni,
...for the U.O.I.
Mr. Souvik Nandy,
...for the N.C.T.E.

By consent of the parties, the appeal and the application are treated as on the day's list and disposed of by this common order.

The appeal is arising out of an order dated 18th January, 2021 in a writ application filed by one Priyanka Mondal challenging the notification dated 23rd December, 2020 for recruitment of Primary Teachers. Before the learned Single Judge a prayer was made for allowing the writ petitioner to participate in TET-2014 pursuant to the said notification on the ground that the writ petitioner has the qualification as prescribed in the notification, save and

except, Clause (c) of the Eligibility Criteria as she would be appearing for the TET Examination scheduled for 31st December, 2020 and it is in the fitness of the thing that the relaxation should be extended to all the candidates who would qualify in the TET-2017.

It was urged before the learned Single Judge as well as before us that in terms of the notification dated 11th February, 2011 issued by the National Council for Teachers Education (in short “NCTE”), it is obligatory under Rule 11 for the appropriate Government to conduct a TET at least once every year and the State, being the appropriate Government, having failed to conduct such TET every year, the right of the writ petitioner to be considered for the recruitment process would be infringed in the event the TET qualification of 2014 is not extended to TET-2017. The learned Single Judge denied the interim order on the ground that whether such provision is mandatory or directory needs consideration. The learned Single Judge has also held that the writ petitioner ought to have approached the Board to allow the petitioner to participate in the recruitment process before filing the writ petition.

Mr. S.N. Mukherjee, learned Senior Counsel appearing on behalf of the writ petitioner submits that it is not in dispute that so far as qualification (a) and (b) of the notification for recruitment dated 23rd December, 2020 is concerned, the appellant has a requisite qualification but the inclusion of Clause (c) in the said notification, namely,

that the candidate should also pass in the TET-2014 conducted by the West Bengal Board of Primary Education, ought to have extended to the candidates who are appearing for TET-2017 as it is the failure on the part of the appropriate Government in not holding TET Examination every year as directed by NCTE in its notification dated 11th February, 2011. It is submitted that the last TET Examination was held in the year 2014 and there is no explanation offered as to why the TET Examination for the subsequent period was not held. When the State decided to hold TET-2017 in terms of the advertisement 31st December, 2020, there is no reason not to extend the benefit of TET-2017 to the successful candidates. It is also submitted that by restricting it to TET-2014, the State respondents have narrowed down the area of consideration and it is discriminatory, arbitrary and also contrary to the notification dated 11th February, 2011.

Mr. Kishore Dutta, learned Advocate General representing the State submits that the provisions of NCTE Guideline are directory in nature as held by the Hon'ble Supreme Court in ***State of Uttar Pradesh and Others Vs. Shiv Kumar Pathak and Others*** reported at **(2018) 12 SCC 595**. It is an admitted position that the writ petitioner was not qualified for TET-2014 as she was under-age and filed the writ petition only on the basis of the notification dated 31st December, 2020 inviting candidates to participate in TET-2017 Examination to be conducted by

the West Bengal Board of Primary Education. It is further submitted that if the writ petitioner was really aggrieved by the inaction on the part of the State authorities for not conducting TET every year, nothing prevented the writ petitioner to approach the Court for holding TET Examination for the subsequent periods and not to wait till the notification dated 31st December, 2020 was issued inviting the applicants for participating in TET-2017. Mr. Advocate General has reiterated that in view of the decision of the Hon'ble Supreme Court in **Shiv Kumar Pathak** (supra), it is not incumbent upon the State to hold TET Examination every year, in any event, it is an issue to be decided at the final hearing of the writ petition.

The learned Counsel representing the other respondents have adopted the submissions made by the learned Advocate General.

The learned Counsel for the NCTE has submitted before us that the Guideline-11 is directory and not mandatory.

At this stage, we are concerned with the propriety of an order passed by the learned Single Judge refusing ad-interim order of injunction. In considering the prayer for ad-interim order of injunction, the Court is required to take into consideration certain essential facts. The writ petitioner could not have participated in TET-2014. She became eligible for TET-2017 only after 2018

because she acquired a technical qualification in the year 2018 itself. In fact, the notice dated 12th May, 2017 would not come to the aid of the writ petitioner had the TET-2017 was held in the year 2017 itself. The sheet anchor of the writ petitioner is the notification dated 31st December, 2020. Had there been no notification dated 31st December, 2020, the writ petitioner possibly could not have approached this Court. The process of recruitment starts with an advertisement which lays down the qualification, admittedly the writ petitioner was not qualified on the date of advertisement. The writ petitioner invited us to change the rule of the game after the process has started. One would have followed that the writ petition was filed challenging the very basis of the recruitment process immediately after 23rd December, 2020. The recruitment process to be initiated under the notification has set out different dates for completion of the formalities. All the online applications were to be filed by 6th of January, 2021. The writ petition was filed on 11th January, 2021. The judgment of the Hon'ble Supreme Court **Shiv Kumar Pathak** (supra) records the submission of the NCTE that the notification dated 11th February, 2011 is not mandatory. However, we find that there is no decision on merit as to the mandatory nature of all the Clauses of the Guidelines. It goes by concession. At the same

time, it needs to be considered whether such guidelines are mandatory in nature having regard to the fact that the nomenclature is used by the NCTE in respect of various rules are: “guidelines for conducting TET”. It is on a prima facie reading of the judgment in **Shiv Kumar Pathak** (supra), it appears that NCTE has made a concession and that is restricted only with regard to the weightage to be given to the marks obtained in TET and not in relation to the other Clauses of the said Guideline. The state has taken a conscious decision to recruit teachers on the board of, inter alia, results in 2014 TET. The decision to hold TET 2017 is a subsequent decision which may govern future recruitment. However, these are the issues we feel to be decided at the final hearing of the writ petition. The issue raised by Mr. Mukherjee has to be weighed with the balance of convenience and the comparative hardship that would result in the event the State is now to ask to relax the qualification. Moreover TET certificate is valid for 7 years. There is no reason also to doubt that the state would not take steps in near future for filling up future vacancies keeping in mind its duties under the Right to Children to Free & Compulsory Education Act, 2009 falling the NCTE guidelines. The petitioner is yet to qualify in TET 2017. The examination is going to be held on 31st January, 2021.

On the aforesaid consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

The appeal being MAT 82 of 2021 and the stay application being CAN 1 of 2021, accordingly, stands dismissed.

However, the learned Single Judge shall decide the writ petition being uninfluenced by any observation made by us in this order.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Aniruddha Roy, J.)

(Soumen Sen, J.)