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03.11.
2022
Ct. No.17

WPA 16485 of 2022

Prasenjit Saha & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Mousumi Hazra
.....For the Petitioners
Mr. Saikat Banerjee
Mr. Ratul Biswas
Mr. Koushik Chowdhury
.....For the Board
Mr. B. P. Vaisya
Mr. Sagnik Chatterjee
.....For the State
Mr. Sauvik Nandy
.....For the NCTE
Mr. Shaunak Ghosh
....For the Respondent No.5

Deficit court fees have been paid by the petitioners against entry no. A-13708 dated 25.07.22 and document showing such deposit is kept on record.

The petitioners' case in this writ application (filed by 16 aspiring candidates for the selection process initiated recently by the West Bengal Board of Primary Education for which Notification has already been published) as has been stated in their pleading (Vide paragraph 28 of the writ application) that all the petitioners have obtained 82 marks out of full marks 150 and have been declared as unqualified on the ground that they did not get 82.5 marks. The

petitioners' contention is that the "principle of rounding off" should be applied and in accordance with the settled principle of rounding off, 54.67% should be increased to 55% and they should be treated as qualified candidates.

Their allegation is that the West Bengal Board of Primary Education is not following the settled principles of law.

The petitioners have also referred to the decision of the School Service Commission, another recruiting agency for the Upper Primary Classes and the said recruiting agency being the School Service Commission has accepted the principle of rounding off and they have declared the candidates who obtained 82 marks out of full 150 as qualified candidates and in support of such contention the petitioners have annexed one document (which is Annexure 'P-14 at page 359) which is a TET result issued by the School Service Commission.

The petitioners have relied upon one letter of the NCTE issued by its under Secretary dated 10.01.2014. This letter is required to be reproduced in full to understand the view of Allahabad High Court in a similar matter and the subsequent decision of the NCTE in such matters of the candidates who have obtained 82 marks in TET.

"Sir,

I am directed to refer to the Guidelines for

conducting Teacher Eligibility Test (TET) circulated by the NCTE *vide* its letter dated 11th February 2011.

2. As per clause 7 of the said Guidelines, the TET exam has to be of 150 marks and as per clause 9 of the Guidelines a person who scores 60% or more in TET exam will be considered as TET pass.

3. Further, as per 9(a) of the TET guidelines the *School Managements (Government, local bodies, government aided and unaided) may consider giving relaxation to persons belonging to SC/ST, OBC, differently abled persons etc in accordance with their extant reservation policy.*

4. The CBSE is the competent authority to conduct the Central TET for school boards under the Central Government. The pass in CTET is also eligible for recruitment as teacher by the State Governments. The CBSE has regarded 82 marks as pass in CTET for candidates belonging to reserved category.

5. The State Government of Uttar Pradesh had given the relaxation of 5% in the qualifying marks to the persons belonging to reserved categories.

6. Representations were received from various candidates seeking directions to the UP Government to consider candidates belonging to reserved categories in Uttar Pradesh who secured 82 marks (54.67%), be considered eligible as decided in CTET by CBSE. The affected candidates approached the Hon'ble High Court of Allahabad in W.P. No. 30875/2013 and the Hon'ble Court *vide* order dated 29th May 13 disposed the petition with liberty to petitioners to approach the NCTE for any such clarification. Based on the representations, the NCTE *vide* letter dated 25th September 2013 sought clarification from CBSE regarding the basis for declaring candidates with 82 marks as eligible. The CBSE in its reply dated 01st October 2013 stated the following:-

As per NCTE guidelines out of 150 marks, 55% marks exactly becomes 82.5, which cannot be scored, therefore looking into the wider interest of the candidates and to ensure reasonableness and

justness, 82.5 marks were rounded to 82 marks i.e. 54.67% treated as equivalent to 55% on rounding as the benefit of anomaly of impossibility of securing exactly 55%(82.5/150) marks in the examination, was given to the candidates. Therefore, the reserved category candidates, securing marks upto 82 are issued the Eligibility Certificates for CTET Nov 12 and onward examinations, applicable in KVS and Directorate of Education, Govt of NCT of Delhi in accordance with the relaxation granted to them.

