

405. 29.08.2022
BD Ct.15

W.P.A. 2280 of 2022

Anupama Shit

-vs-

The State of West Bengal & Ors.

Mr. Lalratan Mondal

Mr. Avik Kumar Das

Mr. Dilip Kumar Sadhu

... for the petitioner.

Mr. Arindam Chattopadhyay

... for the State.

Mr. Ratul Biswa

... for the Board.

Petitioner prays for appointment in the post of Primary Teacher on the basis of her participation in the counselling held on 5th February, 2017 wherein she was asked to participate vide e-mail letter dated 3rd February, 2017. Petitioner is a TET 2014 qualified candidate who participated in the selection process of 2016 conducted by the West Bengal Board of Primary Education for appointment in the post of Assistant Teacher in primary school. At the time of counselling her higher secondary qualification which she obtained from Jharkhand Academic Council, Ranchi, was doubted by the appointing authority as a result thereof in the website of the Board the status of the petitioner was shown as empanelled (withheld).

On being declared though empanelled but withheld in the selection process conducted by the Board petitioner filed first writ petition being WPA

26302 of 2017 which was disposed of vide order dated 18th June, 2018 by the co-ordinate Bench whereby the Secretary, West Bengal Board of Primary Education, was directed to take decision on appointment of the petitioner for the post of Primary Teacher based on the certificate of the petitioner relating to her higher secondary pass qualification obtained from Jharkhand Academic Council, Ranchi. Pursuant to such direction of the co-ordinate Bench dated 18th June, 2018 the Secretary of the Board passed an order on 27th December, 2019 whereby it was observed the verification on higher secondary pass qualification of the petitioner was received by the Board on 29th August, 2018 from the Jharkhand Academic Council, Ranchi, but by that time the Ministry of Human Resource Development, Department of Literacy, on issuing order dated 6th September, 2017 put an embargo on appointment of untrained candidates in the post of Primary Teacher with effect from 10th August, 2017. In consideration of such order of the Ministry of Human Resource Development, Department of Literacy, dated 6th September, 2017 the issue was forwarded to the School Education Department, Government of West Bengal, seeking clarification whether the petitioner would be appointed in the post of primary teacher in spite of issuance of such order dated 6th September, 2017 by the Ministry of Human Resource Development. Subsequently, the petitioner questioned such decision of the Secretary of the Board dated 27th December, 2019 by filing another writ petition being WPA 3621 of 2021 which was disposed of on 23rd December, 2021 by

another co-ordinate Bench directing the Secretary, Department of School Education, Government of West Bengal, to take a decision on appointment of the petitioner in the post of primary teacher. Pursuant to such direction by the co-ordinate Bench dated 23rd December, 2021 Assistant Secretary to the Government of West Bengal, School Education Department, decided on issuing Memo dated 17th January, 2022 whereby claim of the petitioner for being appointed in the post of primary teacher was spurned on the ground that the petitioner is not having requisite educational qualification for being appointed in the post of Assistant Teacher in the primary school.

Such decision of the Assistant Secretary to the Government of West Bengal dated 17th January, 2022 is questioned by the petitioner by preferring the present writ petition.

This Court has heard the learned advocates representing the petitioner, Board and the State respondents and perused the relevant materials available on record including the pleadings used by the parties.

It is indisputable that petitioner was asked to participate in the counselling vide e-mail letter dated 3rd February, 2017 on 5th February, 2017 on being found eligible in terms of the recruitment rules prevalent at the material point of time. Had there been no dispute raised by the selection body relating to higher secondary pass qualification of the petitioner which she obtained from Jharkhand

Academic Council, Ranchi, she would have been appointed being an empanelled candidate in the post of primary teacher prior to issuance of order dated 6th September, 2017 by the Ministry of Human Resources Development whereby restriction was imposed with effect from 10th August, 2017 relating to appointment of untrained candidates in the post of Assistant Teacher in primary school. On verification subsequently it has been found that the higher secondary pass qualification of the petitioner is an approved qualification which is equivalent to the higher secondary pass qualification obtained by the candidate from the West Bengal Council of Higher Secondary Education. In this regard attention of this Court has been drawn to relevant part of affidavit affirmed by the Assistant Secretary of the School Education Department, Government of West Bengal, on 28th April, 2022. On perusal of such affidavit it appears that Jharkhand Academic Council, Ranchi, has been mentioned at serial no. 28 under the list of examining bodies which are considered equivalent to the examining body of the State of West Bengal as it appears from Annexure R-1, page 5, to the said affidavit.

On perusal of such affidavit affirmed by the Assistant Secretary of the School Education Department and the order of the Secretary of the Board dated 27th December, 2019 wherein it has been recorded that higher secondary pass qualification of the petitioner has been found to be genuine and equivalent to the higher secondary pass qualification under West Bengal Council of

Higher Secondary Education of the State. However, it has further been recorded in the said order of the secretary of the Board that there was delay in receiving verification relating to higher secondary pass qualification of the petitioner from Jharkhand Academic Council, Ranchi, which was received by the Board on 29th August, 2018 and unfortunately by that time restrictions relating to appointment of untrained candidate in the post of primary teacher was imposed with effect from 10th August, 2017.

On chronological analysis of the facts and in consideration of the verifications made relating to higher secondary pass qualification of the petitioner which she obtained from Jharkhand Academic Council, Ranchi, based on an affidavit affirmed by the Assistant Secretary to the Government of West Bengal, as well as order of the Secretary of the Board dated 27th December, 2019 it can be concluded that on 5th February, 2017 when petitioner participated in the counselling she could be declared qualified to be appointed in the post of Assistant Teacher in primary school since at that point of time the restriction relating to appointment of untrained teacher in the post of Assistant Teacher in primary school was not imposed vide order dated 6th September, 2017 by the Ministry of Human Resource Development. Therefore, considering the position which was prevalent on the date of counselling on 5th February, 2017 this Court finds no impediment to direct the concerned respondent authorities to appoint the petitioner in the post of Assistant Teacher in primary school based on submissions of

her candidature in connection with selection process which was initiated in 2016. Accordingly the order dated 17th January, 2022 of the Assistant Secretary to the Government of West Bengal stands set aside.

The concerned respondent authorities are directed to appoint the petitioner in the post of Assistant Teacher in primary school within a period of 8 weeks from the date of communication of this order if the petitioner is otherwise eligible.

With the aforesaid direction the writ petition stands disposed of. However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)