

22. 12. 2022

BP
Sl Nos. 130, 131,
132, 389, 390, 414,
551, 596
Court No. 17

WPA 24564 of 2022

Sailen Kumar Barui
Vs.
The State of West Bengal & Ors.
With

WPA 24253 of 2022

Haradhan Acharyya
Vs.
The State of West Bengal & Ors.
With

WPA 25455 of 2022

Kamaluddin Sk.
Vs.
The State of West Bengal & Ors.
With

WPA 24973 of 2022

Arifa Aktar Banu
Vs.
The State of West Bengal & Ors.
With

WPA 24707 of 2022

Mrityunjoy Guchhait
Vs.
The State of West Bengal & Ors.
With

WPA 24709 of 2022

Ashoke Kumar Maity
Vs.
The State of West Bengal & Ors.
With

WPA 26426 of 2022

Md. Lutfar Sardar & Anr.
Vs.
The State of West Bengal & Ors.
With

WPA 26883 of 2022

Tapas Kumar Das & Ors.
Vs.
The State of West Bengal & Ors.

Mr. K.M. Hossain
Mr. Ali Ahsan Alamgir
Ms. Rabia Khatoon
Ms. Soma Mal
..for the petitioner in
WPA 24564 of 2022, WPA 24253 of 2022
and WPA 25455 of 2022

Mr. Avijit Chakraborty
..for the petitioner in
WPA 24707 of 2022 and WPA 24709 of 2022

Mr. Dibyendu Chatterjee
Mr. Rahul Deb Goenka
Ms. S. Ghosh
..for the petitioners in
WPA 26426 of 2022

Mr. Sabyasachi Chatterjee
Mr. Sandipan Das
Mr. Sayon Banerjee
Mr. Badrul Karin
Mr. Kiron Sk.
..for the petitioners in
WPA 26883 of 2022

Mr. Saikat Banerjee
Mr. Ratul Biswas
Mr. Kaushik Chowdhury
..for the Board

Mr. Biswajit De
Ms. Debdooti Dutta
..for the State
in WPA 24253 of 2022

Mr. Sirsaya Bandyopadhyay
Mr. A.K. Nag
..for the State in WPA 24973 of 2022

Mr. Sauvik Nandy
..for NCTE

The petitioner qualified in TET 2017. He was waiting for recruitment process for such TET qualified candidates (of which he is one) to be held by the West Bengal Board of Primary Education. From 2017 to 2022 November, there was no recruitment for TET 2017 qualified candidates. For the first time after a long gap the Board is going to start the recruitment process for the post of Assistant Teachers in primary schools in 2022 December (the interview and the aptitude test will start for the district of Kolkata – first phase on 27.12.2022 for the TET qualified candidates of 2014 and 2017). The petitioner's case is that in the meantime after qualifying in TET 2017 he has crossed the maximum age limit on 3rd February, 2020 which shows that he got no opportunity during the period when he was within the age limit to appear for any recruitment exercise for the post of primary teachers.

Learned advocate for the petitioner submits that there is no reason for not recruiting teachers for such a long time for which the petitioner and the other similarly situated candidates are going to be deprived of for crossing the age bar.

Mr. Saikat Banerjee, learned advocate for the West Bengal Board of Primary Education submits that as per statutory rule, the recruitment process is being initiated in 2022 and as per the said rules the petitioner has crossed the age bar and the petitioner has not challenged the Rule 6 which speaks about the age bar. Therefore, the petitioner's case cannot be entertained by this court. Mr. Banerjee has also relied upon three judgements of the Supreme Court reported in 1. (2011) 3 SCC 436, 2. (2011) 14 SCC 725 and 3. (2014) 16 SCC 375 but none of the matters are similar to the present one. It is the Board who was responsible for recruiting the teachers after receiving the vacancies from the State Government. The Board and the State Government has apprised this court that though there was the recruitment process in 2020, wherein 2014 TET qualified candidates were allowed to participate, TET 2017 qualified candidates were not allowed to participate in that recruitment process. Mr. Banerjee further submits that TET 2017 examination was held on 31st January, 2021 i.e. after four years. Therefore, in 2020 recruitment process there was no scope for entertaining 2017 TET qualified candidates.

I find that the West Bengal Board of Primary Education acted in most irregular manner where TET

results are published after four years. After six years, TET 2014 qualified candidates were given a chance to appear in the recruitment process which was initiated in 2020. The TET 2014 candidates also got another chance in 2016.

Nobody is bothered about the persons who are after filling up the form for TET 2017 (test taken in 2021) crossed the maximum age limit after qualifying in TET 2017. The candidates who qualified in TET 2017 (held in 2021) but crossed the age bar cannot be made subject of a cruel comedy. TET pass certificate is not meant for keeping it hanging in the walls with good framing. Therefore, the petitioners and the similarly situated candidates who have crossed the age bar must be given one opportunity in the recruitment test which is going to be initiated from 27th December, 2022 starting with the district of Kolkata.

The 2017 TET qualified candidates were not responsible for not appearing in the recruitment process because after 2017 TET no recruitment process was initiated till 2022. In fact TET 2017 was held in 2021. It was the Board which was responsible in not creating any opportunity for the TET 2017 successful candidates. The petitioner's right to appear in at least one recruitment process cannot be denied and this

right of petitioners to appear at least one recruitment process accrued as soon as the person appeared for TET 2017 and the right has been fortified on qualifying TET 2017. Therefore in my view this is not an age relaxation matter; it is a matter of legal right and corresponding legal duty relationship.

Therefore I direct the West Bengal Board of Primary Education to allow TET qualified candidates who has crossed the age bar between 12th May, 2017 (the date of advertisement for TET 2017) and 27th December, 2022 (the date of actual initiation of the recruitment process starting with the district of Kolkata).

I further direct the West Bengal Board of primary Education to allow such persons one chance in the coming recruitment process which is going to initiated from 27th December, 2022.

I want to know from the learned advocate for the State whether he has any information or instruction as to the vacancy in the primary schools after 2020 recruitment process was over, the said learned advocate has submitted that there is no such instruction with him. Therefore it cannot be said that there was no necessity of recruitment of primary teachers after 2020 recruitment process and for such reason 2017 TET

qualified candidates could not be given an opportunity in the recruitment process after the recruitment process of 2020.

Therefore, this writ application is allowed and the Board is directed to allow the petitioner to participate in the recruitment process which is going to be initiated from 27th December, 2022. This order shall also be applicable for other similarly circumstanced persons.

The petitioner and the similarly situated persons is required to be given opportunity to participate in the recruitment process which is going to be initiated from 27th December, 2022 after their on-line registration which can be done separately.

There shall be no order as to costs.

(Abhijit Gangopadhyay, J.)