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MAT 123 of 2021
with
I.A No. CAN 1 of 2021
CAN 2 of 2021

West Bengal Board of Primary Education
Vs.
Imana Chowdhury & Ors.

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with

MAT 124 of 2021
with
I.A No. CAN 1 of 2021

West Bengal Board of Primary Education
Vs.
Sweta Mahanta & Ors.

Mr. L.K. Gupta, Sr. Adv
Mr. Subir Sanyal
Mr. Ratul Biswas
... For the Appellant/Board
in both the appeals

Mr. Kishore Dutta, Ld. A.G
... For the State

Mr. Biswaroop Bhattacharya
Mr. Ali Ahsan Alamgir
Mr. Asif Iqbal
Ms. Riyas Das
Ms. Rabia Khatoon
... For the Writ Petitioners/
Respondents nos. 1 to 88
in MAT 123 of 2021

Mr. Bikram Banerjee
Mr. Sudipta Dasgupta
... For the Writ Petitioners/
Respondents nos. 1 to 13
in MAT 124 of 2021

Mr. Firdous Samim
Mr. Gopa Biswas
... For the applicants
in MAT 123 of 2021

Mr. Souvik Nandy
... For NCTE in both the appeals

On the last occasion we had heard the parties in extenso. The hearing of the appeals were concluded for all practical purposes. However, this matter is adjourned till date.

In view of confusion being raised with regard to the maintainability of appeal as prima facie it appeared to us that concession was made before the learned Single Judge with regard to the participation of the writ petitioners in the ensuing TET examination. We adjourned this matter to enable the appellant to seek clarification.

The appellant subsequently carried out an application for clarification before the learned Single Judge. Learned Single Judge clarified that Mr. Subir Sanyal, learned counsel who had represented the Board, had categorically stated that all arrangements including examination centers, distributing of admit cards and other formalities were completed and keeping in mind the pandemic of COVID-19 it was not possible to entertain more candidates to sit TET-2017 examination and on such submission drawn the learned Single Judge concluded that Mr. Sanyal has categorically submitted that writ petitioners should not be allowed to sit for TET-2017 examination.

In view of such clarification now we dispose of both the appeals and all connected applications by the following order.

The writ petition was filed by candidates who admittedly did not have required certificate as on 12th May, 2017 to become eligible to participate in the Teacher Eligibility Tests (TET)-2017 for classes I to class V.

The Notification for the said examination

reads as follows:-

“ Only those persons who have acquired the academic and professional qualifications specified in the NCTE- Notification dated 23.08.2010 are eligible to apply for the TET, 2017(set out below):

(i) Classes I-V

Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and having Diploma in Education (Special Education), a course recognized by the Rehabilitation Council of India(R.C.I) shall also be considered.

5% relaxation of marks in Senior Secondary or its equivalent examination (i.e. 45%) will be allowed for the SC,ST,OBC-A, OBC-B, PH<EC, Ex-Servicemen) and DH (Death-in-harness) category candidates.

(ii) *As per the Govt. order No. 287-SE(E)/10M-6/2009 Pt-I(TET) dated 17.04.2017 read with No. 343-SE/EE/10M-6/2009 Pt-I (TET) dated 12.05.2017 persons who have appeared final examination of Two Year D.El.Ed Course from NCTE recognized institutions on the date of this Notification and the result is not yet*

published.

And

Persons who have appeared final examination of Two Year D.Ed (Special Education) Course from RCI recognized institutions on the date of this Notification and the result is not yet published shall also be eligible to sit for the TET 2017.

Minimum academic qualifications mentioned above obtained after the date of this notification, shall not be accepted. Any such applications submitted shall be rejected.”

However, by the Notification dated 14th November, 2017 the Board invited on-line applications from the candidates who were pursuing Diploma in Elementary Education (D.El.Ed) course.

The Notification further says that minimum academic qualification as specified therein obtained after 9th October, 2017 shall not be accepted. The examination did not take place in the year 2017. TET-2017 is now being held in January 2021.

The writ petitioners were denied participation in the said examination on the plea that they did not obtain the required qualification on or before 9th October, 2017 and hence they are not eligible for participation in the said examination.

The writ petitioners being aggrieved by such decision of the appellant approached the learned Single Judge with a prayer to allow to participate in TET 2017.

Several writ petitions were disposed of by the common judgment and order dated January 28, 2021. The learned Single Judge in disposing of

the writ petitions has observed that the writ petitioners, who have approached this Court after publication of the notice dated December 31, 2020, should be allowed to participate in TET 2017 by the West Bengal Board of Primary Education. It has further been clarified by the learned Single Judge that the benefit of the order disposing of the writ petitions should be extended to such petitioners who have filed their writ petitions before January 27, 2021.

The order dated January 28, 2021 passed by the learned Single Judge has been challenged before us by the West Bengal Board of Primary Education.

The learned Advocate General and Mr. Lakshmi Kumar Gupta, learned senior advocate, addresses us separately on behalf of the State respondents and the appellant respectively in justification of their stand that the learned Single Judge could not have extended the bench mark set by the notification and in allowing so the learned Single Judge has, in fact, diluted the notification which is not permissible in law. It has been argued before us that once the cut off date is decided, the candidates, who had acquired the requisite qualification before the cut off date, can only be allowed to participate.

