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WPA 1149 of 2018

**Dr. Shanta Moulik
Vs.
State of West Bengal & Ors.**

Mr. Vivekananda Bose
Mr. Arka Kumar Nag
Mr. Rahul Kumar Singh
Mr. Ratikanta Pal
... For the petitioner.

Mr. Pulak Ranjan Mandal
Ms Bandana Mondal
Mr. Subhrangsu Panda
... For WBCSC.

Mr. Pratik Majumder
Mr. Abul Mallick
... For respondent nos. 8-10.

Mr. Soumya Majumder
Mr. Malay Kr. Seal
Ms. Sanjukta Dutta
... For respondent 13.

In this writ petition a writ in the nature of *quo warranto* has been prayed for against respondent no. 13, who holds the position of Principal at Nandalal Ghosh B.T. College, North 24 Parganas.

Before the merit of the case is dealt with, it is interesting to note that the petitioner was an Associate Professor of that college and during the pendency of the writ petition, she retired on January 31, 2023. It, however, does not appear that there is any lack of zealously in pursuing the writ petition even after her retirement.

Mr. Bibekananda Bose, learned advocate appearing for the petitioner has urged two points to demonstrate ineligibility of respondent no. 13 for the relevant post. He has drawn attention of this Court to the advertisement dated December 31, 2013, issued by the College Service Commission following which respondent no. 13 was appointed to the post of Principal.

Mr. Bose submits that the petitioner scored 54.67% marks in her B. Ed. examination whereas the required percentage in the said advertisement was at least 55%. The College Service Commission should not have rounded off 54.67% to allow respondent no. 13 to participate in the selection process.

It has further been urged by Mr. Bose that respondent no. 13 also did not have the requisite teaching experience in terms of the said advertisement.

He submits that the teaching experience of the petitioner at Barchana Junior Womens College in Odisha could not have been considered for the relevant post. He refers to the information obtained by the petitioner under the Right to Information Act, 2005 appearing at page 68 of the writ petition, which suggests that the said college imparts education for female students of 10+2 Arts and Science stream.

According to Mr. Bose, service of the respondent no 13 at the said institution cannot be accepted as a

service in a recognised college of the University Grants Commission.

In support of his submission, Mr. Bose relied upon a judgment reported at **(2011) 8 SCC 108 (Orissa Public Service Commission vs. Rupashree Chowdhary)**, where the Supreme Court in paragraphs 9 and 10 held as follows:

“10. A bare reading of the aforesaid Rule would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the main examination. When emphasis is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding

some words to the said statutory rules for giving the benefit of rounding off or relaxation.”

Appearing on behalf of respondent no. 13, Mr. Soumya Majumder, learned advocate, on the other hand, has drawn attention of this Court to the relevant part of the advertisement dated December 31, 2013. By referring to the qualification as specified in clause 4(B)(d) of the said advertisement Mr. Majumdar submits that it was not necessary for the petitioner to have 10 years teaching experience in a college/university recognized by UGC for the post in question.

With regard to the lack of percentage of marks in B. Ed., Mr. Majumder submits that a bare reading of the advertisement will make it clear that while rounding off of marks was specifically prohibited for Master Degree, no such prohibition was there for B. Ed. Degree.

Appearing on behalf of the College, Mr. Pratik Majumder, learned advocate submits that the College has acted on the basis of the recommendation made by the College Service Commission. By referring to a notification dated February 02, 2022, he submits that in Odisha, at the relevant point of time, an institution imparting 10+2 level education was considered to be a college and therefore, the petitioner had the requisite qualification.

In paragraph 8 of the affidavit filed by the College Service Commission, it has been accepted that the petitioner had the requisite teaching experience for the post in question. The College Service Commission, however, suggests that the rounding off of B. Ed marks of the petitioner was not permissible. At the time of counselling, the petitioner in the prescribed form disclosed her percentage of marks in B. Ed. examination as 55%. Based on such representation, the College Service Commission recommended her name.

To ascertain the eligibility of the petitioner, it is necessary to compare the required teaching experience and academic qualification for the “General Degree Colleges” and “B. Ed. Colleges” as mentioned in the advertisement dated December 31, 2013. The same are quoted below:

4. Academic Qualifications and Experience:

“A. For General Degree Colleges

...

d) At least 15 years of teaching/research/administrative experience in recognized Universities, Colleges and other Institutions of Higher Education, as clarified in Note 1 below.

