

22.01.2021

Item No.01
Court No.25
Avijit Mitra

W.P.A. No. 8530 of 2019 (Via Video Conference)

In re: Champa Rani Paul
- Versus -
State of West Bengal & Ors.

Mr. Saibal Kumar Acharya,
Mr. Khairul Alam

For the Petitioner

Mr. Prasenjit Mukherjee,
Mr. Nirmalya Kumar Das,
Mr. Madhurima Sarkar

For the Madrasah Commission

The present writ petition has been preferred challenging an order dated 27th February, 2019 passed by the respondent no.4.

Shorn of unnecessary details, the facts are that after passing the Pre-Board examination conducted by the Sambnagiya Purba Madhyamik Pariksha of Secondary Education in the year 1982, i.e. School Leaving Examination (VIII), the Class-IX Examination in the year 1983 from Kamala Nehru Uchatara Madhyamik Examination in the year 1984, the petitioner passed the old Higher Secondary School Certificate Examination, 1985 (XI) conducted by Madhya Pradesh Board of Secondary Education (in short, the said M.P. Board). Thereafter, the petitioner obtained her B.Ed. degree, graduate degree and the post-graduate degree. In the midst thereof, upon emerging to be successful in a selection process, she got appointment to the post of para-teacher in Bio-Science in

Nashipur High Madrasah (H.S) in the year 2005. Thereafter, the petitioner pursued the Bengali language course in West Bengal Rabindra Mukta Sansad (in short, the said Sansad) and completed the same in the year 2008. In the year 2014, West Bengal Madrasah Service Commission (in short, said commission) initiated the 6th State Level Selection Test for Assistant/U.G. teachers in Madrasahs (in short, 6th SLST). The petitioner applied for participation in the said SLST on 14th February, 2014 for the post of an assistant teacher in science group (bengali medium) under general category. Surprisingly, a candidate securing lower marks than the petitioner was empanelled. The petitioner submitted an application under the Right to Information Act, 2005 with a request to intimate the exact marks obtained by her and the marks obtained by the last empanelled candidate. In reply thereto, it was intimated by a letter dated 6th September, 2018 that the last empanelled candidate obtained 60.33 marks and the petitioner obtained 67.938 marks. It was also intimated that the petitioner's candidature has been cancelled for furnishing wrong information in the application form. In the application form, the petitioner inadvertently stated that she had obtained '483 marks' in old H.S. (XI) in place and stead of '463 marks'. However, the percentage of marks as incorporated in the application form, was calculated on the basis that she had secured '463 marks'. Stating such fact, the petitioner submitted a representation dated 27th July, 2018 to the respondent no.4 with a prayer for appointment.

As the said representation was not considered, the petitioner preferred a writ petition being W.P. No.30 (W) of 2019 which was disposed of by an order dated 24th January, 2019 directing the respondent no.4 herein to consider the petitioner's representation dated 27th November, 2018. Pursuant thereto, the impugned order dated 27th November, 2019 was passed by the respondent no.4.

Mr. Acharya, learned advocate appearing for the petitioner submits that by the order dated 24th January, 2019 passed in W.P. No.30 (W) of 2019, the matter was relegated to the respondent no.4 for consideration of two issues. First, as to whether the petitioner qualified in the first Secondary Level Examination or School Leaving Examination. Second, as to whether incorporation of the marks in the application form by the petitioner was a *bona fide* mistake. He contends that the petitioner pursued the Old H.S. course under the said M.P. Board and passed the old H.S. Examination in the year 1985. It is only subsequent thereto, the said M.P. Board introduced 10+2 system. In 1985 there was no 10+2 system, the candidates used to appear in the old Higher Secondary Class-XI Examination. The 10+2 course was conducted by the M.P. Board after 1985. In support of such contention he has drawn the attention of this Court to a notification dated 16th July, 1986 and replies dated 18th June, 2019 and 19th March, 2019, as annexed at pages 14 to 17 of the affidavit-in-reply.

He submits that the petitioner did not intentionally incorporate in the application form that she had obtained '483 marks'. She actually obtained '463 marks' which tallies with the percentage calculation as incorporated to be '58%'. The mistake was not backed with any intent to mislead the authorities.

He submits that in the affidavit-in-opposition a new ground has been agitated in support of the impugned order. According to the respondents, the petitioner did not fulfil the provisions towards additional essential qualification as contained in Rule 4 of the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of Persons for Appointment and Transfer) Rules, 2010 (in short, said Rules of 2010) and she could not have applied for a Bengali medium post as she did not have Bengali as the medium of instruction at the Secondary Level or at Higher Secondary Level or at Fazil Level or at any subsequent higher Level of education in that language paper.

According to Mr. Acharya, the said Rules of 2010 do not stand in the way towards appointment to a post in a Madrasah where the medium of instruction is Bengali since the petitioner had completed a one year duration course in the Bengali language from the said Sansad in the year 2008, as would be explicit from the document annexed at page 19 of the affidavit-in-reply.

Mr. Mukherjee, learned advocate appearing for the Commission submits that the petitioner had not passed

First Secondary Level Examination i.e. Class XI Examination or School Leaving Examination before passing the Higher Secondary Certificate Examination, 1985 conducted by the said M.P. Board though in terms of the Board of Secondary Education (M.P) Regulation, 1965, the said M.P. Board had conducted as many as 13 examinations including Classes-XI and XII Examinations.

According to him, the petitioner admittedly did not study Bengali language at Madhyamik Level or at H.S. Level or at Graduate Level or at Higher Studies Level, as would be explicit from Column no.16 of the petitioner's application dated 14th April, 2014. The Bengali language course pursued in the said Sansad by the petitioner cannot be construed to have been a course in Madhyamik or H.S. Level and as such the petitioner is not eligible and qualified for the concerned post. In support of such contention he has placed reliance upon a judgment delivered in the case of *West Bengal Central School Service Commission Vs. Tauhid Alam & Others*, reported in 2009 (2) CHN 799.