It would be irrational and equitable if the present writ petitioners are allowed as a large number of candidates similarly placed and that of the writ petitioners would not be avail the same benefit apart from the fact that the relaxation of such cut off dates cannot be done at this stage once the process has been initiated. It is submitted that the present writ petitioners would not suffer as by reason of their TET qualification acquired subsequent to the cut off

dates would remain valid for seven years and they would be eligible to participate in the next TET examination to re-conduct at this stage.

It has been emphasized before us that the writ petitioners have failed to demonstrate that they have acquired the requisite qualification before the cutoff date and any qualification acquired after the cutoff date cannot be taken into consideration in extending the benefit of subsequent acquisition of qualification in so far as TET 2017 is concerned.

Mr. Bikash Ranjan Bhattacharjee, learned senior advocate, appearing with his junior, Mr Biswaroop Bhattacharya, learned advocate, on behalf of the writ petitioners/respondents, have submitted that in view of the fact the examination for TET 2017 scheduled to be held in the month of January 2021 pursuant to notification dated October 9, 2017, which however was modified by subsequent notification by which the date of examination was declared as 31st January, 2021. It would be inequitable and unfair for the appellant not to allow the writ petitioners to participate in the ensuing TET-2017 examination. It is submitted that endeavor of the State to have broader participation in the public examination rather than narrowing it down is undesirable. Moreover having regard to the fact that the writ petitioners had now acquired requisite qualification before 31st January, 2021, it is only fair that they are allowed to sit in the examination as the State has miserably failed to implement the guidelines for conducting Teacher Eligibility Test which, inter alia, prescribes for conducting TET once in a year as mandated under Clause II. It is submitted that the State cannot deny such right

of the writ petitioners to participate in TET-2017.

Mr. L.K. Gupta, learned senior counsel, in reply has submitted that there is no mandatory requirement for the State to hold TET every year, which would be evident from the preceeding Clause 10 of the guidelines which has taken care of consequences if the State is unable to hold the examination and this makes it clear that the Clause 11 of the guidelines is not mandatory.

It is further submitted that it is in the nature of a guideline having no statutory force and the State has to consider the suitability of the time and other relevant considerations in conducting TET which may not be feasible every year having regard to the number of vacancies for a particular year. The decision of the State as to feasibility of holding such examination cannot be the subject matter of judicial review as it falls within the domain of policy decision of the Government.

Learned senior counsel has also drawn our attention to the eligibility criteria mentioned in the guidelines for conducting TET, which has allowed a person who is pursuing any of the teacher education courses recognized by NCTE or the RCI specified in NCTE Notification dated 23rd August, 2010. Our attention is also drawn to the Notification dated 14th November, 2017 issued by the West Bengal Board of Primary Education where the said eligibility criteria was duly incorporated.

We have considered the submissions made on behalf of the parties. There cannot be any doubt that the candidates who were pursuing Diploma in Elementary Education. Courses during the year 2017 would be eligible to participate in the Teachers Eligibility Test, 2017

which is subject to successful completion to Teachers Training Courses which may spill over beyond 2017.

On a reading of the guidelines issued by the National Council for Teacher Education read with the circulars governing the Teachers Eligibility Test, 2017, we are of the opinion that the State cannot deny a candidate who was pursuing any of the teacher education courses recognized by the NCTE or the RCI, as the case may be, when the advertisement was issued. We are not inclined to accept the submission that the candidates who were pursuing Teachers Education Courses on or before October 9, 2017 could be excluded or denied participation in the TET 2017. This view also finds support in the decision of the Hon'ble Supreme Court in the case of Omkar Singh & Ors. Vs. State of Uttar Pradesh & Ors., reported in 2019 SCC Online S.C. 1183.

Although submission has been made that Clause 11 of the NCET guideline is not mandatory. We cannot however, disregard the fact that the State can take refuge of Clause 10 of the said guidelines to deny its responsibility of holding TET examination if not every year but within a reasonable time when it appears that there are large number of vacancies and such vacancies had resulted due to inaction of the part of the State for non-conducting in regular intervals. The State cannot deny its responsibility of imparting quality education and the requirement of teachers in various institutions also cannot be denied. The delay in recruitment of teachers ultimately affects the education institution and the students who are the beneficiary of such recruitment.

The candidates who have requisite qualification in terms of our order shall not be denied to participate in the said examination. The other candidates since they are ineligible, the benefit of relaxation as contemplated in the Notification dated 14th November, 2017 cannot be extended to them.

With the aforesaid observation, both the appeals stand disposed of.

In view of disposal of the appeals, the applications for stay also stand disposed of.

The report of the learned Registrar General is placed before us should be placed on the administrative side.

In view of disposal of both the appeal the application for addition of party is also disposed of.

There will be no order as to costs.

Urgent Xerox certified copy to be made available to the parties upon compliance of all formalities.

(Saugata Bhattacharyya,J.) (Soumen Sen, J.)