...

e) A minimum score in the academic performance indicator (AP) based performance Based Appraisal System (PBAS), with emphasis on published work,

designed in accordance with UGC guidelines. It is also desirable, but not essential, that the candidate should have experience of guiding research

Teaching Experience: As a whole time faculty at least in UGC scale of pay in recognized University/College/Institution of Higher Education.

Research Experience: Post-doctoral research experience in recognized Institution of Higher Education.

Administrative Experience: Experience of working in an administrative capacity in any recognized University/College/Institution of Higher Education in at least Assistant Professor Scale.

B. Educational qualifications *For B. Ed. Colleges*

...

- a) Master's degree in Education with at least 55% marks (or an equivalent grade/grade point wherever grading system is followed) from a recognized University.
- b) B. Ed. with at least 55% marks (or an equivalent grade/grade point wherever grading system is followed).
- c) Ph. D. in Education.

“Relaxation of 5% from 55% to 50% is admissible at the Master's degree and M. Ed level for (i) candidates

belonging to SC and ST categories and for (ii) those who have obtained the sold Master's Degree prior to 19th September, 1991. The percentage calculation should not involve any rounding-off procedure, that is, 54.5% and 49.5% (and above) should not be rounded off to 55% and 50% respectively."

- d) 10 years teaching experience out of which at least 5 years teaching experience in a Secondary Teacher Education Institution."
- e) A minimum score in the academic performance indicator (AP) based Performance Based Appraisal System (PBAS), with emphasis on published work, designed in accordance with UGC guidelines See note 2 above about the submission of API by the candidates."

A close scrutiny of the advertisement demonstrates that the marks obtained in Master's degree examination should not follow round off procedure, while with regard to the percentage of marks in B. Ed. examination, no such prohibition has been indicated.

The different languages in the different paragraphs of the same advertisement denotes different intention of the authority. Expressed prohibition with regard to the rounding off in Master Degree score and the conspicuous absence of such restriction with

regard to the B. Ed. marks leaves no room for doubt that the Commission or the State did not intend to prohibit the rounding off marks in B. Ed. examination. Rounding off is a well accepted practice in every sphere of calculation and unless prohibited specifically or by necessary implication, rounding off marks is to be accepted.

No doubt that the judgment relied upon by Mr. Bose goes to suggest the word “minimum” or “at least” should be construed as a prohibition against rounding off. However, having regard to the content of the advertisement in question, I am of the view that the Commission never intended to prohibit the rounding-off marks in case of B. Ed. examination.

Again a difference in language with regard to the experience clause for Principal in “General Degree Colleges” and “B. Ed. Colleges” has to be noted. It is apparent that for the post of Principal in “General Degree Colleges”, a candidate must, *inter alia*, possess at least 15’ years teaching experience/ Research/ Administrative experience in University/Colleges and other Institutions of Higher Education. The teaching experience has been clarified as a whole time faculty at least in the University Grants Commission scale of pay in the University/Colleges and other Institutions of Higher Education.

In case of B. Ed. College, only 10 years' teaching experience out of which at least 5 years' teaching experience in a Secondary Teacher Education Institution is required. When the advertisement does not prescribe that the teaching experience in case of a B. Ed College has to be in a recognised college/university, the same cannot be the qualification of a Principal of a B. Ed. college.

The status of Barchana Junior Women's College at Odisha has been seriously disputed by the petitioner.

The petitioner strongly suggests that the said institution does not offer any under-graduate degree and therefore, the teaching experience at the said institution should not have been counted.

The status of the college has been clarified by a letter dated February 05, 2018, as disclosed in the affidavit of respondent no.13, which reads as follows:

“Certified that Miss Kalyani Sahoo D/o Late Niranjan Sahoo At Bidyadharpur, P.O. Nuabazar, Dist-Cuttack was working as lecturer in Chemistry in this college from Dt. 11.01.1993 to 21.01.1998. At that time the college status was Barchana Womens College, Barchana. The college was conferred on the status of (Barchana Junior

Womens College) vide Govt. order No. 15377/HE dt. 13.04.2011.”

Neither the said letter nor the averments made in the affidavit-in-opposition used by respondent no. 13 clarifies whether at the relevant point of time Barchana Junior Women’s College used to offer under-graduate degree.

In any event, in view of the finding that the Principal of a B. Ed. college does not require to possess a 10 years experience in a college or university, the argument of the petitioner with regard to the Barchana Junior Women’s College does not merit any attention.

In that view of the matter, this writ petition is not entertained and the same is dismissed.

Accordingly, **WPA 1149 of 2018** is dismissed.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)