

Item-2. 13-07-2023

MAT 460 of 2023
CAN 1 of 2023
CAN 2 of 2023

^{sg} Ct. 8

The West Bengal Board of Primary Education & Anr.
Versus
Shampa Ghorui & Ors.

Mr. Subir Sanyal, Adv.
Mr. Saikat Banerjee, Adv.
Mr. Ratul Biswas, Adv.
Mr. Ksushik Chowdhury, Adv.
...for the appellant Board

Mr. Dibyendu Chatterjee, Adv.
Mr. Pritam Majumdar, Adv.
Mr. Rahul Deb Goenka, Adv.
Mr. Soumish Ghosh, Adv.
...for the writ petitioner/respondent

CAN 1 of 2023 is an application for condonation of delay. However, the Stamp Reporter in its report dated 24th March, 2023 has indicated that the appeal is filed within time.

CAN 1 of 2023 is, accordingly, disposed of by recording that the appeal is within time.

The appeal is arising out of an order passed by the learned Single Judge on 9th February, 2023 directing the West Bengal Board of Primary Education to consider the candidature of the writ petitioner without canceling it and to take steps for recommendation as it is found from the affidavit that she got higher marks than the last recommended candidate, if she is otherwise eligible. The timeframe of three weeks was given to make such recommendation from the date of communication of the said order.

The appellant is aggrieved by the said order. The appellant has preferred the instant appeal on 10th April, 2023.

We have been informed by Mr. Subir Sanyal, learned Counsel representing the appellant Board that an contempt application has been filed for non-implementation of the order dated 9th February, 2023 and the same is still pending. In the said contempt application, the President of the Board was directed to appear personally on 18th July, 2023.

The facts of the case reveal that she was declared as PH Category candidate by the West Bengal Board of Primary Education and she had deposited Rs.50/- on account of fees in respect of recruitment process of 2016. For a PH Category candidate, the amount to be deposited is Rs.50/- and it shows that she apparently had accepted such position. She, however, later on contended that such mistake was due to inadvertence of the person working in the local computer centre. Undoubtedly she was present at the time of making entry in the computer declaring her category and depending on such declaration, she was directed to make payment of application fees. If she were to be considered as a PH candidate, then she had qualified as she had already secured 84%. However, she did not produce any physical handicapped certificate which is obvious as she contended that she never declared herself as PH Category candidate. Prima facie, it appears that she is not a PH candidate as the admit card issued by the West Bengal Board of Primary Education does not refer to the writ petitioner as a PH candidate. However, the problem lies elsewhere. If we assume for the sake of argument that she is entitled to a General Category, then indisputably she is required to get 90% marks.

Mr. Dibyendu Chatterjee, learned Counsel representing the

writ petitioner has candidly submitted that there is a shortfall in this regard.

The question arises when there is an admitted shortfall, whether the Court can direct recommendation of her name.

The learned Counsel for the parties have referred to a judgment of a coordinate Bench in *MAT 1594 of 2018 (West Bengal Board of Primary Education & Ors. vs. Prativa Mondal)* particularly pages 63 and 64 wherefrom it appears that a direction was given to the Board to award marks to all the examinees irrespective of whether they have attempted the wrong questions/options in the key answers of JGB Question Booklet series or not.

In the supplementary affidavit filed on behalf of the writ petitioner, the writ petitioner has stated that the writ petitioner is entitled to get additional six marks in respect of wrong answer keys provided by the respondent Board in six questions. The said affidavit was affirmed on 6th February, 2023 prior to the order passed by the coordinate Bench.

Mr. Sanyal has fairly submitted that giving effect to the direction of the Hon'ble Division Bench shall take sometime and only on examination of the entire matter, a fresh list may be required to be prepared.

Moreover, the Hon'ble Division Bench while disposing of the matter has observed that:

“This Order shall not however affect steps taken so far by the Board or, already in the process of being taken by the Board, in respect of TET 2014”.

We must record that the order of the Hon'ble Division

Bench was subsequent to the impugned order and accordingly, the learned Single Judge could not have the opportunity to consider this aspect of the matter.

In view of the aforesaid, no recommendation could be made for the petitioner in respect of TET 2014. The candidature of the writ petitioner may be considered for future recruitment process in the event of her making an application by considering the age bar and subject to fulfillment of other criteria.

The appeal succeeds. The impugned judgment is set aside.

The application for stay being CAN 2 of 2023 also stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)