

Dl. February
16. 19, 2021

Through Video Conference

W.P. 25951 (W) of 2018

Mr. Aniket Mitra,
...for the petitioner.

Mr. Kanak Kiran Bandyopadhyay,
...for the School Service Commission.

The writ petitioner applied for Teacher Eligibility Test 2013 upon submitting filled in form, wherein he declared himself as OBC-B category candidate. Unfortunately, the Teacher Eligibility Test, 2013 could not be conducted by the respondent authorities. Subsequently, Teacher Eligibility Test, 2015 was conducted in which the writ petitioner participated as OBC-B category candidate. Admit card was issued to the writ petitioner wherein it was also stated that he was an OBC-B candidate. The petitioner qualified Teacher Eligibility Test 2015, but ultimately when selection for appointment to the post of assistant teachers in upper primary level in secondary schools was made in terms of West Bengal School Service Commission (Selection of Persons for Appointment to the Posts of Teachers in Upper Primary Level) Rules, 2016 (hereinafter referred to as "Rules of 2016"), he was found ineligible on the ground of overage.

On behalf of the writ petitioner it has been argued before this court that in the event Teacher Eligibility Test, 2013 would have been conducted in due time, his candidature could not have been rejected on the ground of overage and in the Teacher Eligibility Test, 2015 he was found overaged since there was failure

on the part of the concerned respondent authorities to hold the said test in appropriate time.

The petitioner prays for relaxation of age bar under the said Rules of 2016 since he offered his candidature in Teacher Eligibility Test, 2013.

It has been argued on behalf of the School Service Commission that there is a specific bar in terms of first proviso to Rule 4(1) of the said Rules of 2016. Rule 4 of the said Rules of 2016 is reproduced below :-

“4. Name of post, essential qualification and age. _ (1)
The name of the posts, and its qualification shall subject to rule 5, be such as specified in schedule I :

Provided that the candidates possessing valid TET Certificates shall be eligible for appearing in the selection under these rules, in spite of the fact that they have exceeded upper age-limit, subject to the condition that the age of such candidate on first day January of the Year of holding the TET has been within the prescribed age-limit.

Provided further that the qualification for the posts of Teacher includes academic qualification and professional qualification of teachers for Upper Primary Level of Schools notified by NCTE and includes the relaxation of qualification, if any, extended by the Central Government or NCTE, as the case may be, from time to time on the date of advertisement by the Central Commission or in case of Work Education, relaxation of qualification as may be notified by the State Government.

Provided also that certificates received on or before the last date of the application and mentioned in the application form, shall be counted for academic and professional qualification.

(2) The age-limit for the post shall be such as specified in Schedule I:

Provided that a non-teaching staff or a Teacher having post-graduate degree but holding lower category of post, may apply with maximum age of 55 years as on the 1st day of January of the year of advertisement.”

As per the first proviso to Rule 4(1) of the said Rules of 2016 upper age limit for the candidate was prescribed as 40 years for general category and 3 years' relaxation was given to the candidates belong to OBC category.

Though the petitioner is a OBC-B category candidate, but from page 19 of the writ petition, which is a filled up form submitted online for participation in Teacher Eligibility Test, 2015 (Upper Primary), it appears that date of birth of the petitioner is January 24, 1971. In Teacher Eligibility Test, 2015 where he participated upon online submission of filled up form, he crossed the upper age limit of 43 years considering his date of birth as January 24, 1971. Therefore, it has been argued on behalf of the School Service Commission that the petitioner has rightly been adjudged as overaged candidate by the School Service Commission while appraising the candidature of the writ petitioner.

I have heard the submissions made on behalf of the appearing parties and considered the materials on record including the relevant provisions as contained in the said Rules of 2016. It is true that for participation in Teacher Eligibility Test, there is no prescribed upper age limit as submitted on behalf of the Commission but for selection of assistant teachers on the basis of result of Teacher Eligibility Test, 2015 (Upper Primary), the School Service Commission is bound by the said Rules of 2016 wherein Rule 4(1) first proviso read with Schedule I, Part A specifically prohibits overaged candidates to be considered by the School Service Commission at the time of preparation of panel for the posts of assistant teachers (upper primary). Since the School Service

Commission is bound by the statutory provisions as contained in the said Rules of 2016, it is not open to the Commission to grant the benefit of age relaxation as claimed by the writ petitioner considering the fact that he duly applied for participation in Teacher Eligibility Test, 2013.

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

However, there shall be no order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Saugata Bhattacharyya, J.)

dns