

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 5375 of 2022

Reserved on : 12.07.2023
Pronounced on: 10.08.2023

Sk. Obaidullah

...Petitioner

-Vs-

The State of West Bengal & Ors.

...Respondent

Present:-

Mr. K.M. Hossain
Mr. Ratan Das

... for the Petitioner

Ms. Sumita Sen

...for the Respondent Nos. 5 & 6.

Mr. Supriyo Chattopadhyay
Ms. Sayantanee Bhattacharjee

...For the State.

Rajarshi Bharadwaj, J:

1. The instant writ petition has been preferred challenging an order IC/239/LP/2021 dated 27.01.2022 wherein one Sk. Obaidullah herein the writ petitioner was denied appointment to the post of primary school teacher under Physically Challenged category in connection with the Recruitment Process of primary school teachers, 2006 by Commissioner of School Education herein respondent No. 2 and lack of action on the part of the District Primary School Council, Birbhum herein respondent No.6 for not taking any steps in respect of issuing appointment letter to the petitioner.

2. Shorn of unnecessary details, the facts of the case are that the petitioner passed one-year Primary Teachers' Training Examination from Minerva Academy PTI, Murshidabad and Md. Bazar Govt. SP PTI, State recognized institutions in the academic session 2004-2005, received Training Certificate on 23.12.2005 and was a candidate in the recruitment process of primary teachers initiated by respondent No. 6 starting in 2006.

3. The petitioner filled up an application form for appearing in the examination for appointment as a primary school teacher under Physically Challenged category on 13.10.2009 and submitted handicapped certificate dated 25.05.2000.

4. The name of the petitioner appeared in Employment Exchange of the Government of West Bengal on 17.01.2006 under Physically Challenged category in Bengali Medium for participating in the recruitment process of primary school teachers initiated by respondent No. 6.

5. A written test was conducted in 2009 following which the interview for the post of Assistant Teacher of Primary School was held on 24.11.2009 wherein no weightage of training marks was given to the petitioner. Challenging the selection process for the selection for the said post, a writ petition being W.P 9129 (W) of 2010 was preferred by the petitioner. The State of West Bengal, through the Secretary, Department of School Education herein respondent No.1 was thereupon ordered to provide an efficacious remedy to the petitioner.

6. The order dated 24.01.2019 passed by Hon'ble Supreme Court (Amina Khatun & Ors versus Birbhum District Primary School Council & Ors) provided that the primary teachers who obtained their certificates from the institutes recognised by the State Government, would also be entitled to the weightage under Rule 9(2)(d) of the Recruitment Rules, 2001 so long as they have filed the legal proceedings in the High Court on or before 31st December, 2010.

7. In pursuance of the aforesaid order, 79 candidates out of the list of 80 candidates for Birbhum District were found entitled to be appointed and letters were issued in favour of the empanelled candidates vide Memo No. 848-SC/P dated 23.09.2019 by respondent No.2.

8. The petitioner submitted representation that he is entitled to 22 marks for having training qualification as per Rule 9 (2)(d) of the Primary School Teachers Recruitment Rules 2001 and with the aid of such marks is entitled for appointment before the respondent authority and after verification, a report consisting of four candidates including the name of the petitioner was sent to the Directorate of School Education Department vide Memo No BDPSC/GEN/2673/2020 dated 14.02.2020.

9. The non-action on the part of respondent authority for not taking any steps in respect of issuing appointment letter to the petitioner despite several representations made up till 2021 warranted writ petition W.P.A No. 14358 of 2021 wherein the Learned Single Judge by order dated 16.11.2021 directed respondent No. 2 to hear and pass a reasoned order within 3 weeks from the date of the aforesaid order.

10. Though the petitioner was included in the additional panel (5 % of the existing vacancies) under Physically Challenge category according to merit, his appointment to the said post was rejected as he failed to obtain the cut-off of 49.75 marks in the Additional Panel under Physically Challenged category vide letter dated 27.01.2022 issued by respondent No. 2. Thus, being aggrieved by such order the present petition has been preferred.

11. It has been submitted by the learned counsel for the petitioner that his appointment has been withheld by the respondent authority under unsubstantiated reasons although several similarly situated candidates have been given appointment earlier. The petitioner is entitled to weightage of training marks under Rule 9 (2)(d) of the West Bengal Primary School Teachers Recruitment Rules 2001.