He further argues that the petitioner cannot claim any relaxation of the said Rules of 2010 having rendered service as a para-teacher in a Bengali medium Madrasah. Having not disclosed at the time of filing of the application on 14th February, 2014 that she had pursued and completed a Bengali course from the said Sansad, the petitioner cannot agitate the said issue at this stage.

The first argument of Mr. Mukherjee that the petitioner had not passed the First Secondary Level

Examination, i.e., Class-X Examination or School Leaving Examination before passing Higher Secondary School Certificate Examination, 1985, is not acceptable to this Court since prior to 1985 the said M.P. Board used to conduct only Higher Secondary Class-XI Examination. It is only after 1985, the 10+2 system was introduced *vide* notification dated 16th July, 1986, as would be explicit from the documents issued on behalf of the said M.P. Board, as annexed at pages 14 to 17 of the reply. The candidates who had pursued and passed the old H.S. course were eligible to participate in the 6th RLST. In the application itself there exists a column to that effect and the said column no.21 was filled up by the petitioner declaring that she had passed the old H.S. Examination 1985. Furthermore, in paragraph 2(b) of the affidavit-in-opposition, it has been admitted that the petitioner “*has completed Secondary and Higher Secondary Examination from M.P. Board on Secondary Education in regular course*”. At Class X stage or XI stage, the petitioner had no Bengali subject and as such she had not committed any mistake in filling up column 16 and column 21. The petitioner could not have marked column 16 (M.P./H.M or equivalent) since she did not have any Madhyamik stage or equivalent Board certificate.

The Court is also not in a position to accept the contention of Mr. Mukherjee that the petitioner does not fulfil the provisions of Rule 4 of the said Rules of 2010 since the petitioner had completed a Bengali language

course of one year's duration from the said Sansad. There was also no column in the application form where she could have incorporated that she had completed a Bengali language course of one year's duration. In course of hearing, Mr. Acharya has placed before this Court the guidelines of the said Sansad which *inter alia* provides that candidates may apply for admission in the month of June or July or in the month of December and that the course would be for a period of one year. Copy of the said regulations was handed over to Mr. Mukherjee on the earlier occasion and drawing the attention of this Court to the same, he contends that the petitioner could not have conducted any course in a particular language. He has also placed reliance upon a memo dated 3rd August, 2005 annexed to the said guidelines which *inter alia* details the qualifications which would be recognised by the Government. According to him, as the one year course is not a course recognised by the State Government no weightage can be granted to the same.

A composite reading of clauses 3, 5, 6, 7, 10 and 17 of the said guidelines reveals that a candidate may appear in the Madhyamik Examination or in any individual paper course of one year's duration. The memo dated 3rd August, 2005 does not speak that a one year course is not recognised. I view thereof, I do not find any reason to disbelieve the petitioner's contention that she had successfully completed a Bengali medium course of one year's duration.

The incorporation of '483 marks' in place and stead of '463 marks' was a *bona fide* mistake on the part of the petitioner since the percentage incorporated being 58% is commensurate with the actual marks obtained by the petitioner being '463 marks'. It does not appear that the petitioner has in any manner intentionally misled the authorities. The petitioner did not do so to gain any advantage. It was sheer inadvertence on her part and for such inadvertence she cannot be penalised.

A perusal of the order dated 24th January, 2019 passed in W.P. No.30 (W) of 2019 would reveal that in course of hearing it was submitted by the Commission that the M.P. Board is a recognised Board. The selection process pertaining to the 6th RLST was deferred due to pendency of several litigations. However, Mr. Mukherjee informs this Court that appointments could be made pertaining to the said RLST on and from the month of August, 2018. In the affidavit-in-opposition there is no averment as regards lack of vacancies. Furthermore, at the time of admission of the writ petition on 24th April, 2019, an *interim* order was passed to the effect that "*all actions that may be taken or taken by the concerned Board in the meantime with regard to the recruitment process in question, however, will be subject to the result of this writ petition*". It is also not disputed that Nashipur High Madrasah (H.S.) in which the petitioner is working as para-teacher for the last 15 years is Bengali Medium Madrasah.

Rule 5 of the West Bengal Service Commission (Selection of Persons for Appointment to the post of Teachers) Rules, 2006 (in short, the said Rules of 2006) prescribes additional qualification required by a candidate willing to be selected as teacher in any School. Almost similarly Rule 4 of the said Rules of 2010 prescribes additional qualification required by a candidate willing to be selected as a teacher in Madrasah. Although largely similar, Rule 4 of the said Rules of 2010, contains an additional clause which states that the candidate *“must have passed a language (relevant to the medium) course of at least one year’s duration from a University or Institute”*. Due to the absence of the said additional Clause in Rule 5 of the Rules, 2006, the judgment delivered in the case of *Tauhid Alam* (supra) cannot be said to be applicable to the present dispute.

For the reasons discussed above, the impugned order dated 27th February, 2019 passed by the respondent no.4 is set aside and the Commission is directed to issue recommendation in favour of the petitioner towards appointment to the post of an assistant teacher in science group (bengali medium) under general category in any madrasah, within a period of two weeks from the date of communication of this order. Thereafter, the other respondents including the respondent no.6 shall take all follow up steps and ensure appointment of the petitioner in the recommended post within a period of two weeks thereafter.

With the above observations and directions, the writ petition is disposed of.

There shall however be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Tapabrata Chakraborty, J.)