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01.03.2023.
Ct. No. 11.
F.B.

**MAT 159 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023
with
IA No. CAN 3 of 2023**

**Sadek Biswas & Ors.
-Vs.-
Biswanath Mandal & Ors.**

**Mr. Surajit Nath Mitra,
Mr. Subir Sanyal,
Mr. Chittapriya Ghosh,
Mr. Asit Baran Ghosh,
Mr. Somesh Ghosh
..... For the Appellants.**

**Mr. Sabyasachi Chatterjee,
Mr. Badrul Karim
..... For the Respondents/
Writ Petitioners.**

**Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Mousumi Hazra,
Ms. Payel Shome
..... For the applicants
in IA No. CAN 3 of 2023.**

**Mr. Saikat Banerjee,
Mr. Ratul Biswas,
Mr. Kaushik Chowdhury
..... For the Primary Board.**

**Mr. Sauvik Nandy
..... For the NCTE.**

Party/Parties is/are represented in the order of
their name/names as printed above in the cause title.

Under challenge in this appeal is the Order of the Hon'ble Single Bench in WPA 24618 of 2022 dated 22nd of December, 2022.

By the said interim order the Hon'ble Single Bench admitted the West Bengal Board of Primary Education (for short, the Board) to allow the Writ Petitioners/who are present Respondents to this appeal to participate in the Recruitment of Primary Teachers being conducted by the Board. The Writ Petitioners before the Hon'ble Single Bench were candidates who had passed the Central Teachers Eligibility Test (for short, CTET).

The Order of the Hon'ble Single Bench dated 22nd of December, 2022 (*supra*) was purely in the nature of an interim measure and it was also held by the Hon'ble Single Bench that such participation by the Writ Petitioners in the Recruitment Process will not create any equity in their favour. The recommendation for appointment of the Writ Petitioners, if any, will also abide by the result of the Writ Petition.

Mr. Mitra, Learned Senior Counsel with Mr. Sanyal and Mr. Ghosh, Learned Counsel, appears for the appellants and seeks leave to appeal against the Order dated 22nd of December, 2022. The present

appellants are State Teachers Eligibility Test (for short, STET) qualified candidates.

It is the contention of the appellants that in terms of the National Council for Teachers Education (NCTE) Guidelines as framed on the 11th of February, 2011 and particularly Clause 10 thereof, there is a clear demarcation of Recruitment in either of categories namely, CTET and STET. Clause 10 of the NCTE Guidelines dated 11th of February, 2011 (*supra*) reads as follows:-

“10.

(a) TET conducted by the Central Government shall apply to all schools referred to in sub-clause (i) of clause (a) of section 2 of the RTE Act.

(b) TET conducted by a State Government/UT with legislature shall apply to:

(i) a school of the State Government/UT with legislature and local authority referred to in sub-clause (i) of clause (n) of section 2 of the RTE Act; and

(ii) a school referred to in sub-clause (ii) of clause (n) of section 2 of the RTE Act in that State/UT.

A school at (i) and (ii) may also consider eligibility of a candidate who has obtained

TET Certificate awarded by another State/UT with legislature. In case a State Government/UT with legislature decides not to conduct a TET, a school at (i) and (ii) in that State/UT would consider the TET conducted by the Central Government.

(c) A school referred to in sub-clause (iv) of clause (n) of section 2 of the RTE Act may exercise the option of considering either the TET conducted by the Central Government or the TET conducted by the State Government/UT with legislature.

Next, taking this Court to the Right of Children to Free and Compulsory Education Act, 2009 (for short, the 2009 Act), the appellants rely upon the definition of schools as provided in Section 2 thereof. The appellants contend that the schools in relation to which CTET candidates can apply for recruitment are clearly provided in Section 2(a)(i) of the 2009 Act. On the other hand, in terms of Clause 10(b) of the said NCTE Guidelines the schools to which the STET candidates can apply are clearly provided in Clause 2(n)(i) as well as Clause 2(n)(ii) of the said NCTE Act.

The appellants further contend that the only condition under which CTET candidates can apply for recruitment in a State or Union Territory (UT) is when a State Government/UT with legislature decides not to conduct a TET. In such a situation, a school at sub-

clauses (i) and (ii) at Clause (n) of Section 2 of 2009 Act would consider for recruitment the CTET candidates.

The appellants point out that since by the notification for recruitment issued by the Government dated 29th of September, 2022, the State is conducting the TET recruitment, the bar created by Clause 10 of the said NCTE Guidelines disallowing CTET candidates from participating in the State TET recruitment shall apply.

Accordingly, the appellants seek *Leave to Appeal* and stay of operation of the Order impugned dated 22nd of December, 2022 (*supra*).