12. As per provision of the West Bengal Primary School Teachers Recruitment Rules 2001, the cut-off mark of a candidate is to be determined after awarding marks for written test/ interview. The marks awarded to the petitioner has been wrongfully determined as 49.77 (34.69 in academic and 15.08 in training) without considering marks for written test/interview. Had the respondent authorities called him for the written test/ interview, he would have secured marks above the cut-off and would be considered for appointment.

13. The provision relating to selection procedure, Rule 9(9) of the West Bengal Primary School Teachers Recruitment Rules 2001 provides that a separate panel shall be prepared for vacancies reserved for candidates belonging to Exempted Category, Ex- Servicemen and Physically Handicapped Category, further an Additional Panel of 5 % of the above mentioned shall be instituted. The total number of eligible candidates included in the panel shall be the same as the number of vacancies in addition to 5 % of such existing vacancies. In the instant case, the respondent authorities deprived the petitioner of employment by preparing Additional Panel consisting of only one (01) candidate instead of two (02) candidates as against 26 posts reserved for Physically Challenged category in the normal panel, admitting the last appointed candidate awarded with lesser marks than the petitioner.

14. The learned counsel for respondent No. 2 submits that due weightage upon the one-year Primary Teachers' Training Examination certificates obtained by the petitioner has been given in consequence of recasting of Panels prepared by respondent No.6, placing high reverence to the order passed by the Hon'ble Supreme Court of India. Subsequently, the lowest cut-off marks stood to 49.81 and the petitioner did not qualify to the recast normal physically challenged panel because he obtained 49.77 marks.

15. The stipulation applicable to the said recruitment process of primary school teacher, Rule 11 of the West Bengal Primary School Teachers Recruitment Rules 2001 laid down that appointment letters in excess of the

said Additional Panel shall be issued provided the normal panel is exhausted and the vacancies as worked out remain unfilled. As there was no case of non-joining of candidates and as vacancies were fulfilled, the petitioner being in the Additional Recast Panel of the Physically Challenged category did not get an appointment letter.

16. The Learned Counsel for Chairman, District Primary School Council, Birbhum, respondent No. 5 and respondent No. 6 submits that the cut-off marks obtained by an empanelled candidate under Physically Handicap category in the Recast Main Panel is 49.81 and in the Recast Additional Panel is 49.75. A report dated 14.02.2020 consisting of four candidates including the name of the petitioner was sent to the Directorate of School Education Department for consideration. Out of the four candidates, three candidates were found to be eligible. The petitioner was not eligible as he failed to appear in the recast normal panel, rather his name appeared in the recast additional panel as per order of the Hon'ble Supreme Court.

17. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the writ petitioner could not be deprived of the training marks awarded for written examination in terms of Rule 9(9) of the 2001 Recruitment Rules. Under the said Rule out of 100 marks 65 marks was meant for academic qualification, 22 marks for training, 3 marks for co-curricular activities and 10 marks for written examination. The cut-off mark has to be determined after awarding marks for the written examination. At the time of evaluating merit for participation in the selection process, the respondent ought to have granted weightage of the written examination/interview marks. The rules of selection and appointment governing a particular category of candidates must be uniformly exercised and strictly complied with.

18. The petitioner participating in the recruitment process having submitted Primary Teachers' Training Examination Certificate from a State recognized institution along with other necessary documents was not given an

opportunity to sit for the written test. Hence the preparation of Normal Panel and Additional Panel of the Physically Challenged category indicates prima facie insufficient application of mind on the part of the concerned respondent.

19. The respondent authorities have failed to recognize that the training marks have been awarded to the writ petitioner without awarding marks for written examination/interview. Had the said marks been considered, he could possibly have come within the zone of selection process by obtaining more than the deficit marks. No effort was made to rectify the mistake in spite of repeated representations by the petitioner.

20. Order IC/239/LP/2021 dated 27.01.2022 issued by respondent No. 5 has thereby violated the provisions of the West Bengal Primary School Teachers Recruitment Rules, 2001.

21. For the reasons discussed above, the writ application is allowed. The petitioner should be given an opportunity to participate in the written test in connection with appointment to the post of primary school teacher under Physically Challenged category. The respondent No. 5 being the competent authority, is directed to revisit the recruitment process pertaining to the petitioner as per extant Recruitment Rules. A fresh written test must be conducted based on which, a modified score sheet for him must be prepared by the competent authority. If he qualifies after the said written examination, further steps are to be taken thereafter to send the said Recast Panel for approval as per law and recommend the petitioner in any school for his appointment.

22. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(RAJARSHI BHARADWAJ, J)

Kolkata

10.08.2023

PA (BS)