

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Abhijit Gangopadhyay

WPA 10946 of 2021

(Via Video Conference)

Mamaki Patra & Anr.

-versus-

The Union of India & Ors.

For the petitioner

**: Mr. Firdous Samim
Ms. Gopa Biswas**

For the State

**: Mr. Biswabrata Basu Mallick
Mr. Raja Saha**

For the Board

**: Mr. Subir Sanyal
Mr. Ratul Biswas**

For NCTE

: Mr. Sauvik Nandy

For the Union of India

**: Mr. Debasish Saha
Ms. Namrata Chatterjee
Mr. Souvik Dian**

Heard on

: 03.08.2021

Judgment on

: 03.08.2021

(Abhijit Gangopadhyay, J.:)

Affidavit of service filed in court today be kept on record.

The petitioners' case is that after a notification of the West Bengal Board of Primary Education (Board, in short) dated 23rd November, 2020 for verification/ scrutiny of the testimonials, another notification dated 26th November, 2020 had been published giving clarifications regarding online Form fill up. In this clarification dated 26.11.2020, the Board gave clarification how to fill up the forms by Honours Graduate and Pass Graduate candidates.

Learned advocate for the petitioners submits that there is no differentiation so far as the National Council of Teacher Education is concerned as to Honours Graduate and Pass Graduate candidates and by making this differentiation between Honours Graduate and Pass Graduate candidates through its notification dated 26.11.2020, the Board violated the NCTE norms and this is also not a reasonable classification and violates the principle of equality. On this ground the petitioners say that they should be treated as the candidates and they are to be allowed in the interview and appointments are to be given to them. The petitioners appeared in the interview in the month of February, 2021 and their candidatures were rejected as they did not secure required percentage of marks as OBC candidates.

I do not find any merit in the submissions because it is perfect, being within the power and authority of the recruiting authority, i.e. the Board as to giving clarification for recruitment through online Form fill up which has been done by the notification dated 26.11.2020. Board has the power and authority to classify the candidates as Honours Graduate and Pass Graduate. It is

common knowledge, which this court can take judicial note of, that the Honours Graduate candidates face more papers in the Honours subject and they have to qualify in Honours examination where the full marks is much more than the pass course. The depth and the width of a subject, an Honours graduate studies is deeper and wider comparing to a pass graduate in the same subject. The Pass Graduate candidates, face lesser number of papers in pass graduation examination than in the Honours paper of a Honours Graduate candidate.

Now, if the recruiting authority, being the Board, wants to give preference to the Honours Graduate candidates, over the pass graduate candidates, it cannot be alleged that they have violated the principles of equality because it is the quality of the students' education and definitely, in view of this court, a Honours Graduate will be much more proficient in the Honours subject comparing to a pass candidate having the same subject in his pass graduation course. In this respect, except following the minimum qualification, a recruiting authority is not bound by NCTE directives. Though I am told that there is no staff pattern in a school unlike upper primary schools or secondary schools, it cannot be said that such differentiation cannot be made by the recruiting authority on the basis of the qualification being Pass Graduate and Honours Graduate as because the aim of entire education system is to impart the best education possible through the best available qualified teachers. I have no hesitation to hold that Honours Graduate candidates are definitely better candidates by dint of Honour's Course than the Pass Graduate candidates. In our country in different studies by different Governmental and non-Governmental organizations it has come to the fore that the quality of

education imparted in our schools be it primary, be it upper primary, be it Madhyamik or be it Higher Secondary, is much below the desired level. So, if one recruiting authority gives preference with an aim for elevating the standard of education imparted through Honours Graduate candidates and when Honours Graduate candidates are not available in a particular recruitment process for a subject then through Pass Graduate Candidates, (both must have training qualification) I cannot say that there is an unreasonable classification. I find here a reasonable classification and objective sought to be achieved by the classification is imparting better quality of education. I also find the nexus between the intelligible differentia in the classification with the objective sought to be achieved by such classification i.e. better education to primary students.

Apart from the merit of this matter discussed above this writ application has been filed on 29th June, 2021 whereas the notification challenged was published on 26.11.2020 which shows that the notification was published seven months back. I have already stated that the petitioners were called in the interview in the month of February and they came to learn that their candidatures have been rejected because of not having requisite percentage of marks as Honours Graduate, it has been submitted on behalf of the Board, which has not been denied by the petitioners during the argument that the petitioners clubbed together their marks of both Honours subject and Pass subjects, which is a clever practice and when seen, at a first glance, it may appear that the petitioners have secured having 45% marks (as they are OBC candidates). But when the pass subject marks and Honours subject marks of the petitioners are segregated, it becomes evident that they have not been able

to secure 45% marks as Honours candidates. For making a claim of qualified candidates the petitioners have made a hybrid calculation of marks which is not acceptable to the Board as has been submitted on behalf of the board before me. The Board needs pure percentage of marks and not calculation of marks in a hybrid manner as has been done by the petitioners. Such submissions on behalf of the Board have not been denied by the petitioners.

In the facts and circumstances, as discussed above, I do not find any merit in this writ application and the same is dismissed.

No costs.

(Abhijit Gangopadhyay, J.)