

2nd December, 2021

WPA 11698 of 2017

(Through Video Conference)

(18)
(BD)

Sanghati Mondal
-vs-
The State of West Bengal & Ors.

Mr. Rejaul Alam
Mr. Raj Kumar Sain
... for the Petitioner

Mr. Santanu Kumar Mitra
Mr. Jakir Hossain
... for the respondent nos. 3,6.

Mr. Debaki Nandan Maiti
... for the WBUHS.

Mr. Amitava Chaudhuri
Mr. N. Roy
Mrs. M. Choudhury
... for the Joint Entrance Board

The petitioner is aggrieved by two communications dated 21st December, 2016 and 6th January, 2017 by which the petitioner's application for registration under the West Bengal Nursing Council was returned and the petitioner was asked to refund Rs. 11000/- to the College of Nursing Midnapur Medical College and Hospital. The ground given for rejection was that the petitioner had not fulfilled the criteria for eligibility to the B.Sc. Nursing Course for the academic year 2011 to 2015.

According to learned counsel appearing for the petitioner, the petitioner fulfilled the eligibility criteria prescribed under the relevant Rules and Notifications but was unfairly excluded from the course.

Learned counsel appearing for the Registrar and Principal West Bengal University of Health Sciences and College of Nursing, Midnapur Medical College and Hospital, respectively, opposes the prayer on the ground that the mark-sheet of the petitioner in the West Bengal Council of Higher Secondary Education

would show that the petitioner did not qualify under the proscribed Rules and Regulations.

Upon perusal of the relevant documents, it appears that Proviso to Rule 2(4) under the 11th October, 2006 Notification issued by the West Bengal Council of Higher Secondary Education, Government of West Bengal, in order to be declared passed in any examination, a candidate must obtain a minimum of 30% marks in compulsory subjects with the proviso that for any examination consisting of a theory as well as a practical paper or project work, the candidates shall have to score 30% marks in the theory and practical paper separately, the eligibility condition for admission to the B.Sc. program of the Indian Nursing Council would appear from three Notifications of 11th October, 2006, the 2011/2012 Brochure for nursing courses and the Notification dated 20th August, 2019. The relevant part of the Brochure of 2011-2012 provides for the age limit of the candidates and the fact that for SC and ST candidates the qualifying marks shall be 40%.

The Higher Secondary mark-sheet of the petitioner which has been reproduced in the affidavit-in-opposition of the respondent No. 3 shows that the petitioner was awarded 40 in theory and 16 in practical with a total of 56 in Physics; 18 in theory and 18 in practical with a total of 36 in Chemistry and 46 in theory and 18 in practical with a total of 64 in Biology.

It is evident from the argument of learned counsel appearing for the respondent Nos. 3 and 6 that the University seeks to take benefit of the Notification dated 11th October, 2016 of the West Bengal Council of Higher Education which requires that a candidate in order to be declared must secure 30% marks individually in theory and practical papers (proviso to Rule 2(4)).

However, the aforesaid Notification is of a general nature for candidates who have appeared for the Higher Secondary Examination and provides for the conditions which would qualify a candidate to be declared as “passed”.

This Court is of view that Notification dated 20th August, 2019 is specific to the case of the petitioner since that Notification has been issued by the Indian Nursing Council and specifically provides for the eligibility conditions for admission to the B.Sc. Nursing Program.

The relevant portion of this Notification is set out below:

“A candidate should have passed in the subjects of Physics, Chemistry, Biology(PCB) and English individually and must have obtained a minimum of 45% marks taken together in PCB at the qualifying examination(10+2).”

The above portion has further been clarified in the same Notification by providing that the 45% marks for Physics, Chemistry, Biology “taken together” should be from the qualifying examination that is Class XII or the 2nd year Pre-University Course Examination. It is clear from this Notification that a candidate shall be deemed to have passed the subjects of Physics, Chemistry, Biology and English individually by obtaining a minimum of 45% marks taken together in Physics, Chemistry, Biology at the qualifying examination (10+2). - Underlined for emphasis.

The petitioner in this case obtained a total of 56 in Physics, a total of 36 in Chemistry, and a total of 64 in Biology translating to 52% average in these three subjects in the aggregate. Hence the petitioner was well above the qualifying percentage of 45% under the Notification issued by the Indian Nursing Council dated 28th August, 2019. As stated above the petitioner, being

the SC, ST candidate was only required to obtain 40% and above as the cut-off marks under the Brochure for the 2011-2012 conditions.

Hence, there is no reason why the petitioner's application should be or could have been rejected by the impugned orders dated 21st December, 2016 and 6th January, 2017. It should also be stated that if there is any inconsistency between the Notification dated 20th August, 2019 and the Notification of the Higher Secondary Education Council of 11th October, 2006- the benefit of the inconsistency should be construed in favour of the candidate at whose expense the inconsistency is relied upon.

WPA 11698 of 2017 is accordingly allowed in terms of the above. The orders dated 21st December, 2016 and 6th January, 2017 are set aside. If any amount of money has been refunded by the petitioner, the concerned respondents shall return the same within three weeks from the date of communication of this order.

The writ petition is disposed of accordingly.

(Moushumi Bhattacharya, J.)