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02.02.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 3143 of 2021
(Via Video Conference)**

**Joy Adhikari
-versus
The State of West Bengal & Ors.**

**Mr. Samim Ahammed.
...For the Petitioner.**

**Mr. Ratul Biswas.
...For the Board.**

**Mr. Pinaki Dhole,
Ms. Kakali Samajpaty.
...For the State.**

None appears on behalf of the Malda District Primary School Council.

The petitioner is a TET 2014 qualified candidate. A letter of appointment was issued in his favour by the Chairman, Malda District Primary School Council on 11th February, 2017. The petitioner duly joined his service but sometime thereafter he was restrained from performing his duty.

The petitioner approached this Court by filing a writ petition being W.P. 14464 (W) of 2017 (Joy Adhikari –vs- State of West Bengal & Ors.) which stood disposed of by an order dated 12th June, 2018.

In the said order, the reason for not permitting the petitioner to continue his duty was mentioned. The order records that in the report filed by the West Bengal Board of Primary Education it has been mentioned that the petitioner failed to produce the original Admit Card at the time of verification, for that reason the petitioner's appointment was withdrawn.

In the earlier writ petition it was pointed out by the petitioner that the original Admit Card for appearing in the TET Examination was lost and the Board issued the second original Admit Card in favour of the petitioner.

Relying upon the submissions made on behalf of the parties, the Court directed the petitioner to make a comprehensive representation before the Secretary of the Board ventilating his grievances and the Secretary was directed to take a decision after consideration of the representation in accordance with law after verification of the documents produced by the petitioner.

The petitioner has annexed a photocopy of the original Admit Card issued in his favour by the Board at page 32 of the writ petition and the duplicate Admit Card issued by the Board in favour of the petitioner on 4th March, 2014 at page 33 of the writ petition.

Pursuant to the direction passed by the Court, the petitioner filed the comprehensive representation. An opportunity of hearing was given to him.

From the reasoned order that has been communicated to the petitioner it appears that the Board noted that the petitioner being a TET qualified untrained general candidate could not submit his

original TET Admit Card. As the TET Admit Card is the only unique identity proof of the candidate his candidature without the original Admit Card raised the question before the verifying officer at the material point of time.

Instead of deciding or adjudicating whether the second Admit Card issued in favour of the petitioner by the Board was genuine or not the Board rejected the prayer of the petitioner relying on the Departmental Order of the Ministry of Human Resource Development, Government of India dated 6th September, 2017 wherein restriction has been imposed for appointment of untrained TET qualified primary school teachers.

Admittedly, the petitioner is an untrained teacher. In 2017 there was no requirement of having training qualification for being appointed as primary school teachers.

The submission of the Board is that currently the petitioner cannot be permitted to resume his duty as there is a restriction for appointment of untrained candidates as primary school teachers. As the petitioner does not possess the relevant training qualification, there is no scope for permitting him to resume his duties at this stage.

The petitioner has filed a supplementary affidavit wherein it has been mentioned that upon consideration of the representation filed by the petitioner, the certificate relied upon by him was found to be genuine.

To deny the benefits of the job, the respondent authority has bypassed the issue as to whether the admit card produced by the petitioner was genuine or

not and has relied upon the Departmental Order of the Ministry of Human Resource Development imposing restriction on appointment of untrained primary school teachers.

On perusal of the order passed by the Court in the earlier writ petition it appears that the Court specifically directed the Board to take a decision with regard to the issuance of second original Admit Card in favour of the petitioner after verification of the documents.

The petitioner duly produced the original Admit Card and the duplicate Admit Card issued in his favour by the Board at the time of hearing. The Board did not pass any order by holding that the Admit Card relied upon by the petitioner was not genuine. From the action of the Board in not categorically denying the genuinity of the Admit Card relied upon by the petitioner, it can be presumed that the Admit Card relied upon by the petitioner is genuine.

The appointment letter which was issued in favour of the petitioner was withdrawn as the Board wanted to verify the genuinity of the Admit Card relied upon by the petitioner. The moment the Board came to a conclusion that the Admit Card relied upon by the petitioner was not fake or manufactured, the authority ought to have withdrawn the order of withdrawal of the letter of appointment and ought to have permitted the petitioner to resume his duty.

The restriction imposed by the Ministry of Human Resource Development long after the letter of appointment was issued in favour of the petitioner cannot be invoked to apply the same against him. The

prohibition imposed by the Ministry of Human Resource Development is prospective in nature and cannot be given effect retrospectively in case of the petitioner. Any decision taken by the Council with regard to verification of the testimonials submitted by the petitioner will automatically relate back to the date of appointment of the petitioner and not from any date after the Departmental Order was issued by the Government of India.

In view of the above, the instant writ petition is disposed of by directing the Malda District Primary School Council, the respondent no. 3 herein to take steps to permit the petitioner to resume his duty within a fortnight from the date of communication of a copy of this order.

The petitioner shall, however, not be entitled to claim salary for the period he did not render his service but will be entitled to the notional benefit taking into consideration his date of appointment as 15th February, 2017 i.e. the date on which the petitioner actually joined duty in the school.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)