

Court No. 24
04.01.2022
(Item No. 24)
(AB)

W.P.A. 13819 of 2021
(via video conference)

Subrata Kumar Dutta
VS
The State of West Bengal & Ors.

Mr. Prosenjit Mukherjee
... for the petitioner.
Mr. Swapan Kumar Datta
Mr. Tapas Kumar Dey
..... for the State
Ms. S. Sen
... for the Council

The reasoned order dated 11th November, 2020 passed by the Chairman, Birbhum District Primary School Council in compliance of the order dated 14th September, 2020 passed by this Court in WPA 6136 of 2020 (Subrata Kumar Dutta Vs. State of West Bengal & Ors.) is under challenge in the instant writ application.

The prayer of the petitioner for approval of “A” category benefit has been rejected on the ground of non submission of cleared mark sheet of D.El.Ed. training.

The petitioner has annexed a photocopy of the mark sheet of D.El.Ed. course issued by the National Institute of Open Schooling (untrained In-Service Teacher). In the said mark sheet it has been mentioned “NC” i.e. not cleared. It has further been mentioned that final certification will be done after due verification of eligibility criteria of 50% marks in class XII.

The impugned order mentions that according to clause 3 of the Notification No. 389(38)SE/EE/PTTI-7/11 dated 13th August, 2012 issued by the School Education Department, Primary School Teachers appointed from 1st

January, 2006 onwards should possess at least 50% marks in Higher Secondary Examination or equivalent (45% marks in case of candidates belonging to reserved category and exempted category) and two years diploma in teachers training course (D.El.Ed.); or should be graduate from recognized University with any percentage of marks with two years diploma in elementary education.

The petitioner being an exempted category candidate is required to obtain only 45% marks in the Higher Secondary Examination for being eligible for appointment.

According to the petitioner he was appointed in the year 2016 and he has more than 45% marks in his Higher Secondary Examination and he is a Pass Graduate.

The notification dated 13th August, 2012 requires an exempted category candidate to obtain only 45% marks in the Higher Secondary Examination for being eligible for appointment as Primary School Teacher.

The Chairman has admitted the fact that if the candidate submits cleared mark sheet of D.El.Ed. training issued by NIOS authority then the Council will allow "A" category benefit to him as he is an exempted category candidate.

The NIOS authority issues final certification only after verification of the eligibility criteria of 50% marks in class XII. The recruitment condition of the petitioner requires only 45% marks in Higher Secondary Examination. The mark sheet relied upon by the petitioner shows that he has passed in all the subjects in the D.El.Ed. course.

The Council ought to verify as to whether the petitioner has passed the subjects in the D.El.Ed. course instead of insisting upon the cleared mark sheet as the same cannot be issued by the NIOS authority as the petitioner did not obtain 50% marks in the Higher Secondary Examination.

According to the notification dated 13th August, 2012 the petitioner is also not required to upgrade his marks obtained in the Higher Secondary Examination and 45% marks is enough for the petitioner, being an exempted category candidate, to be recruited in service.

In view of the above, the reasoned order dated 11th November, 2020 issued by the Chairman, District Primary School rejecting the prayer of the petitioner for approving the “A” category benefit for not producing cleared mark sheet of D.El.Ed. training is set aside.

The Chairman of the Council is directed to verify the mark sheet and the marks obtained by the petitioner in the D.El.Ed. course. If the certificates produced and relied by the petitioner are found to be genuine then the authority will proceed to approve “A” category benefit to him without insisting upon the final certification or a cleared mark sheet from NIOS authority.

The Council shall act in accordance with the above direction at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

(Amrita Sinha, J.)