

26 01.10.2021
AD Court No.5

WPA 14921 of 2021
(Through Video Conference)

Tulsi Masanta
-vs-
State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee
Mr. Sandipan Das
Mr. Pintu Karar
Mr. Akashdeep Mukherjee
Mr. Sagar Dey

....for the petitioner.

Mr. Pantu Deb Roy
Mr. Subrata Guha Biswas

....for the State respondents.

Mr. Ratul Biswas
Mr. Kaushik Chowdhury

... for the West Bengal Board of Primary Education.

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey

... for the West Bengal Central School Service Commission.

This is a writ petition at the instance of a candidate who has obtained qualification of special educator from Rehabilitation Council of India (RCI) and has claimed to be eligible to teach the differently abled students who are prosecuting their studies in different schools in the State of West Bengal. Petitioner has made out a case that by this time, the State Government should have formulated a policy in consonance with Section 3 of Right of Children to Free and Compulsory Education Act, 2009 thereby providing opportunity to the candidates who have been trained as special educator from Rehabilitation Council of India and can be appointed as special teachers for imparting lessons to

differently abled children in different schools. The grievance has further been voiced on behalf of the writ petitioner that in spite being duly trained as special educator to impart lessons to differently abled students he is not getting any opportunity to impart such lessons on being appointed by the State instrumentalities.

Dr. Sutanu Kumar Patra, learned Counsel appears on behalf of the West Bengal Central School Service Commission and draws attention of this Court to prayer (a) and (d) couched in this writ petition. It has been submitted on pointing out prayer (a) that the writ petitioner has prayed for a compensation for not providing him opportunity to be appointed as special teacher as well as a prayer has been made for relaxation of 10 years of age for getting opportunity to be appointed as special teacher. Dr. Patra has submitted that considering the relevant rules relating to appointment of assistant teachers in government aided secondary schools, there is no provision for appointment of special teachers by the West Bengal School Service Commission who impart lessons to differently abled candidates.

Mr. Ratul Biswas, learned Advocate appears on behalf of the West Bengal Board of Primary Education and submits that West Bengal Board of Primary Education is engaged statutorily to appoint teachers in primary schools where requisite qualification is TET and in addition thereto, an eligible candidate needs to apply

pursuant to the recruitment notifications issued by the Board for appointment.

This Court has heard the submissions of Mr. Sabyasachi Chatterjee, learned Advocate representing the writ petitioner as well as the learned Advocates representing the West Bengal Board of Primary Education and the West Bengal Central School Service Commission.

Upon due consideration of the case made out on behalf of the writ petitioner, it appears to this Court that this is not a public interest litigation and this writ petition has been filed by a lone candidate who is claiming to be appointed as special educator on being trained as special teacher from Rehabilitation Council of India. The relevant prayer made in the writ petition runs *infra*:

- a) A Writ in the nature of Mandamus commanding the respondents, their men, agents, subordinates, employees and/or assignees to provide adequate compensation to the petitioner for not providing him any opportunity to be appointed as a Special teacher despite of having all requisite qualifications to be appointed as a special teacher;
- d) A Writ in the nature of Mandamus commanding the respondents, their agents, servants, subordinates, employees and/or assignees to provide 10 years age relaxation for getting opportunity to be selected as a special teacher in upcoming selection process if at all, happens;

During course of submission on behalf of the

writ petitioner reliance has been placed on unamended Section 3 of the Right of Children to Free and Compulsory Education Act, 2009 and this Court finds it proper to quote said unamended Section 3 of the Act of 2009 below:

“3. Right of child to free and compulsory education.- (1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

Provided that a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 (1 of 1996), shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act.”

The Section 3 of said Act of 2009 had undergone amendment whereby Sub-section (1) was substituted, proviso to Sub-section (2) was omitted and Sub-section (3) was inserted by the Right of Children to Free and Compulsory Education(Amendment) Act, 2012 (30 of 2012) w.e.f. 1st August, 2012. The amended Section 3 reads as follows:

“3. Right of child to free and compulsory education.- (1) Every child of the age of six to fourteen years including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

Provided that a child with “multiple disabilities” referred to in clause (h) and a child with “severe disability” referred to clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education.”

Placing reliance on proviso to Sub-section (2) of unamended Section 3, Mr. Chatterjee has submitted that the instrumentalities of the State till date have not been able to formulate any policy for accommodating candidates like writ petitioner who are trained as special teacher from Rehabilitation Council of India and there is no channel of entry till date has been created for them which would facilitate these special teachers to be appointed in teaching posts.

Considering the prayer made by the writ petitioner, this Court finds that writ petitioner has sought for payment of compensation as well as relaxation of age upto the extent of 10 years in the matter of providing employment to him. In absence of any statutory provisions in this regard and also any policy not being formulated by the State till date in consonance with the relevant provisions of the Right of Children to Free and Compulsory Education Act, 2009, as per appreciation of this Court, the High Court in

exercise of writ jurisdiction ought not to give any direction in the nature of mandamus upon the State authorities to formulate a policy for accommodating these special teachers like that of the writ petitioner.

In above conspectus this writ petition does not merit consideration and the same is dismissed.

However, there will be no order as to costs.

All parties shall act in terms of server copy of the order downloaded from the official *website* of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)