Appearing for the Writ Petitioners/the Respondents to this appeal, Mr. Chatterjee, Learned Counsel and Mr. Samim, Learned Counsel, rely upon the Judgement of the Hon'ble Division Bench of the *Gauhati High Court reported in 2021 SCC online Gau* 224. It is submitted that the Gauhati High Court clearly held that CTET candidates shall be allowed to participate in the STET recruitment on the ground of legitimate expectation and proportionality.

It is submitted that the logic applied by the Hon'ble High Court at Gauhati shall also be relevant to the facts of this case since it is an admitted position that State has not held TET Recruitment for several

years in the past. Accordingly, the Writ Petitioners have accrued the *legitimate expectation* to be considered for recruitment under the present TET Notification of the State Government dated the 29th of September, 2022.

Learned Counsel for the writ petitioners further argue that the 2009 Act enshrines a fundamental right to receive education as protected by Article 21A of the Constitution of India. It is submitted that in view of the requirement of primary teachers in schools through out the State the restriction on CTET candidates to participate in the selection would adversely affect the constitutional right to receive free and compulsory education.

On behalf of the Board, Mr. Biswas, Learned Counsel led by Mr. Banerjee, Learned Counsel, appears and submits that the Board is under a duty to follow the order of the Court and the recruitment process is presently in motion.

On behalf of the NCTE, Mr. Nandy, Learned Counsel, appears and produces a communication dated 10th January, 2014 issued to the Secretary (Basic Education Department), Government of Uttar Pradesh as well as the Secretary (Basic Education) by the NCTE. From the communication, it appears that NCTE has recommended that CTET candidates shall also be

eligible for recruitment as teachers by the State Government.

However, Learned Counsel for the NCTE further clarifies his stand on the basis of subsequent instructions received to the effect that the NCTE is now in the process of examining the Guidelines (*supra*) and hence the communication dated 10th January, 2014 should not be treated reflecting the stand of the NCTE.

Having closely heard the parties and considering the materials placed, this Court finds that the said NCTE Guidelines of 11th February, 2011 are clear in their mandate. From the said NCTE Guidelines both CTET and STET selections at Central and State/Union Territories (UT) with legislature have been differentiated.

The said NCTE Guidelines also provide with no ambiguity whatsoever that the State/UT with legislature shall consider the CTET candidates only in the event they decide not to conduct the TET examination.

This Court finds from the facts that admittedly TET has been conducted by the State Government and the Notification dated 29th of September, 2022 provides for recruitment to the posts of Assistant Teachers in State Government Primary Schools.

In such view of the matter, having regard to the decision of the State Government to conduct the TET and hold recruitment in terms of the Notification dated 29th of September, 2022, the bar created under Clause 10 Proviso (*supra*) shall operate in the field.

Furthermore, this Court is of the view that the order of the Hon'ble High Court at Gauhati has been delivered in the particular facts of that case. This Court finds that before the Hon'ble High Court at Gauhati the issue was the effect of a decision by the State Government of Assam to take cognizance of the claim to recruitment by CTET candidates in the recruitment process of TET conducted by the State Government.

This Court is of the view that in addition to the decision of the Hon'ble High Court at Gauhati being of persuasive value, the fact situation arising out of the discussion by the Hon'ble High Court at Gauhati is not *pari materia* to the fact situation relevant to the present case.

This Court notices that admittedly in view of the decision of the State Government to conduct the recruitment in terms of the Notification dated 29th of September, 2022, the Proviso to Clause 10 of the said NCTE Guidelines shall apply and the bar to CTET

candidates from applying to State schools shall be operative.

This Court also finds that the communication of the NCTE dated 10th of January, 2014 addressed to the Secretaries of the Uttar Pradesh Government was in the context of the percentage of marks to be awarded in respect of CTET and STET candidates respectively for the then recruitment process to schools in the State of Uttar Pradesh. In the facts of this case no such situation exists and moreover, having regard to the stand taken by Learned Counsel for the NCTE placed at the hearing today that the NCTE is not relying on the communication dated 10th of January, 2014 but, reiterates its Guidelines of 2011, persuades this Court to accept the applicability of the Proviso to Clause 10 of the said NCTE Guidelines, 2011 (*supra*).

Having regard to the above discussion, there shall be stay of the operation of the Order impugned of the Hon'ble Single Bench dated 22nd December, 2022 until the writ petition is finally decided by the Hon'ble Single Bench.

Leave to Appeal stands accordingly granted.

Since the appeal is preferred against the interim order of the Hon'ble Single Bench dated 22nd of December, 2022 and the validity of the said interim

order has been decided by this Court by the present order, the appeal is not kept pending. The matter returns to the Hon'ble Single Bench to be heard on merits.

MAT 159 of 2023 along with **IA No. CAN 1 of 2023, CAN 2 of 2023** and **CAN 3 of 2023** stand accordingly **disposed of**.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)