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WPA 19901 of 2019

**Santanu Pati
Vs.
State of West Bengal & Ors.**

**Mr. Partha Sarathi Bhattacharyya, Ld. Sr. Adv.
Mr. Anindya Bose
Mr. Raju Bhattacharyya
Mr. Diptendu Mondal
Mr. Nikhil Gupta**

..for the petitioner

Mr. Ranjan Saha

**..for the respondent nos.
5 & 6**

**Mr. Supriyo Chattopadhyay
Mr. Pinaki Bhattacharya**

....for the State

Affidavit-in-opposition filed on behalf of the State-respondents is taken on record.

Petitioner's candidature was considered for appointment in the post of Primary Teacher in the District of Paschim Medinipur in connection with selection process of 2006.

Mr. Partha Sarathi Bhattacharya, learned senior advocate appears on behalf of the petitioner and submits that the petitioner's name was sponsored by the Employment Exchange to the concerned respondent authorities for appraisal of his candidature. Ultimately, though petitioner was found to be eligible in terms of the marks which could have been awarded in his favour, as

it emanates from memo dated 25th October, 2019 issued by the Chairman, Paschim Medinipur District Primary School Council, but he was not found eligible for being considered for the post of primary teacher on the ground that he was below the prescribed age limit of 18 years at the relevant point of time of initiation of such selection process as it is reflected from the said memo dated 25th October, 2019. Petitioner has questioned such memo dated 25th October, 2019 issued by the Chairman, Pschim Medinipur District Primary School Council being respondent no. 6.

It has been submitted on behalf of the petitioner by Mr. Bhattacharya that in view of the order passed by the Hon'ble Supreme Court dated 24th January, 2019, the year of initiation of selection process of 2006 ought to have been construed from 2009-2010 instead of 2006. In support of such contention reliance has been placed on the said judgement dated 24th January, 2019 passed by the Hon'ble Supreme Court on Civil Appeal No. 1071 of 2019 arising out of SLP (C) No. 29518 of 2016 (Amina Khatun & Ors. Vs. Birbhum District Primary School Council & Ors.) .

It has further been submitted that had the authority in terms of the observations of the Hon'ble Supreme Court as contained in the judgement dated 24th January, 2019 considered 2009-2010 being the year of initiation of selection process, in that event, petitioner

would have been adjudged as a candidate within the prescribed age limit. Such exercise has not been done in the present case which resulted in declaration vide issuing memo dated 25th October, 2019 whereby petitioner was considered as a candidate whose age was below the minimum age limit in reference to the relevant Recruitment Rules.

Mr. Supriyo Chattopadhyay, learned senior Government advocate appears on behalf of the State-respondents and Paschim Medinipur District Primary School Council is represented by Mr. Ranjan Saha, learned advocate. Both the learned advocates representing the respondents have submitted that the judgement dated 24th January, 2019 of the Hon'ble Supreme Court was delivered on a different context of granting weightage for training qualification from the institute, not recognised by the NCTE. Therefore, the observation made therein relating to initiation of selection process of 2006 in the year 2009-2010 does not come in aid of the writ petitioner.

It has further been submitted that the writ petitioner did not participate in the selection process as an eligible candidate by making application to the concerned authority of the District Primary School Council without being forwarded by the Employment Exchange rather his name was forwarded by the concerned Employment Exchange in 2006. Therefore, the

notification dated 30th August, 2009 will not be attracted in case of the petitioner and the calculation of age of the petitioner needs to be made on the premise that the selection process commenced in the year 2006.

This Court in consideration of the rival submissions made on behalf of the parties and on perusal the memo dated 25th October, 2019 issued by the respondent no. 6 finds that the decision of the Chairman whereby petitioner was found below the prescribed minimum age limit in reference to the relevant provision of the Recruitment Rules, is cryptic and devoid of cogent reasons. Excepting referring to one communication dated 22nd October, 2019 of the Commissioner of School Education nothing has been spelt out in support of the conclusion that petitioner was not found eligible since his date of birth was 7th January, 1988. On consideration of the contents of the said memo dated 25th October, 2019 of the respondent no. 6, it also does not appear that what was the date which is to be reckoned for ascertaining age of the petitioner at the time of commencement of said selection process. The Chairman was required to indicate in his decision the date which was taken into consideration while declaring the petitioner as ineligible since he was found below the prescribed minimum age limit.

In view of aforesaid discussion, this Court sets aside the memo dated 25th October, 2019 of the

respondent no. 6 and directs the Commissioner of School Education to take a fresh decision on the aforesaid issue within a period of 8 (eight) weeks from the date of communication of this order after granting opportunity of hearing to the petitioner or his representative.

However, it is made clear that if the claim of the petitioner is refused on any score the Commissioner is directed to assign cogent reasons in support of the same. Till such decision is to be taken by the Commissioner pursuant to the direction passed by this Court today, the letter dated 22nd October, 2019 as referred to by the Chairman in its memo dated 25th October, 2019 shall be kept in abeyance.

With the above direction and observation 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.)