

Item No. 42
08.09.2022
Ct. No. 25
S.A.

WPA 13924 of 2021

Swarnali Maiti Bhunia & Ors
-vs.-
The State of West Bengal & Ors.

Mr. B. R. Bhattacharyya, Sr. Adv.
Mr. Kamalesh Bhattacharyya
Mr. Goutam Dey
Mr. D. Sarkar
Mr. K. Kumar
Mr. A. Ghosh

...for the petitioners

Mr. Swapan Kumar Datta, Sr. Adv. & AGP
Mr. Dipankar Das Gupta

...for the State

Mr. Kamal Mishra

...for the DPSC

Eighty six writ petitioners have joined together to file this writ petition challenging the selection process which was initiated in 2006 but culminated in the year 2009-2010. The petitioners claim that though they have obtained training certificates from institutes not recognized by NCTE but such institutes were duly approved by the West Bengal Board of Primary Education. The petitioners claim that they are entitled to additional marks on training qualification as the institutes were approved by the Board. The petitioners approached the Hon'ble Supreme Court of India by filing an application under Article 32 of the Constitution of India being Writ Petition (Civil) No. 1408 of 2020. Mr. Bhattacharyya, learned advocate

appearing for the petitioners submits that pursuant to the liberty granted by the Hon'ble Supreme Court by an order dated July 26, 2021 passed in the aforesaid writ petition, the writ petitioners have approached this court with this writ petition.

Mr. Bhattacharyya submits that the cut off date of December 31, 2010 fixed by the Hon'ble Supreme Court in the order dated January 24, 2019 passed in Civil Appeal No. 1071 of 2019 arising out of SLP (Civil) No.29518 of 2016) in the case of Amina Khatun & Ors, Birbhum District Primary School Council & Ors. Shall apply only to the parties who were before the Hon'ble Supreme Court in the aforesaid Civil Appeal and the same do not have any universal application. He further submits that the cause of action for filing this writ petition accrued with effect from the date of the order passed in Amina Khatun (supra)

Mr. Datta, learned senior counsel appearing for the State submits that the petitioners are guilty of unexplained delay and laches. He submits that the High Court should not entertain a writ petition challenging the selection process for recruitment of Primary School Teachers initiated by the District Primary School Council of the State of West Bengal in the year 2006 which culminated in the year 2010. He further submits that pursuant to the direction passed by the Hon'ble Supreme Court in the aforesaid Civil

Appeal, more than 1000 candidates have been given appointment and the process has already attained finality and if at this stage any order is passed by the court, the same would unsettle the settled position. He further submits that this court cannot modify the cut off date fixed by the Hon'ble Supreme Court.

The portion of the order passed by the Hon'ble Supreme Court which would be relevant for the purpose of deciding the aforesaid issues are extracted hereinbelow :-

“We are, however, conscious of the fact that the teachers who obtained the certificates from the institutes recognised by the State Government are not to blame. They have been part of the recruitment process which began in the year 2006 and carried on for four years. Not only that, some of these persons immediately approached the Court in the years 2009 and 2010 to assail the denial of weightage to be given to them for having obtained the certificates and even though they succeeded in those proceedings, a second round of proceedings have been initiated on account of certain subsequent developments.

In order to do complete justice *inter se* the parties, while not interfering with the impugned judgement/s passed by the High Court on a principle of law, we consider it appropriate to exercise our

power under Article 142 of the Constitution of India to issue the following directions :

- (1) The primary teachers who obtained their certificates from the institutes recognised by the State Government, will also be entitled to the weightage under Rule 9(2)(d) of the Recruitment Rules, 2001 so long as they have filed the legal proceedings in the High Court on or before 31st December, 2010. This would include such of the parties who are the original petitioners or interventionists in their individual names so long as the petitions or the applications for intervention have been filed on or before 31st December, 2010. We make it clear that this relief will be available to only such persons and no others.
- (2) On the basis of the aforesaid additional marks, the selection process undertaken in the year 2009-10 in pursuance to what was begun in the year 2006, will be revisited and a panel for appointment of primary teachers will be again made. Such of the beneficiaries by this order which figure in the merit list keeping in mind the posts advertised and filled up would get the benefit of appointment with all benefits flowing prospectively only.

- (3) The aforesaid exercise will however not disturb the persons in any manner who have already been appointed and the preparation of the list is only to determine such of the beneficiaries who would have been benefited if the additional marks have been granted to them.
- (4) The entire exercise shall be completed and letters of appointment be issued within a maximum period of three months from today.”

The Hon’ble Supreme Court of India by the order dated January 24, 2019 passed in Amina Khatun (supra) directed that only the primary teachers who obtained their certificates from the institutes recognised by the State Government will be entitled to the weightage under Rule 9(2)(d) of the Recruitment Rules, 2001 provided they have filed the legal proceedings in the High Court either by filing writ petitions or applications for intervention on or before December 31, 2010.

The Hon’ble Supreme Court after taking into consideration that the recruitment process began in the year 2006 and the same carried on for four years and after taking note of the fact that some of the persons have immediately approached the court in the years 2009 and 2010 to assail the denial of weightage, fixed the cut off date at December 31, 2010 thereby restricting the scope of challenge to the selection

process on such issue only to such candidates who assailed the denial of weightage on or before the cut off date.

This writ petition has been filed on September 1, 2021 and it is sought to be argued that the cause of action of this writ petition accrued upon the order passed in Amina Khatun (supra). The right to assail denial of weightage accrued immediately upon such weightage being denied to the petitioner and the same cannot be dependant upon an order passed by the Hon'ble Supreme Court when several candidates approached the court in the years 2009 and 2010.

The right to enforce the claim for weightage has been restricted by the Hon'ble Supreme Court in the decision of Amina Khatun (supra) only to the candidates who approached the court promptly to enforce such claim i.e. till December 31, 2010 while passing the judgement on January 24, 2019.

Therefore, this court is of the view that cause of action to file the writ petition arose in 2009-2010 when other candidates approached the court assailing denial of weightage. This court, therefore, holds that the writ petitioners are guilty of delay and laches and the explanation for the delay is not acceptable.

Furthermore, the High Court cannot modify and/or extend the cut off date fixed by the Hon'ble Supreme Court of India.

With the above observation, the writ petition stands dismissed.

There shall be, however, no order as to costs.

(Hiranmay Bhattacharyya, J.)