7. Meantime, since no direction were issued by the NCTE, the affected candidates again approached the Hon'ble High Court of Allahabad vide W.P. No. 59978/2013 and the Hon'ble Court on 13th Nov 13 passed the following order :-

Heard learned counsel for the petitioner, learning Standing Council for the State respondents are Sh. R.A. Akhtar, learned counsel representing respondent No. 4, NCTE.

The petitioner No. 1 is a Scheduled caste candidate and petitioner No. 2 is a candidate belonging to OBC. For the TET examinations, 60% is the qualifying marks whereas for the reserved category candidates there is a relaxation of 5% marks. Thus for the petitioners it would be 55%. The TET question paper is of total 150 marks and 55% of 150 would be 82.5 marks. The questions in the TET examinations are of one mark each and therefore it is not possible that any candidate may secure 82.5 marks. The candidates who had scored 82 marks in TET examination and belonging to reserved category were held to be unqualified in the TET examination. According to them 82 marks out of 150 marks would amount of 54.67% and on rounding it to 55% and therefore they should be declared successful.

It appears from the records that earlier similar matters have been referred to the NCTE for its views. NCTE in turn has written to the CBSE for its clarification on the above issue. Letter of the NCTE dtd 25/09/13 has been filed as annexure 6 to the writ petition. From a perusal of the said letter also it appears that the CBSE with regard to the CTET- November, 2012 matters has provided that reserved category candidate with 82 marks may be treated to be qualified. Letter further mentions that in some of the States the view of the CBSE has been accepted whereas in other states it has not been accepted, which also include State of UP. The CBSE in its reply dtd 01/03.10.13 filed as part of the Annexure 6 to the writ petition has accepted that it has permitted the reserved category candidates securing 82 marks to be qualified in the CTET- November, 2012 and onward examinations. According to the learned counsel for the parties NCTE has not taken any final decision in the matter.

Considering the facts and circumstances of the case, this petition is disposed of with a direction to the respondent No. 4 to take an appropriate decision in the aforesaid pending matter within a period of two weeks from the date of production of certified copy of the order.

8. In view of the above, a Committee was constituted by NCTE to study the reply received by CBSE and recommend on the appropriateness of the interpretation of the relevant clause by CBSE. The Committee in its report stated as follow:-

In view of the above, it seems reasonable to allow the benefit of the anomaly of impossibility (82.5 marks) in favour of SC/ST/OBC and differently abled persons, which will ensure 5% relaxation by just exceeding it to the tune of 0.33% in the considered view of this Committee all SC/ST/OBC and differently abled persons securing 82 marks or above out of 150 be declared eligible at the TET.

9. The said report of the Committee has been accepted and approved by NCTE; therefore the Govt. of UP may take appropriate action accordingly.”

In view of the stand taken by the NCTE following the view of the Hon’ble High Court at Allhabad (that 82 marks would be treated as 82.5) with which respectfully I agree to the decision of the said High Court, I hold that here in the State of West Bengal also there should not be any discrimination with the other similarly situated candidates of other states amongst the TET candidates and the candidates who have obtained 82 marks in TET 2017 (all the candidates are reserved category) should be treated as TET qualified candidates and they shall be allowed to fill up the forms for the ensuing recruitment process for the post of primary school teachers in West Bengal. The Board shall have to follow this direction.

Learned advocate for the West Bengal Board of Primary Education has made his submissions and after considering his submissions I do not find any merit in the objection raised by him in this matter.

Therefore, I direct the West Bengal Board of Primary Education to allow all the reserved category candidates who obtained 82 marks in TET 2017 in the ensuing recruitment process considering them as TET qualified candidates.

With the above direction this writ application is allowed.

In this writ application the petitioners have also raised a question as to wrong answer key in respect of eight questions which is a different cause of action and I have not gone into this aspect of this matter and the I grant liberty to the petitioners to file separate writ application, if they are so advised, in respect of the said cause of action.

(Abhijit Gangopadhyay, J.)